

**MODEL NOTES**  
**UNIT-1 & UNIT-2 (BNC501)**  
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**TOPIC: CONSTITUTIONAL SCHEME IN INDIA**

The Indian constitutional scheme creates a parliamentary republic with a quasi-federal structure, blending both federal and unitary features. It establishes India as a Sovereign, Socialist, Secular, Democratic, Republic and defines the powers of the central and state governments through a written constitution. Key features include a parliamentary system, a strong central government, a single citizenship, a written and somewhat rigid constitution, an independent judiciary, and fundamental rights for citizens.

The constitutional scheme in India establishes a parliamentary, federal system with a written constitution, Fundamental Rights, a judicial review mechanism, and a separation of powers among its legislative, executive, and judiciary branches. India is a Sovereign Socialist Secular Democratic Republic, and the Constitution outlines the structure and functioning of the central and state governments, ensuring the rule of law and protecting citizens' rights and freedoms.

Q1: Discuss the Key Features of Indian Constitutional Scheme?

**Key Features of India's Constitutional Scheme**

- **Parliamentary Form of Government:** The government is parliamentary, with a President as the head of the state and a Council of Ministers led by the Prime Minister who are collectively responsible to the Lok Sabha (House of the People).
- **Federal Structure with Unitary Features:** India has a federal structure where powers are divided between the Union (Central) government and the States, but it also has unitary features, allowing for a strong central government when needed.
- **Written and Detailed Constitution:** The Constitution is a comprehensive, written document detailing the constitutional law of India and governing both the Union and State governments.
- **Fundamental Rights:** Part III of the Constitution guarantees fundamental rights to citizens, such as the right to equality, freedom of speech and expression, and freedom of religion.
- **Justiciable Rights:** These fundamental rights are justifiable, meaning citizens can approach the courts to enforce them if they are violated.
- **Judicial Review:** The Constitution establishes an independent judiciary that can invalidate any legislation or government action that violates the Constitution.
- **Separation of Powers:** The Indian Constitution divides governmental powers into three distinct organs: the legislature, the executive, and the judiciary, creating a system of checks and balances.
- **Sovereign Socialist Secular Democratic Republic:** The Constitution declares India to be a sovereign, socialist, secular, democratic republic, emphasizing its independent nature, commitment to social welfare, religious freedom, and democratic principles.

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## Q2: What is a Constitutional Amendment?

The process of making changes to the nation's fundamental law i.e. the Constitution is called a Constitutional Amendment.

The amendment procedure laid down for the amendment of India's Constitution is neither flexible as Britain's nor as rigid as the USA's but a synthesis of both.

This constitutional amendment procedure reflects the desire of the constituent legislative assembly to put in place a dynamic document.

Under Article 368 of the Indian Constitution, the Parliament can amend it and its procedures. Further, Parliament cannot amend those provisions which form the Basic Structure of the Constitution as ruled by the Supreme Court in the Kesavananda Bharati case (1973).

## Q3: What are the different ways to amend Indian Constitution?

Different ways in which Constitution can be amended are:

- By a simple majority of the Parliament: This refers to the majority of more than 50% of the members present and voting. Many articles in the Constitution mention that these articles can be amended by a simple law of the Parliament. No special procedure for amendment is required in such cases. Some examples are:
  - Article 2 - Admission or establishment of new states.
  - Fifth Schedule - Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes.
  - Citizenship—acquisition and termination.
  - Elections to Parliament and state legislatures

Under Article 368: By a special majority of the Parliament: Majority of the total membership of each House and a majority of two-thirds of the members of each House present and voting. Examples include Fundamental Rights, Directive Principles of State Policy, etc.

By a special majority of the Parliament and the ratification of half of the state legislatures: States' ratification is through a simple majority. Provisions related to Federal structure are amended by this method. Examples are the election of the President and its manner, any of the lists in the Seventh Schedule, representation of states in Parliament, Article 368, etc.

## Q4: What is the procedure to amend the Indian Constitution?

The amendment procedure to amend the Constitution is as follows:

- Amendments can be initiated only by introducing a bill in either house of the Parliament.
- The bill can be introduced either by a minister or by a private member and does not require the prior permission of the President.
- The bill must be passed in each house by a special majority, that is, a majority of the total membership of the house and a majority of two-thirds of the members of the house present and voting.
- Each house must pass the bill separately. If there is any disagreement, there is no provision for a joint sitting of the houses.
- If the bill seeks to amend the provisions of the constitution, it must be ratified by the legislatures of half of the states by a simple majority.
- After the passage of the bill by both houses, it is presented to the President for his assent.
- The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration by the Parliament.
- After the President's assent, the bill becomes a constitutional amendment act.

Q5: What are the limitations on the amending power of the Parliament?

The amending power of the Parliament is limited by the doctrine of Basic Structure, propounded by the Indian Judiciary on 24th April 1973 in the Keshavananda Bharati case so that the 'Basic Structure of the Constitution' cannot be amended.

Thus, amendments under Article 368 are valid as long as they do not violate the basic structure of the Constitution. Further, the Supreme Court also held Article 368 as part of the Basic Structure.

Some of the significant judgments regarding the limitations of amending power of the Parliament are:

\* Minerva Mills vs. Union of India (1980): The Supreme Court invalidated provisions of the 42nd Constitutional Amendment Act, 1976 that declared no limitation to the constituent power of Parliament under article 368. The Supreme Court ruled that the Parliament cannot take away the power of 'judicial review' as it is a part of the 'Basic Structure'.

\* L. Chandra Kumar v. Union of India (1997): The Supreme Court held that Tribunals (Article 323A and 323B) are not a substitute for the power of judicial review that the Constitution has bestowed upon the High Courts.

\* I.R. Coelho v State of Tamil Nadu (2007): The Supreme Court held that Parliament cannot increase the amending power by amendment of Article 368 and destroy and damage the fundamentals of the Constitution.

\* The Constitution (99th Amendment) Act, 2014: provided for a National Judicial Appointment Commission (NJAC), was struck down by the Supreme Court on the grounds that it violated the "independence of the judiciary", which is a part of Basic Structure.

Q6: What are the criticisms of the amendment procedure under the Indian Constitution?

The amendment procedure of the Constitution has been criticized on the following grounds:

- States have no power to initiate amendments: The power to initiate an amendment to the Constitution lies with the Parliament. The state legislatures cannot initiate any bill.
- Exception: States can pass a resolution requesting the Parliament for the creation or abolition of legislative councils in the states.
- Parliament has powers to amend major parts: The major part of the Constitution can be amended by the Parliament alone. Only in a few cases the consent of half of the state legislatures is required.
- No time frame for ratification: The Constitution does not prescribe the time frame within which the state legislatures should ratify or reject an amendment submitted to them.
- No provision for joint sitting: There is no provision for holding a joint sitting of both Houses of Parliament if there is a deadlock over the passage of a constitutional amendment bill.
- The process of amendment is similar to that of a legislative process. Except for the special majority, the constitutional amendment bills are to be passed by the Parliament in the same way as ordinary bills.

Although having provisions to amend the constitution was progressive to the fathers of our nation, it is important that such provisions are not misused. Misuse could lead to undue legislative or executive authority that could rip apart the fabric of our society. An appropriate balance is thus needed to be maintained to ensure the living nature of our constitution.

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**TOPIC: COMPARISON OF POWERS OF INDIAN PRESIDENT WITH THE UNITED STATES**

The role and powers of the President differ significantly in India and the United States due to their distinct forms of government. While the United States follows a presidential system, where the President is both the head of state and government, India follows a parliamentary system, where the President is the constitutional head, but real power rests with the Council of Ministers, led by the Prime Minister.

**Constitutional Position of the President in India and the US**

**The Indian President**

- The President of India is the head of state, the Supreme Commander of the Armed Forces, and represents the unity and integrity of the nation.
- The position is defined under Articles 52 to 78 of the Indian Constitution.
- The President acts on the advice of the Council of Ministers, led by the Prime Minister (Article 74).

**The US President**

- The US President is both the head of state and head of government, holding direct executive power.
- The office is defined under Article II of the US Constitution.
- The President is not bound by ministerial advice and exercises executive authority independently.

**COMPARISON OF POWERS**

**1. Executive Powers**

<b>Aspect</b>	<b>Indian President</b>	<b>US President</b>
Head of Government	The President is the ceremonial head; real power lies with the Prime Minister.	The President is the actual head of government and the executive authority.
Appointment Powers	Appoints the Prime Minister, Governors, Supreme Court judges, and other officials on the advice of the Prime Minister.	Appoints Cabinet members, Supreme Court judges, and other officials independently, subject to Senate approval.
Commander-in-Chief of Armed Forces	Holds the title but acts on ministerial advice.	Has direct command over the military and can take independent decisions on military actions.
Executive Orders	Can issue executive orders but only within constitutional and legal limits.	Can issue executive orders with direct policy impact.

## **2. Legislative Powers**

Aspect	Indian President	US President
Head of Government	The President is the ceremonial head; real power lies with the Prime Minister.	The President is the actual head of government and the executive authority.
Appointment Powers	Appoints the Prime Minister, Governors, Supreme Court judges, and other officials on the advice of the Prime Minister.	Appoints Cabinet members, Supreme Court judges, and other officials independently, subject to Senate approval.
Commander-in-Chief of Armed Forces	Holds the title but acts on ministerial advice.	Has direct command over the military and can take independent decisions on military actions.
Executive Orders	Can issue executive orders but only within constitutional and legal limits.	Can issue executive orders with direct policy impact.

**Key Difference:** The US President plays a direct role in legislation, while the Indian President's role is mostly procedural and advisory.

## **3. Judicial Powers**

Aspect	Indian President	US President
Appointment of Judges	Appoints Supreme Court and High Court judges, but based on the advice of the Prime Minister and Judiciary.	Appoints Supreme Court justices and federal judges, subject to Senate approval.
Pardon Powers	Can grant pardons, reprieves, and commutations under Article 72, but subject to judicial review.	Can grant pardons and reprieves for federal crimes, with no judicial review.

**Key Difference:** The US President has greater judicial independence, whereas the Indian President's decisions can be challenged in court.

**4. Financial Powers**

Aspect	Indian President	US President
Annual Budget	Presents the Union Budget in Parliament, but has no real role in financial policymaking.	Prepares and presents the federal budget and directly influences financial policies.
Money Bills	Cannot introduce Money Bills; only Parliament can.	Can propose financial policies and influence budget discussions.

**Key Difference:** The Indian President has little role in financial policymaking, whereas the US President directly shapes economic policy.

Case Studies: ***When the Indian President Exercised Power*** [These examples show that while the President has some discretion, it is limited by the parliamentary system.]

**1. Dr. Rajendra Prasad (1950-1962)**

Questioned the **Hindu Code Bill** but had to approve it after Parliament re-passed it.

**2. Giani Zail Singh (1982-1987)**

Used the **Pocket Veto** to delay the **Indian Post Office (Amendment) Bill**

**3. K.R. Narayanan (1997-2002)**

Returned the **Representation of the People (Amendment) Bill, 2002**, questioning its impact on electoral transparency

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## TOPIC: POWER & FUNCTIONS OF GOVERNOR IN INDIA

The Governor of India is the nominal executive head of a state, exercising powers granted by the Constitution of India.

These powers are primarily divided into executive (like appointing the Chief Minister and Council of Ministers, giving assent to bills, and promulgating ordinances), legislative (summoning, proroguing, and dissolving the state legislature), financial (laying the annual financial statement before the assembly), and judicial (granting pardons and suspending sentences).

The Governor acts on the aid and advice of the state's Council of Ministers but also possesses certain discretionary powers, particularly in areas like reporting to the President for President's Rule or reserving bills for the President's consideration.

### EXECUTIVE POWERS OF GOVERNOR

- **Appointments**: The Governor appoints the Chief Minister and other ministers of the state, the Advocate General, and the Chairman and members of the State Public Service Commission.
  - **Administration**: All executive actions of the state government are taken in the name of the Governor, who also makes rules for the convenient transaction of business and the allocation of business among ministers.
  - **Ordinances**: The Governor can promulgate ordinances when the state legislature is not in session.
  - **Reports**: The Governor sends periodic reports to the President about the political and socio-economic developments in the state.
- Legislative Powers
- **Legislature Session**: The Governor can summon, prorogue, and dissolve the State Legislative Assembly.
  - **Bills**: The Governor can give assent to bills passed by the legislature, withhold assent, or reserve a bill for the consideration of the President.
  - **Special Address**: The Governor can address the members of the Legislative Assembly, either before the first session of the year or when a general election has been held.

### FINANCIAL POWERS

- **Budget**: The Governor causes the annual financial statement, showing the estimated receipts and expenditure of the state, to be laid before the State Legislature.
- **Demands for Grants**: No demand for a grant can be made except on the recommendation of the Governor.

### JUDICIAL POWERS

- **Pardons**: The Governor has the power to grant pardons, reprieves, respites, or remissions of punishment for any offense against a law relating to a matter within the state's executive power.
- **Consultation for Judges**: The Governor is consulted for the appointment of High Court judges.

### DISCRETIONARY POWERS

- The Governor exercises certain powers and functions at their discretion, acting on their own judgment without being bound by the advice of the Council of Ministers.
- Examples include sending a report to the President for imposing President's Rule (Article 356) and reserving certain bills for the President's consideration.

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**Q7: What are the powers of the Prime Minister of India?**

The powers of the Prime Minister of India can be broadly categorized into the following:

- **Executive powers**: The Prime Minister is the head of the Union Council of Ministers and is responsible for the administration of the government. He presides over cabinet meetings and coordinates the activities of the various ministries and departments.
- **Legislative powers**: The Prime Minister is a member of the Lok Sabha or the Rajya Sabha and can participate in the proceedings of either house. He advises the President on the summoning and prorogation of the parliament sessions and dissolution of Lok Sabha.
- **Diplomatic powers**: The Prime Minister represents India in the international arena and conducts negotiations with foreign countries. He also receives foreign diplomats and dignitaries on behalf of the President.
- **Emergency powers**: In times of national emergency, the Prime Minister advises the President on the measures to be taken to protect the security of India.
- **Appointment powers**: The Prime Minister (and the Council of Ministers) advises the President with respect to the appointments to the higher judiciary and key administrative posts such as the Governors, the Chief Election Commissioner, the Comptroller and Auditor General of India, and the Attorney General of India.
- **Financial powers**: The Prime Minister is responsible for the overall economic and financial management of the country. His/her government presents the annual budget to the parliament and ensures it is passed.

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**Q8: What are the functions and responsibilities of the Prime Minister of India?**

The Prime Minister is the head of the Union Council of Ministers, the head of the Government of India, and is responsible for the administration of the government. He presides over cabinet meetings and coordinates the activities of the various ministries and departments.

**Relating to the Council of Ministers (CoM)**

As head of the Union council of ministers, the Prime Minister holds the functions and responsibilities:

- Recommending individuals for appointment as ministers by the President, who can only appoint those recommended by the Prime Minister.
- Assigning and reassigning portfolios among ministers.
- Asking for a minister's resignation or advising the President to dismiss them in case of conflicting opinions.
- Presiding over meetings of the council of ministers and influencing its decisions.
- Guide, direct, control, and coordinate the activities of all ministers.
- Bringing about the collapse of the council of ministers by resigning from office.

**Relating to the President**

The Prime Minister serves as the primary means of communication between the President and the council of ministers.

- It is the Prime Minister's responsibility to inform the President of all decisions made by the council of ministers regarding the administration of Union affairs and legislative proposals.
- The Prime Minister provides guidance to the President in regard to the appointment of key officials such as the Attorney general of India, the Comptroller and Auditor General of India, the chairman and members of the Union Public Service Commission (UPSC), Election Commissioners, the chairman and members of the Finance Commission, among others.

**Relating to the Parliament**

As the leader of the Lok Sabha, the Prime Minister holds the following functions and



- Advising the President on summoning and prorogation of the sessions of Parliament.
- Recommending the dissolution of the Lok Sabha to the President at any time.
- Announcing government policies in the House.

### **Other Functions and Responsibilities of Prime Minister**

In addition to the three primary roles given above, the Prime Minister also has several other functions and responsibilities, including

- Chairman of the various bodies like- NITI Ayog (which succeeded the planning commission), National Integration Council, Inter-State Council, National Water Resources Council, and other related bodies.
- Shaping the country's foreign policy.
- Chief spokesperson for the Union government.
- Chief crisis manager at the political level during emergencies.
- Meeting various groups of people in different states and receiving a memorandum from them regarding their issues as a leader of the nation.
- Leader of the party in power.
- Political head of the services.

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#### **Q9: What is the function of the PMO (Prime Minister's Office)?**

In India, the Prime Minister's Office (PMO) is the administrative body that assists the Prime Minister in managing the Government of India and exercising his/her constitutional, executive, and administrative functions.

- PMO is responsible for coordinating the functioning of various departments and ministries of the Government of India and advising the Prime Minister on a wide range of policy and administrative matters.
- The PMO is headed by the Principal Secretary to the Prime Minister and comprises several other senior officials who assist the Prime Minister in his/her duties.
- Some departments and bodies working under the purview of the PMO
  - (1). Department of Atomic Energy (DAE)
  - (2). Department of Space (DoS)
  - (3). National Security Council (NSC)

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#### **Q10: Why the Indian Government is called a 'Prime Ministerial Government'?**

A Prime Minister is the head of government in India's political setup. He is the de facto head of state.

- The Prime Minister is appointed by the President of India and is the leader of the party or coalition that holds the majority of seats in the Lok Sabha, the lower house of India's parliament.
- The Prime Minister is responsible for the administration of the government and serves as the chief spokesperson for the government's policies.
- Under Article 75, the Council of Ministers shall be appointed by the President on the advice of the Prime Minister.
- Also, Article 74(1) states that there shall be a Council of Ministers with a Prime Minister at the head to aid and advise the President. Thus, other ministers work under the direction of the Prime Minister.

Hence, in the parliamentary system of India, the role of the Prime Minister has become so significant and crucial that the form of government in India is called a 'Prime Ministerial Government'.

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**Q11: Appointment of the Prime Minister**

The Constitution does not specify a particular process for selecting and appointing a Prime Minister.

- According to Article 75, the Prime Minister is appointed by the President. However, this does not mean the President can choose any person as Prime Minister.
- In line with the conventions of a parliamentary government system, the President typically appoints the leader of the majority party in the Lok Sabha as Prime Minister.
- When no party holds a clear majority in the Lok Sabha, the President may use their discretion in selecting and appointing the Prime Minister.
- In such cases, the President usually chooses the leader of the largest party or coalition in the Lok Sabha as Prime Minister and requests that they obtain a vote of confidence from the House within a month.

**Oath, Term, and Salary of Prime Minister of India**

**Oath:** Before assuming the office of the Prime Minister, the President administers oaths of office and secrecy to the Prime Minister-Elect. As part of the oath of office, the

**Prime Minister takes an oath**

- to bear true faith and allegiance to the Constitution of India,
- to uphold the sovereignty and integrity of India,
- to faithfully and conscientiously discharge the duties of his office, and
- to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

**Term:** The duration of the Prime Minister's term is not fixed, and they hold the position at the pleasure of the President. However, this does not mean the President can remove the Prime Minister at anytime.

- As long as the Prime Minister maintains majority support in the Lok Sabha, He/She cannot be dismissed by the President. But, if he/she loses the confidence of the Lok Sabha, he/she must resign, or the President may dismiss him/her.

**Salary:** The Prime Minister's salary and benefits are periodically set by the Parliament and include the compensation and perks given to a Member of Parliament, as well as additional perks such as a sumptuary allowance, free housing, travel allowances, and access to medical facilities.

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**Q12: What are the functions of State Cabinet in India?**

The state cabinet in India, led by the Chief Minister, is responsible for formulating government policies, overseeing the administration of various departments, implementing policies and programs, and ensuring collective responsibility under the principle of responsible government. The cabinet functions as the key decision-making body within the state executive, with each minister leading a specific department to carry out its functions. Key Functions of the State Cabinet are as follows:

- **Policy Formulation:** The cabinet collectively decides on the state's policies across various sectors, providing direction and guidance for governance.
- **Administrative Oversight:** Ministers head different departments, and the cabinet ensures efficient administration, policy implementation, and coordination between departments.
- **Legislative Initiative:** The cabinet is responsible for initiating major legislation and ensuring that government policies are translated into laws.
- **Decision-Making:** It acts as the principal decision-making body, with ministers collectively making decisions on matters concerning the state's administration and affairs.
- **Collective Responsibility:** All ministers are bound by the principle of collective responsibility, meaning they must uphold the cabinet's decisions even if they initially disagreed.

- **Coordination:** The cabinet ensures that government policies and programs are implemented smoothly by fostering cooperation and resolving issues between different ministries and departments.
- **Response to the Legislature:** Ministers are accountable to the state legislature, and the cabinet works to ensure that the government's actions are in line with the requirements of the assembly.

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Q13: Discuss some of the functions of State Legislature in India.

The functions of the Indian state legislature include making laws on subjects in the State and Concurrent Lists, controlling state finances by approving the budget and authorizing expenditure, and overseeing the executive by holding the Council of Ministers accountable. It also performs representative functions by representing the interests of the people and ensuring accountability, alongside constitutional functions such as amending certain parts of the Constitution. Key Functions of State Legislature are as follows:

- **Legislative Function:** The primary role is to make laws on subjects listed in the State List and the Concurrent List of the Seventh Schedule of the Constitution.
- **Financial Function:** The legislature controls the state's finances, including authorizing all expenditure, taxation, and borrowing. Money bills must be introduced first in the Legislative Assembly, and the legislature approves the annual budget.
- **Control Over Executive:** The Council of Ministers is responsible to the Legislative Assembly. The legislature holds the executive accountable through mechanisms like the Question Period and committee reviews, scrutinizing government policies and demanding explanations from ministers.
- **Representative Function:** The legislature acts as a forum to represent the diverse interests and needs of the people within the state, ensuring their voices are heard in the governance process.
- **Constitutional Function:** It has the power to make certain constitutional amendments and can reserve bills for the consideration of the President.

Q14: How State Legislature Works

- **Law-making Process:** Bills are introduced, debated, and passed by the legislature. Ordinary bills can be introduced in either house (if bicameral), but money bills originate in the Vidhan Sabha (Legislative Assembly).
- **Governor's Role:** After a bill is passed, it goes to the Governor for assent. The Governor can send it back for reconsideration, and if passed again by the legislature, the Governor must give assent.
- **Presidential Assent:** The Governor may reserve bills for the President's consideration, especially those affecting the powers of the High Courts, involving inter-state water projects, or restricting inter-state trade.

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Q15: Discuss the basic functions of High Courts & Subordinate Courts in India.

High Courts act as state-level supreme courts, handling original and appellate cases, issuing writs for fundamental rights, and supervising all subordinate courts; Subordinate Courts (district and lower) hear cases from their local jurisdiction and function under the High Court's guidance, resolving local civil and criminal disputes and providing a foundational layer of the Indian justice system.

FUNCTIONS OF HIGH COURTS

- **Original Jurisdiction:** They hear cases involving fundamental rights, constitutional matters, marriages, and wills, and can directly hear disputes that cannot be handled by lower courts due to territorial limits or complexity.
- **Appellate Jurisdiction:** They are the primary appellate courts for civil and criminal cases, hearing appeals against the decisions of subordinate courts within their state.
- **Supervisory Power:** High Courts have administrative control and guidance over all subordinate courts, overseeing appointments, promotions, transfers, and the overall functioning of these courts.
- **Writ Jurisdiction:** They can issue writs (orders) to protect citizens' fundamental rights under Article 226 of the Indian Constitution.
- **Judicial Review:** High Courts have the power to review the actions of the executive and legislative branches, declaring any law or policy unconstitutional.
- **Courts of Record:** Their judgments serve as legal precedents and are binding on all subordinate courts within their territorial jurisdiction.

FUNCTIONS OF SUBORDINATE COURTS

- **Local Dispute Resolution:** These courts, which include district and lower courts, handle civil and criminal cases at the local level, addressing local disputes.
- **Trial and Adjudication:** They conduct trials, hear evidence, and deliver judgments on cases within their jurisdiction.
- **Application of High Court Precedents:** They are bound by the laws and precedents set by their state's High Court.
- **Reporting and Supervision:** They function under the direct supervision and control of the High Court, which may examine their records and correct any irregularities.
- **Hearing Appeals from Lower Courts:** In turn, some cases from even lower local bodies might be appealed to the district court, the highest level of the subordinate judiciary.

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### Q16: Discuss Emergency Provisions in India.

The Indian Constitution's emergency provisions found in Part XVIII (Articles 352–360), grant the President exceptional powers to address national crises like war, internal armed rebellion, breakdown of constitutional machinery in a state, or financial instability.

These provisions include National Emergency (Article 352), which deals with threats to India's security; President's Rule (Article 356), which imposes state-level emergencies when a state's government fails; and Financial Emergency (Article 360), triggered by threats to India's financial credibility. Emergency powers are subject to parliamentary approval and provide mechanisms for swift action while protecting the nation's integrity during extraordinary circumstances.

#### Types of Emergencies

- **National Emergency (Article 352)**: This is declared by the President when India's security is threatened by war, external aggression, or armed rebellion.
- **President's Rule (Article 356)**: This allows the President to take over a state's administration if it's impossible to run the government according to the Constitution.
- **Financial Emergency (Article 360)**: The President can declare this if they are satisfied that India's financial stability or credit is at risk.

#### Key Characteristics

- **Exceptional Powers**: These provisions empower the President with broad authorities to bypass normal procedures and act decisively during critical times.
- **Parliamentary Oversight**: Proclamations of National Emergency and President's Rule require approval from both houses of Parliament to be extended beyond six months.
- **Protection of Fundamental Rights**: While most fundamental rights can be suspended during a National Emergency, Articles 20 (protection in respect of conviction for offenses) and 21 (protection of life and personal liberty) remain in force.
- **Emergency in the Constitution's Part XVIII**: These provisions are outlined in Part XVIII of the Constitution of India, which addresses various forms of emergency.

#### Emergency Provisions in Indian Constitution [Advantages]

- Emergency Provisions in Indian Constitution enable the central government to act quickly during times of war, rebellion, or financial breakdown.
- By centralizing power temporarily, these provisions help maintain political stability and national integrity, especially when state machinery fails.
- In situations like internal rebellion or state-level political instability, emergency provisions help restore governance and law enforcement mechanisms, ensuring the safety of citizens.
- During wartime or external threats, these powers allow the government to safeguard the country's sovereignty without being hindered by procedural delays.
- Financial Emergency (though never used) offers a legal mechanism to manage fiscal crises by directing both Union and State governments to prioritize essential expenditures.

#### Emergency Provisions in Indian Constitution [Criticism]

- Emergency Provisions in Indian Constitution shifted the balance heavily in favor of the Union, reducing states to administrative units with little autonomy.
- History has shown that emergency powers can be misused for political gain. The 1975 Emergency under Indira Gandhi is a prime example, where democratic institutions were curtailed for personal and political reasons.
- National Emergency suspends Article 19 rights, and other rights can also be restricted. This compromises civil liberties and freedom of expression, often affecting dissenters and opposition voices.

- With Parliament and state assemblies under control, the checks and balances between organs of the state are weakened. The executive can dominate without sufficient scrutiny or accountability.
- Excessive concentration of authority in the hands of the Union executive dilutes the role of state governments and may lead to arbitrary governance.

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### **TOPIC: THE APPOINTMENT OF SUPREME COURT JUDGES IN INDIA**

The appointment of Supreme Court judges in India is primarily governed by Article 124 of the Constitution of India, which mandates that judges are appointed by the President after consultation with such judges of the Supreme Court and High Courts as deemed necessary.

The process is guided by a judicial collegium system, which has evolved through several landmark Supreme Court judgments and involves the Chief Justice of India (CJI) and a collegium of senior judges making recommendations to the President.

### **CONSTITUTIONAL PROVISION FOR APPOINTMENT OF JUDGES OF SUPREME COURT OF INDIA**

- Article 124: of the Constitution of India states that Supreme Court judges are appointed by the President by warrant.
- The President's appointment is made after consultation with the Chief Justice of India and other judges of the Supreme Court and High Courts.

### **THE COLLEGIUM SYSTEM**

- Establishment: The collegium system was established through a series of Supreme Court judgments, with the "Second Judges Case" in 1993 playing a crucial role in defining the scope of consultation. Prior to the 1980s, the executive had more control over appointments. The collegium system was born from a desire to give greater weight to the judiciary's role in selecting its members.

### **COMPOSITION**

- Supreme Court: The collegium for the Supreme Court consists of the Chief Justice of India and the four senior most judges of the Supreme Court.
- High Courts: For the High Courts, the Supreme Court collegium consists of the CJI and two senior most judges.

### **PROCEDURE**

1. The collegium proposes a candidate for the appointment.
2. The collegiums' opinion and recommendations are then transmitted to the Government of India.
3. The President of India formally appoints the judge.

### **INDEPENDENCE OF JUDICIARY:**

The collegium system aims to ensure the independence of the judiciary from the executive branch.

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## TOPIC: MEANING OF CONSTITUTIONAL LAW & CONSTITUTIONALISM

**CONSTITUTIONAL LAW** is the field of study and the body of rules, doctrines, and principles that define and interpret a state's constitution, which is the supreme law outlining governmental structure, powers, and citizen rights.

**CONSTITUTIONALISM** is a political philosophy and system of governance where governmental power is limited by a constitution, emphasizing the rule of law, separation of powers, checks and balances, and the protection of individual rights to prevent abuse and tyranny.

- **Constitutional Law**: The set of laws, interpretations, and doctrines that explain and apply the principles within a nation's constitution.

**Purpose of Constitutional Law**: To provide a framework for interpreting the constitution, resolving ambiguities, and ensuring that governmental actions align with constitutional mandates.

**Function of Constitutional Law**: It focuses on the "how" of government – detailing the structure, organization, and operation of state organs and the division of power.

- **Constitutionalism** is defined as a political ideology and a system of governance that prioritizes limiting governmental power through a constitutional framework.

### Core Principles of Constitutionalism

- **Rule of Law**: The idea that all individuals and government entities are subject to the law.
- **Limited Government**: The belief that a constitution should place restraints on governmental authority to prevent abuses.
- **Separation of Powers**: Dividing governmental power among different branches to prevent anyone from becoming too powerful.
- **Checks and Balances**: A system where each branch of government can limit the powers of the others.
- **Protection of Individual Rights**: Safeguarding fundamental freedoms for all citizens.

**Function of Constitutionalism**: It acts as an "evaluative role," ensuring that the powers granted by the constitution are exercised responsibly and not abused. Constitutionalism fosters a culture of respect for constitutional principles and democratic values.

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### Q17. What is a Constituent Assembly?

The Constituent Assembly is an institution specifically conceived to design or amends a Constitution, with the authority to establish the norms that govern the political and social framework of a territory. In India, the Constituent Assembly was formed in November 1946 under the Cabinet Mission Plan (1946) as a partly elected and partly nominated body.

It convened for the first time on December 9, 1946, to draft and formulate the Constitution of India, seen as essential for implementing self-determination. After its final session on January 24, 1950, the Constituent Assembly served as the provisional Parliament from January 26, 1950, until the first general elections in 1951-52 established the new Parliament.

The Constituent Assembly of India was formed in 1946, fulfilling a longstanding demand from the Indian freedom movement for a body to draft a constitution for independent India. The idea was first proposed in the 1930s by M.N. Roy, adopted by the Indian National Congress in 1935, and finally accepted by the British government in their 1940 August Offer. Under the Cabinet Mission Plan, the Assembly was established, with its first meeting on December 9, 1946. It was a partly elected, partly nominated body that drafted India's Constitution, which was adopted on November 26, 1949, and came into effect on January 26, 1950.

#### Nature of the Constituent Assembly:

- Body: It was a partly elected and partly nominated body.
- Elections: Members were indirectly elected by the members of the provincial legislative assemblies using proportional representation through the single transferable vote system.
- Nomination: Representatives from the princely states were nominated by their respective rulers.

#### CRITICISM OF CONSTITUENT ASSEMBLY

Several scholars and Constitutional experts have criticized the Constituent Assembly on various grounds. These are as follows:

- Not a representative Body: Its members were not directly elected based on the universal adult franchise
- Not a Sovereign Body: It was created by the British proposals, and its sessions were held with the permission of the British Government.
- Time-Consuming: It took an unduly long time to frame the Constitution; on the other hand the American Constitution was formed in 4 months.
- Dominated by Congress: Granville Austin commented that, "The Constituent Assembly was one party body in an essentially one-party country. The Assembly was the Congress, and the Congress was India".
- Lawyer-Politician Domination: Scholars maintain that they dominated the Constituent Assembly and are not representative of other sections.
- Dominated by Hindus: Winston Churchill commented that the Constituent Assembly represents "Only one major community in India"

Despite these criticisms, we may assert that our founding parliament was a collection of India's finest, who helped make the Indian Constitution the most dependable and wisest among all national Constitutions.

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**Q18: DISCUSS THE SALIENT FEATURES OF INDIAN CONSTITUTION**

The Indian Constitution's salient features include it being the world's lengthiest written constitution, a blend of rigidity and flexibility, a parliamentary system with a strong centralizing tendency, the Rule of Law, a Fundamental Rights framework balanced by Directive Principles of State Policy and Fundamental Duties, and a commitment to Universal Adult Suffrage and a sovereign, secular, socialist, democratic republic.

**NATURE OF THE CONSTITUTION**

- **Lengthiest Written Constitution:** It is the most comprehensive and detailed written constitution globally, providing a clear legal framework for the nation.
- **Blend of Rigidity and Flexibility:** The Constitution allows for amendments through both simple (flexible) and special (rigid) procedures, making it adaptable to changing needs while maintaining stability.
- **Federal System with Unitary Bias:** It establishes a federal structure with two governments and division of powers but includes several unitary features like a strong central government and single citizenship, creating a unique balance.

**GOVERNANCE STRUCTURE**

- **Parliamentary Form of Government:** India has a parliamentary system, emphasizing the co-operation between the executive and legislative branches, influenced by the British model.
- **Integrated and Independent Judiciary:** The constitution establishes a single, independent judiciary to uphold the rule of law and protect citizens' rights, free from executive influence.
- **Universal Adult Suffrage:** All adult citizens aged 18 and above have the right to vote, ensuring democratic representation.

**RIGHTS AND DUTIES**

- **Fundamental Rights:** Part III of the Constitution guarantees fundamental rights to citizens, which are enforceable by the courts.
- **Directive Principles of State Policy:** These are guidelines for the government to establish social and economic justice, aiming to create a welfare state.
- **Fundamental Duties:** Added later, these are obligations of citizens to the nation, balancing the rights they enjoy.

**KEY PRINCIPLES**

- **Sovereign, Socialist, Secular, Democratic, Republic:** The preamble declares India as these principles, highlighting its independence, social justice, religious freedom, democratic governance, and elective head of state.
- **Rule of Law:** It ensures that all individuals and the government are subject to the law, promoting equality and preventing arbitrary power.

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*The Government of India Act 1935 was a landmark legislation passed by the British Parliament to expand the governance of British India that came into effect on April 1, 1937.*

The Government of India Act 1935 was one of the most important legislative measures enacted by the British Parliament to govern British India. The Act marked a significant shift towards Indian self-government. It proposed a federal structure, granted provincial autonomy, and expanded the electoral base in response to growing demands for increased Indian participation in governance.

**Government of India Act 1935:** The Government of India Act 1935 was a significant constitutional reform enacted by the British Parliament with 451 clauses and 15 schedules. The Act granted provincial autonomy, expanded the electorate to 10%, and created a Federal Court. It introduced elected legislatures and Indian ministers but retained key powers for the British Crown and Governor-General, including control over defence, foreign affairs, and veto authority. These limitations fueled the demand for full independence.

### **BACKGROUND OF GOVERNMENT OF INDIA ACT 1935**

Several political events and demands for greater autonomy in India influenced the Government of India Act of 1935. The following are key events that led to the Act's formulation:

- **Montagu-Chelmsford Reforms (1919):** It introduced diarchy in provinces, giving elected Indian ministers control over certain areas. However, they fell short of self-government demands.
- **Simon Commission (1927):** The commission was formed to review the 1919 reforms and it faced protests for excluding Indians. Its 1930 report suggested major constitutional changes.
- **Round Table Conferences (1930-1932):** It was held in London; these meetings exposed divisions among Indian leaders and emphasized the need for broader reforms.
- **Communal Award (1932):** Proposed separate electorates for religious communities, complicating the constitutional landscape.
- **White Paper (1933):** It laid the basis for the Government of India Act 1935.

### **SIGNIFICANCE OF GOVERNMENT OF INDIA ACT 1935**

The Government of India Act 1935 significantly impacted India's constitutional development and was the core foundation for the making of the constitution. Its significance can be understood through several key aspects:

- **Foundation for Federalism:** Established a framework for federalism, though it was not fully implemented; this concept later became central to the Indian Constitution.
- **Provincial Autonomy:** Abolished diarchy and granted significant control to provincial governments, enhancing self-governance and Indian participation in administration.
- **Electoral Base Expansion:** Increased the electorate to about 10% of adults, enabling greater political participation and fostering democratic governance.
- **Blueprint for Future Developments:** Many of its provisions, such as power division, bicameral legislatures, and minority rights protections, influenced the Indian Constitution.
- **Encouragement of Political Mobilization:** Fostered the rise of political parties and awareness, providing a platform for Indian leaders to shape future governance.

The Government of India Act of 1935 established an All-India Federation, provincial autonomy, and bicameral legislatures, which increased local power. Despite these changes, the central government remained under British control, and the Act was enforced in April 1937.

The key provisions that reshaped the constitutional framework of British India are:

- All-India Federation: The Act proposed a federal structure for India, creating a federation of provinces and princely states. However, the federation never fully materialized due to the reluctance of many princely states to join.
- Provincial Autonomy: Provinces were granted substantial autonomy, allowing them to govern themselves in most areas, except for matters specified as central.
- Bicameral Legislature: It established a bicameral legislature at the provincial level in some provinces (Madras, Bombay, Bengal, United Provinces, Bihar, and Assam), consisting of a Legislative Assembly and a Legislative Council.

**\*\* Division of Powers**: The Government of India Act of 1935 divided powers between central and provincial governments into three lists.

- Federal List: Exclusively under central government control, covering defence, foreign affairs, and communications.
- Provincial List: Solely under provincial jurisdiction, including police, public health, and agriculture.
- Concurrent List: Shared authority between central and provincial governments, covering subjects like criminal law and marriage.
- The Viceroy retained control over unspecified subjects to protect British interests, but the proposed federation failed as many princely states refused to join.

**Expansion of Franchise**: Voting rights were extended to approximately 30 million people or roughly 10% of the population. The extension was based on criteria such as property, education, and income, which significantly increased the electorate compared to previous reforms.

- Federal Court: It provided for the establishment of a Federal Court, which was established in 1937. Nonetheless, the Privy Council in London remained the final court of appeal.
- Communal Representation: The system of separate electorates was expanded to include not only Muslims, but also depressed classes (scheduled castes), women, and labour (workers), thereby expanding communal representation.
- Retention of British Control: Despite increased provincial autonomy, the British Crown maintained control, with the Governor-General and Governors exercising discretionary authority in defence, foreign affairs, and security.
- Establishment of Public Service Commission's: A Federal Public Service Commission, Provincial Public Service Commissions, and Joint Public Service Commissions were formed to oversee civil service recruitment and administration.
- Abolition of the Council of India: The Council of India, established under the Government of India Act of 1858, was abolished and replaced by a team of advisors for the Secretary of State for India, thereby centralizing administrative control.
- Provisions for Joint Sitzings: Joint Sitzings of the bicameral legislatures are permitted in the event of a legislative deadlock, as a means of resolving conflicts between the two houses.

### REACTIONS ON GOVERNMENT OF INDIA ACT 1935

The Government of India Act of 1935 received mixed reactions but the Act ultimately failed to satisfy Indian demands, pushing the nationalist movement closer to the goal of full independence by 1947:

- Indian National Congress (INC): The INC criticized the Act for not granting full independence, opposing the limited provincial autonomy and continuing British control over key areas like defence and foreign affairs. They viewed it as a flawed step, falling short of India's aspirations for self-rule.
- Muslim League: While the Muslim League also wanted more significant reforms, they saw the Act as a step toward securing political representation for Muslims through separate electorates and reserved seats.
- Princely States: The princely states resisted joining the proposed federal structure, as they feared losing autonomy to the central government.
- British Government: The British saw the Act as a necessary compromise to maintain control while addressing growing Indian political demands. However, the Act's limitations led to intensified calls for complete independence.

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#### Q19: Discuss the OBJECTIVE RESOLUTIONS introduced by Jawaharlal Nehru

The Objective Resolution, introduced by Jawaharlal Nehru on December 13, 1946, in the Constituent Assembly, was a foundational document that outlined the guiding principles for the Indian Constitution.

It declared India as an Independent Sovereign Republic, established the ultimate source of power as the people, and aimed to secure justice, equality, and fraternity for all citizens, along with safeguards for minorities and backward communities. This resolution served as the framework for the subsequent constitution-making process and is reflected in the Preamble of the Indian Constitution.

#### **Key Aspects of the Objective Resolution**

- Sovereign Independent Republic: It proclaimed India as a sovereign and independent nation, with its powers derived from the people.
- Democratic Union: It envisioned India as a democratic union with autonomous constituent parts, offering a uniform level of self-government.
- Justice, Equality, and Fraternity: The resolution guaranteed fundamental rights, social, economic, and political justice, equality of status and opportunity, and freedom of thought, expression, belief, and worship for all citizens.
- Safeguards for Minorities and Depressed Classes: It assured adequate safeguards for minorities, backward areas, tribal communities, and other disadvantaged groups.
- Preservation of National Unity: It affirmed the resolve to preserve the unity and integrity of the nation.
- International Peace and Well-being: The resolution committed India to contributing to international peace and the welfare of humanity.

#### **Significance of the Objective Resolution**

- Framework for Constitution-Making: The resolution provided the foundational ideals and the philosophical framework for the entire constitution-making process.
- Preamble to the Constitution: The principles laid down in the Objective Resolution are embodied in the Preamble of the Indian Constitution, shaping its core values and goals.
- Popular Sovereignty: It established the principle that the authority of the Indian government and its constitution comes from the people of India.

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Q20: Discuss the Indian Independence Act of 1947

The Indian Independence Act of 1947 was a British Parliament act that granted India independence and partitioned it into two separate, sovereign dominions:

India and Pakistan. Passed in July 1947 and with royal assent on July 18th, it formally ended British authority in the subcontinent on August 15, 1947, establishing the two new nations and granting them dominion status.

The act also ended British supremacy over the princely states, allowing them to join either dominion or remain independent.

**\*\* Key Provisions of the Indian Independence Act of 1947**

- Partition and Creation of Dominions: The British Indian Empire was divided into two independent nations, India and Pakistan, on August 15, 1947.
- Dominion Status: Both India and Pakistan were granted dominion status, meaning they would be fully autonomous in their affairs but would retain the British monarch as their head of state and remain part of the British Commonwealth.
- End of British Authority: British authority over the Indian territories ceased to exist.
- Princely States' Choice: The act declared that the British suzerainty over the Indian princely states would end. These states were given the option to join either India or Pakistan, or to remain independent.
- Abolition of Certain Offices: The office of the Secretary of State for India and the Council of India were abolished, and the British Parliament could no longer legislate for the new dominions.
- Governor-General Role: A Governor-General was to be appointed for each dominion, acting as a constitutional head of state.
- Provisional Government: Until each dominion adopted its own new constitution, they were to be governed by the provisions of the Government of India Act of 1935, though they retained the authority to amend it.

Significance of the Indian Independence Act of 1947:

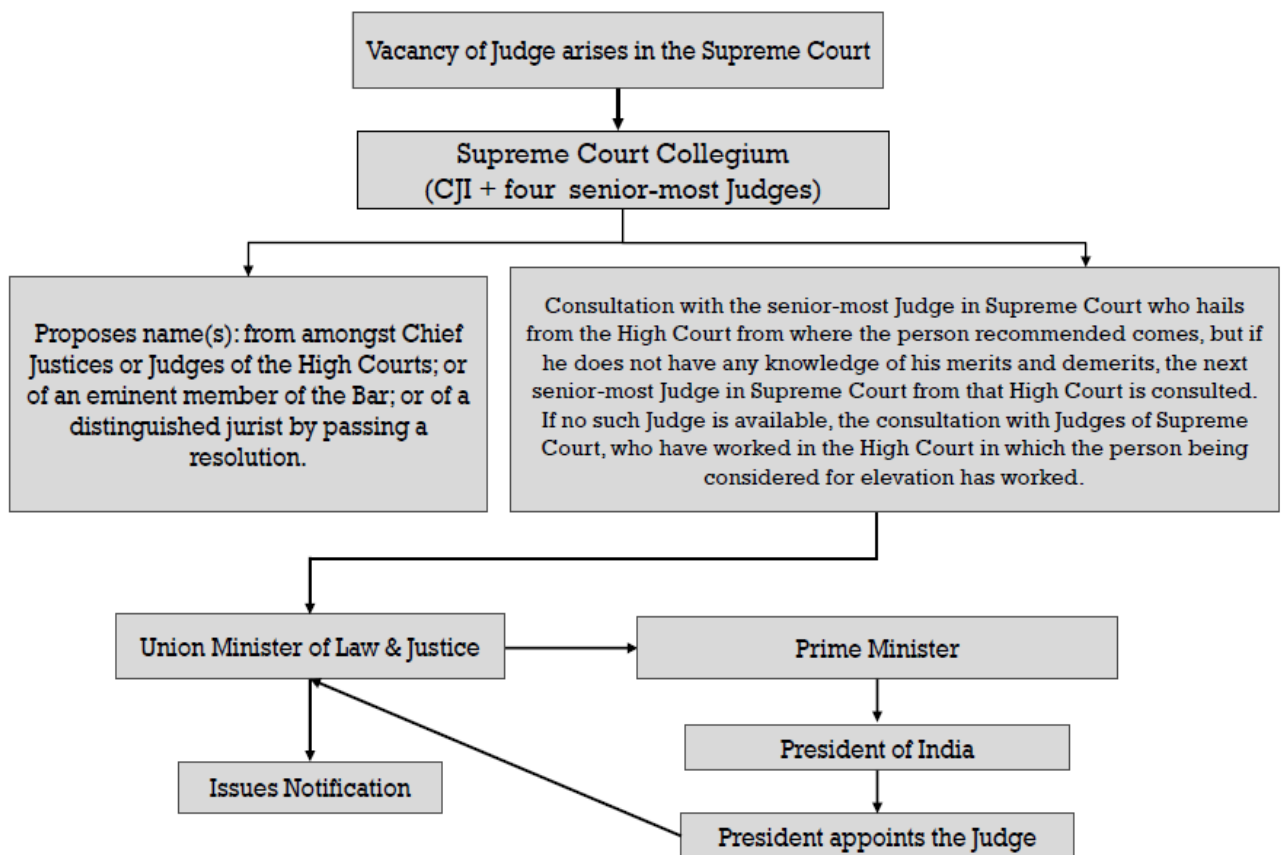
- The Indian Independence Act 1947 was a landmark act that finalized the end of the British Raj and marked the emergence of India and Pakistan as modern, sovereign nations.
- It set the stage for the formation of the new governments and the subsequent development of both India and Pakistan into their own constitutional frameworks.

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**TOPIC: APPOINTMENT OF CHIEF JUSTICE AND JUDGES OF THE SUPREME COURT**

Consultation with the senior-most Judge in Supreme Court who hails from the High Court from where the person recommended comes, but if he does not have any knowledge of his merits and demerits, the next senior-most Judge in Supreme Court from that High Court is consulted. If, no such Judge is available, the consultation with Judges of Supreme Court, who have worked in the High Court in which the person being considered for elevation has worked

- Union Law Minister, at the appropriate time (i.e. at least one month prior to the retirement of the incumbent Chief Justice of India), seeks recommendation of the outgoing Chief Justice of India for the appointment of the next Chief Justice of India.
- Appointment should be of the senior-most Judge of the Supreme Court considered fit to hold the office.
- However, in case there is any issue about the fitness of the senior-most Judge of the Supreme Court to hold the office of the Chief Justice of India, Chief Justice of India should consult other Judges of the Supreme Court, as envisaged in Article 124(2) of the Constitution, for appointment of the next Chief Justice of India.
- After, receipt of the recommendation of the Chief Justice of India, the Union Minister of Law and Justice shall submit the recommendation to the Prime Minister, who then advises the President in the matter of appointment of the Chief Justice of India.



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**MODEL PAPER**  
**CONSTITUTION OF INDIA**  
**BNC501 /BNC501(H)**

**Q1. Evaluate the functions of constitution of India.**

The Constitution of India, being the supreme law of the land, performs several crucial functions essential for the governance and functioning of the country as a Sovereign, Socialist, Secular, Democratic Republic.

**Key Functions of the Constitution of India**

The main functions of the Constitution of India can be categorized as follows:

**1. *Establishing the Framework of Government:* -**

\* Defines the Structure: It establishes the federal structure with a clear division of powers between the Union (Central) Government and the State Governments.

\* Creates Organs of Government: It defines the structure, powers, and duties of the three principal organs of the government—the Legislature, the Executive, and the Judiciary.

\* Checks and Balances: It ensures a system of separation of powers and checks and balances among these three organs, preventing the concentration or misuse of power by any single branch.

**2. *Specifying Decision-Making Power:* -**

\* It clearly specifies who has the power to make decisions on different subjects and how those decisions will be made, primarily through the establishment of the Parliamentary System of Government at both the Union and State levels.

**3. *Limiting the Power of the Government:* -**

\* Fundamental Rights: It sets explicit and justiciable limits on the government's power by guaranteeing Fundamental Rights (Part III) to all citizens, safeguarding their freedoms of speech, life, equality, etc.

\* Rule of Law: It establishes the Rule of Law, ensuring that the government and all its institutions operate under and are bound by the law, and that all individuals are equal before the law.

\* Independent Judiciary: It empowers the independent Judiciary (especially the Supreme Court and High Courts) with the power of Judicial Review to strike down any law or executive action that violates the Constitution.

**4. *Fulfilling Societal Aspirations:* -**

\* Directive Principles of State Policy (DPSP): It contains the DPSP (Part IV), which are non-justiciable directives that serve as a moral and constitutional guide for the State to adopt while framing laws and policies, aiming to establish a welfare state and social and economic democracy.

\* Fundamental Duties: It specifies the Fundamental Duties of citizens, promoting a sense of social responsibility and national integration.

**5. *Expressing National Identity and Values:* -**

\* Preamble: The Preamble embodies the core philosophical values and goals of the nation, declaring India as a Sovereign, Socialist, Secular, Democratic Republic committed to securing Justice, Liberty, Equality, and Fraternity for all its citizens.

\* Unity and Integration: It provides a single citizenship and a unified legal and administrative system, fostering national integration and unity in a diverse society.

In essence, the Constitution serves as the fundamental and supreme document that provides a legal and political blueprint for the governance of India, protects citizens' rights, and creates the conditions for a stable, just, and democratic society.

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## Q2. What do you mean by Judicial Activism? Discuss its significance and limitations.

Judicial Activism refers to a judicial philosophy where judges take a proactive role in using their powers of judicial review to uphold citizens' rights and advance justice, often by going beyond the literal interpretation of the law or Constitution.

In essence, it is the judiciary's willingness to intervene in legislative and executive domains to correct perceived wrongs, fill legislative gaps, or enforce constitutional mandates when the other two branches fail to do so. A key tool often associated with judicial activism, particularly in India, is the Public Interest Litigation (PIL).

### Significance of Judicial Activism

Judicial activism plays a crucial role in a democratic system, especially in countries like India, where its significance can be seen in several ways:

- \* Protection of Fundamental Rights: It acts as a shield for the fundamental rights of citizens, particularly the poor, marginalized, and vulnerable groups, by intervening when the legislature or executive is negligent or abusive.

- \* Example: Expanding the scope of the Right to Life (Article~21) to include rights like the right to clean air, water, and a pollution-free environment.

- \* Checks and Balances: It serves as a necessary check on the arbitrary use of power by the executive and the legislature, preventing them from overstepping their constitutional boundaries.

- \* Social Justice and Change: Judicial activism can be a powerful catalyst for social change by adapting legal principles to evolving societal needs, addressing long-standing social inequities, and promoting equality.

- \* Filling Legislative Vacuum: Where the legislature is slow, indecisive, or unable to make a law on a crucial matter, the judiciary steps in to issue guidelines or directions to fill the legal gap.

- \* Example: The Vishaka Guidelines on sexual harassment at the workplace before a specific law was enacted.

- \* Good Governance and Accountability: It promotes accountability and transparency in governance by compelling public authorities to perform their constitutional and legal duties.

### Limitations and Criticisms

Despite its importance, judicial activism is often subject to criticism due to its potential pitfalls and limitations:

- \* Violation of Separation of Powers: The most significant criticism is that it blurs the line between the judiciary, the executive, and the legislature. When judges start framing policy or giving detailed administrative directions, it is seen as "Judicial Overreach", encroaching upon the domain of the elected representatives.

- \* Lack of Expertise: Judges are experts in law, not in all areas of policy-making (e.g., economics, environmental policy, defence). Their interventions in technical domains can lead to decisions that are impractical or ill-informed.

- \* Undermining Democracy: By overriding the will of the legislature (which is directly accountable to the people), judicial activism can be viewed as undemocratic and a shift of power from the elected to the appointed.

- \* Judicial Uncertainty: An over-reliance on a judge's personal philosophy or views, rather than established legal principles and precedents, can lead to unpredictable and inconsistent judgments, thereby causing uncertainty in the law.

- \* Erosion of Public Confidence: Excessive intervention in political matters can make the judiciary susceptible to the charge of political bias, which can undermine the public's confidence in its impartiality.



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### **Q3. Discuss and evaluate the functions of State Legislation.**

The functions of State Legislatures (Vidhan Sabha and, where applicable, Vidhan Parishad) in India are crucial to democratic governance at the state level. They mirror the structure and roles of the Union Parliament but focus on state-specific affairs, ensuring governance is responsive to local needs.

**Primary Functions of State Legislation:** The main functions can be grouped into legislative, financial, executive control, and electoral roles:

#### **Legislative Functions**

\* **Law-Making Authority:** This is the primary function. The State Legislature has the power to enact laws on subjects listed in the State List (like public order, police, public health, local government, agriculture) and the Concurrent List (like education, forests, protection of wild animals) of the Seventh Schedule of the Constitution.

\* **Approval of Ordinances:** It reviews and approves ordinances promulgated by the Governor when the legislature is not in session.

\* **Constitutional Amendments:** The State Legislative Assembly must ratify certain constitutional amendment bills passed by the Parliament (like those relating to the election of the President or the distribution of powers).

#### **Financial Functions**

\* **Budget Approval:** It is the custodian of the state's finances. It is responsible for enacting the annual state budget (Annual Financial Statement), which details revenue and expenditure proposals.

\* **Taxation:** It authorizes the imposition and collection of taxes and duties within the state. No tax can be levied or money spent without its approval.

\* **Financial Control:** Through committees like the Public Accounts Committee and Estimates Committee, the legislature scrutinizes government spending and financial policies, ensuring accountability and preventing misuse of funds.

#### **Control over the Executive**

\* **Responsible Government:** In a parliamentary system, the Council of Ministers (Executive) is collectively responsible to the State Legislative Assembly.

\* **Accountability:** The legislature exercises control through various instruments:

\* **Questions and Debates:** Members can ask questions, introduce adjournment motions, and hold half-hour discussions to seek information and criticize government policies.

\* **No-Confidence Motion:** The most powerful tool. The Legislative Assembly can remove the Council of Ministers by passing a no-confidence motion.

\* **Policy Approval:** Executive policies and bills must receive legislative approval to become law.

#### **Electoral and Other Functions**

\* **Electing Members of the Council:** Members of the Legislative Assembly (MLAs) elect a portion of the members of the Rajya Sabha (Council of States) from the state.

\* **Presidential Election:** Elected MLAs participate in the election of the President of India.

\* **Electing Officials:** The Assembly elects its own Speaker and Deputy Speaker.

\* **Establishment of Panchayats:** The State Legislature defines the powers and functions of the Panchayats and Municipalities as per the 73rd and 74th Constitutional Amendments.

**Evaluation of State Legislation Functions**

The functions are vital for decentralizing governance and ensuring state autonomy; however, their effectiveness is subject to several challenges.

**Strengths and Importance (Positive Evaluation)**

\* Local Responsiveness: By creating laws on the State and Concurrent Lists, the legislature ensures that laws and policies are tailored to the unique cultural, geographical, and social needs of the state's population.

\* Executive Accountability: The legislature acts as a critical check and balance on the state executive (Council of Ministers), ensuring they remain accountable to the people's representatives.

\* Public Opinion Representation: As a popularly elected body, the Legislative Assembly is the platform for debating public issues, voicing constituents' grievances, and representing the diverse opinions of the state.

**Challenges and Weaknesses (Critical Evaluation)**

\* Diminished Deliberation: The rise of party politics, frequent disruptions, and the use of the 'guillotine' (clubbing demands for grants) often curtail meaningful debate, especially on crucial legislation and the budget.

\* Executive Dominance: Given the party system, the ruling majority, led by the Chief Minister and Cabinet, often dictates the legislative agenda, reducing the legislature's role to merely rubber-stamping executive decisions.

\* Limited Scrutiny: Unlike Parliament, state legislatures often lack robust committee systems or fail to effectively utilize existing committees for detailed, non-partisan scrutiny of bills and departmental finances.

\* Marginal Role of the Legislative Council (where present): The Legislative Council (Vidhan Parishad) in bicameral states has only advisory powers over ordinary bills and minimal power over Money Bills, making it a weak second chamber.

In conclusion, State Legislatures are the linchpin of state-level democracy, responsible for converting the will of the people into law and overseeing the executive. While constitutionally vested with extensive powers, the actual effectiveness of their functions often depends on the political culture, quality of deliberation, and the strength of the opposition within the state.

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**Q4. Explain Tribunals in India. Discuss why Tribunals are needed.**

A Tribunal in India is a quasi-judicial institution established by a statute (law) to resolve disputes in specialized areas such as taxation, administration, corporate affairs, and environment. They are not part of the traditional hierarchy of courts but perform judicial or quasi-judicial functions.

**Key Features of Tribunals**

\* Quasi-Judicial Nature: They possess some of the powers of a civil court, like summoning witnesses and taking evidence, but are often not strictly bound by the rigid procedures of the Code of Civil Procedure or the Indian Evidence Act. They typically follow the principles of natural justice.

\* Statutory Origin: They are created by an Act of Parliament or a State Legislature.

\* Specialization: They are manned by both judicial members and subject-matter experts (technical members) to ensure decisions are informed by domain knowledge.

\* Constitutional Basis: The system was introduced by the 42nd Amendment Act of 1976 which inserted two key articles into the Constitution:

\* Article 323A: Empowers Parliament to establish Administrative Tribunals for disputes related to the recruitment and conditions of service of public servants (e.g., Central Administrative Tribunal or CAT).

\* Article 323B: Empowers Parliament and State Legislatures to set up tribunals for various other specific matters like taxation, land reforms, foreign exchange, etc. (e.g., National Green Tribunal or NGT).

### **Why Tribunals are Needed**

Tribunals are necessary components of the Indian legal system for several critical reasons:

#### 1. Reducing Judicial Backlog

\* Decreasing Workload: India's traditional courts (District Courts, High Courts, and Supreme Court) are severely overburdened. Tribunals divert a large volume of specific disputes, especially administrative and tax-related cases, significantly reducing the caseload on the regular judiciary.

#### 2. Specialized Expertise

\* Domain Knowledge: Many modern disputes—like those involving intricate tax laws, environmental regulations, or corporate finance—require deep technical and subject-matter knowledge. Tribunals, by including non-judicial experts, ensure that judgments are delivered by individuals with relevant expertise.

#### 3. Speedy and Cost-Effective Justice

\* Expedited Decisions: Tribunals generally follow a simpler, less formal procedure compared to traditional courts, which are governed by the rigid Code of Civil Procedure. This procedural flexibility helps in faster disposal of cases.

\* Affordable Access: The quicker disposal and simpler procedures generally make the justice delivery mechanism more cost-effective for the public.

#### 4. Policy Implementation

\* Adjudicating Administrative Actions: They effectively bridge the gap between administrative functioning and the judiciary by providing a forum to challenge decisions made by government agencies, ensuring administrative fairness and accountability.

In essence, tribunals serve as a specialized, efficient, and accessible alternative to the conventional court system, enabling the judiciary to focus on core constitutional and criminal matters while ensuring that technical disputes receive informed and timely resolution.

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### **Q5. Discuss different types of Tribunals in India.**

Tribunals in India are quasi-judicial institutions established to resolve disputes, particularly those of a specialized or technical nature, quickly and affordably. They were incorporated into the Indian Constitution by the 42nd Amendment Act of 1976, adding Part XIV-A with Article 323A and Article 323B.

They are primarily classified based on their constitutional basis and the subject matter they address.

#### Classification Based on Constitutional Provision

##### 1. Administrative Tribunals (Article 323A)

\* Purpose: Exclusively deals with disputes and complaints regarding recruitment and conditions of service of persons appointed to public services of the Union, States, local bodies, or public corporations.

\* Authority: Only the Parliament is empowered to establish these tribunals.

\* Examples:

\* Central Administrative Tribunal (CAT): Handles service matters of Central Government employees.

\* State Administrative Tribunals (SATs): Established by the Central Government on the specific request of a state government to handle state government employee disputes.

## 2. Other Tribunals (Article 323B)

\* Purpose: Deals with a variety of disputes concerning specific matters like taxation, industrial and labour disputes, foreign exchange, land reforms, elections, etc.

\* Authority: Both the Parliament and State Legislatures are empowered to establish these tribunals.

\* Examples: National Green Tribunal (NGT), Income Tax Appellate Tribunal (ITAT), Debt Recovery Tribunal (DRT).

### Classification Based on Subject Matter

Apart from the constitutional classification, tribunals are also broadly categorized based on the disputes they adjudicate:

\* Administrative Tribunals: (As above) Central Administrative Tribunal (CAT).

\* Tax Tribunals: Deal with tax-related disputes.

\* Income Tax Appellate Tribunal (ITAT)

\* Customs, Excise and Service Tax Appellate Tribunal (CESTAT)

\* Corporate Tribunals: Adjudicate matters related to Indian companies, insolvency, and regulation.

\* National Company Law Tribunal (NCLT)

\* National Company Law Appellate Tribunal (NCLAT)

\* Sector-Specific Tribunals: Focus on disputes within specific sectors.

\* National Green Tribunal (NGT): Handles cases relating to environmental protection and conservation.

\* Armed Forces Tribunal (AFT): Deals with service matters and appeals against court-martial of military personnel.

\* Telecom Disputes Settlement and Appellate Tribunal (TDSAT): Resolves disputes in the telecommunications sector.

\* Securities Appellate Tribunal (SAT): Hears appeals against the orders of the Securities and Exchange Board of India (SEBI).

\* Debt Recovery Tribunals (DRT): Facilitates the recovery of debts due to banks and financial institutions.

### Key Role of Tribunals

Tribunals play a vital role in the Indian justice system by:

\* Reducing the workload on traditional courts, thereby tackling judicial backlog.

\* Providing subject-matter expertise for complex, technical issues (e.g., environment, tax, finance).

\* Offering a mechanism for speedy and less formal adjudication compared to regular courts.

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**Q 6. Discuss the functions of National Green Tribunal (NGT) and Central Administrative Tribunal (CAT).**

The National Green Tribunal (NGT) and the Central Administrative Tribunal (CAT) are specialized quasi-judicial bodies in India established to handle specific types of disputes, thus reducing the burden on regular courts and providing expert adjudication.

*National Green Tribunal (NGT) Functions*

The NGT was established under the National Green Tribunal Act, 2010, with the principal objective of providing effective and expeditious disposal of causes related to environmental protection.

\* *Environmental Adjudication*: It resolves civil cases that substantially concern the environment and involve the implementation of various environmental laws, such as the Water Act, Air Act, and Environment Protection Act.

\* *Relief and Compensation*: The Tribunal has the authority to grant relief and compensation for damages caused to persons and property due to environmental harm.

\* *Enforcement of Environmental Rights*: It is tasked with the enforcement of any legal right relating to the environment and acts as a specialized forum to uphold the right to a healthy environment.

\* *Sustainable Development*: The NGT works to ensure that developmental activities adhere to the principles of sustainable development, balancing economic growth with environmental protection.

\* *Remediation and Restoration*: It can issue directions for the restoration and remediation of damaged ecological areas and impose penalties on violators.

*Central Administrative Tribunal (CAT) Functions*

The CAT was established under the Administrative Tribunals Act, 1985, as per Article 323-A of the Constitution, to address disputes concerning public services.

\* *Service Matters Adjudication*: The primary function is to adjudicate disputes and complaints with respect to the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union (Central Government) and other notified authorities.

\* *Grievance Redressal*: It acts as a specialized forum for central government employees to seek redressal for grievances related to promotions, transfers, pay and allowances, disciplinary actions, and pension/retirement benefits.

\* *Speedy Justice*: It aims to provide speedy and inexpensive justice to public servants in service matters, thereby reducing the massive backlog of such cases in High Courts.

\* *Quasi-Judicial Oversight*: The Tribunal provides judicial oversight over administrative decisions in the public sector, ensuring they are lawful and adhere to the principles of natural justice.

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**Q7. Discuss the appointment procedure to Supreme Court Judges and High Courts Judges in India.**

The appointment procedure for Judges of the Supreme Court and High Courts in India is governed by the provisions of the Constitution and the Collegium System, which evolved through various Supreme Court judgments (known as the Three Judges Cases).

*Supreme Court Judges Appointment Procedure*

The appointment is made by the President of India after consultation with Judges of the Supreme Court and High Courts as the President may deem necessary. Crucially, the process is primarily driven by the Supreme Court Collegium.

1. Initiation of Proposal: The proposal for appointment is initiated by the Chief Justice of India (CJI).

2. The Collegium: The CJI forms an institutional opinion in consultation with a collegium comprising the four senior-most Judges of the Supreme Court.

\* The CJI must consult this Collegium, and the recommendation sent to the government must be based on the consensus of the Collegium.

\* If two or more judges give an adverse opinion, the CJI should not send the recommendation to the government.

\* The Collegium also consults the senior-most Supreme Court Judge from the High Court from which the prospective candidate comes.

3. Recommendation to Government: The CJI's recommendation is sent to the Union Minister of Law and Justice.

4. Role of the Executive:

\* The Law Minister forwards the recommendation to the Prime Minister, who advises the President.

\* The President makes the formal appointment by warrant under their hand and seal.

\* The government can seek clarification or reconsideration from the Collegium. However, if the Collegium reiterates the recommendation, the government is generally bound to make the appointment.

\*\*\*\*\* **High Court Judges Appointment Procedure**: The appointment is made by the President of India in consultation with the Chief Justice of India and the Governor of the concerned State. For the appointment of a Judge other than the Chief Justice, the Chief Justice of the concerned High Court is also consulted.

1. Initiation of Proposal

\* The proposal for a Judge (other than the Chief Justice) is initiated by the Chief Justice of the High Court in consultation with two senior-most colleagues of that High Court.

\* For the Chief Justice of a High Court, the proposal is initiated by the Supreme Court Collegium, often following a policy to appoint a Chief Justice from outside the respective state.

2. State-Level Consultation

The High Court Chief Justice forwards the recommendation to the Chief Minister, who advises the Governor of the State. The Governor then sends the proposal to the Union Law Minister.

3. Supreme Court Collegium Consultation

The proposal is considered by the Supreme Court Collegium, which, for High Court appointments, comprises the CJI and two senior-most Judges of the Supreme Court.

4. Recommendation and Appointment

\* The Supreme Court Collegium's recommendation goes to the Union Law Minister.

\* The Union Law Minister forwards the recommendation to the Prime Minister, who advises the President.

\* The President issues the warrant of appointment.

\* Similar to Supreme Court appointments, if the Collegium reiterates a name after the government seeks reconsideration, the appointment is usually binding on the Executive.

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### Q 8. Explain the term Acts of Parliament.

Acts of Parliament Explained: An Act of Parliament is essentially a text of law that has been formally passed by a country's legislative body, or Parliament. It is the highest form of law (often referred to as primary legislation or statute law) in jurisdictions with a parliamentary system, such as the United Kingdom, India, and Canada.

#### Key Characteristics

- \* Law Creation: The primary function of an Act is to create a new law or change an existing one.
- \* Source of Law: Acts of Parliament are the core component of what is known as Statute Law.
- \* Authority: They are the ultimate source of law, deriving their authority directly from the legislature.

#### The Process: From Bill to Act

An Act of Parliament begins its life as a Bill, which is a proposal for a new law or an amendment to an existing one. The process generally involves several key stages:

- \* Introduction: A Bill is formally introduced in one of the houses of the legislature.
- \* Scrutiny and Debate: The Bill goes through various readings and stages where its provisions are debated, scrutinized, and potentially amended by members of the legislature (e.g., the House of Commons and House of Lords in the UK).
- \* Approval: The Bill must be approved by all necessary houses of the legislature.
- \* Assent: Once approved by the legislature, the Bill is sent to the Head of State (e.g., the Monarch in the UK or the President in India) for Royal Assent or Presidential Assent. This final approval is the moment the Bill officially becomes an Act of Parliament and gains the force of law.
- \* Commencement: The Act then comes into force (or commencement), either immediately, on a specified date, or in stages determined by a government minister.

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### Q 9. Discuss the Lok Ayukta and Lokpal Act 2013.

The Lokpal and Lokayukta Act, 2013: The Lokpal and Lokayuktas Act, 2013, is a landmark anti-corruption legislation in India. It aims to establish independent and impartial institutions—Lokpal for the Union (Central) government and Lokayuktas for the State governments—to inquire into allegations of corruption against public functionaries.

These institutions function as an Ombudsman to ensure transparency and accountability in public administration.

1. The Institution of Lokpal (for the Union): The Act provides for the establishment of a multi-member body known as the Lokpal at the central level.

#### Key Features and Jurisdiction:

- \* Composition: The Lokpal consists of a Chairperson (a current or former Chief Justice of India, or a Judge of the Supreme Court, or an eminent person with at least 25 years of experience) and a maximum of eight members, half of whom must be judicial members. A minimum of 50% of the members must belong to SC/ST/OBC/Minorities/Women.
- \* Selection: The Chairperson and members are appointed by the President on the recommendations of a high-powered Selection Committee, which includes the Prime Minister,

Speaker of the Lok Sabha, Leader of Opposition in the Lok Sabha, the Chief Justice of India (or a sitting SC Judge nominated by him/her), and one eminent jurist.

*\* Jurisdiction over Public Functionaries:*

\* Prime Minister: The PM is covered, except for allegations of corruption relating to international relations, security, public order, atomic energy, and space. Any inquiry against the PM must be approved by a full bench of the Lokpal.

\* Ministers and Members of Parliament (MPs).

\* All Central Government employees (Group A, B, C, and D).

\* Any person in charge of an organisation or body established by a Central Act, or financed or controlled by the Central Government.

Powers:

\* Inquiry and Investigation: Lokpal can conduct a preliminary inquiry, order an investigation, and also initiate prosecution.

\* Civil Court Powers: It has the powers of a Civil Court during preliminary inquiry and investigation proceedings.

\* Direction over CBI: It has the power of superintendence over, and to give direction to, the Central Bureau of Investigation (CBI) in respect of cases referred to it by the Lokpal. The investigating officer of a Lokpal-referred case cannot be transferred without the Lokpal's approval.

\* Confiscation of Assets: It has the power to recommend the confiscation of assets, proceeds, receipts, and benefits of corruption.

*2. The Institution of Lokayukta (for the States)*

The Act mandates that every State shall establish a body to be known as the Lokayukta for the State, if not already established, by a law made by the State Legislature within a period of one year from the commencement of the Act.

Features:

\* The structure, tenure, and jurisdiction of the Lokayukta vary slightly from state to state as they are created through state legislation.

\* It performs a similar role to the Lokpal at the state level, inquiring into allegations of corruption against various state public functionaries.

*3. Key Provisions of the Act*

\* Mandatory Asset Disclosure: The Act mandates that all public servants furnish details of their assets and liabilities, and those of their dependents.

\* Timelines: It sets clear timelines for preliminary inquiry (30 days, extendable by 30 days), investigation (six months, extendable), and trial (one year, extendable by six months at a time).

\* Protection for Complainants: It includes provisions for protecting the identity of the complainant/whistleblower.

\* Inquiry and Prosecution Wings: The Lokpal will have its own Inquiry Wing for conducting preliminary inquiries and a Prosecution Wing for the purpose of prosecuting public servants.

The Act is a significant step towards institutionalizing a mechanism to hold the highest public functionaries accountable, fulfilling a long-standing demand for an effective anti-corruption watchdog.

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**Q10. Discuss the use of technology in judicial process and the Role of IT professionals in Judiciary in India.**

The Indian Judiciary is undergoing a significant transformation through the integration of technology, primarily driven by the e-Courts Mission Mode Project. This initiative aims to enhance efficiency, accessibility, and transparency in the justice delivery system.

**Use of Technology in Judicial Process in India**

Technology is actively being implemented across various facets of the judicial process:

- \* Case Management Systems (CMS): The Case Information System (CIS) software is used for digital case filing, registration, tracking, and management. This has led to the development of the National Judicial Data Grid (NJDG), a national repository providing real-time data on case status, pendency, and disposal rates across courts.

- \* e-Filing and e-Payment: Systems are in place for the electronic filing of legal documents, court fees, fines, and judicial deposits, reducing paperwork and the need for physical presence.

- \* Virtual Courts and Video Conferencing: Advanced Video Conferencing (VC) systems and dedicated Virtual Courts facilitate remote hearings, especially crucial during public health crises, allowing for the examination of witnesses, arguments by lawyers, and even the disposal of certain traffic cases.

- \* Information Dissemination and Access:

- \* The e-Courts Services Portal and Mobile App provide citizens and lawyers with easy access to case status, cause lists, daily orders, and judgments.

- \* Touch Screen Kiosks and e-Sewa Kendras are set up in court complexes to provide information and assistance.

- \* Digital Courtrooms and Record Digitization: Courtrooms are being modernized with LED video walls and digital displays for presenting evidence. Massive efforts are underway for the scanning and digitization of all court records, including legacy files, to move towards paperless courts.

- \* AI and Analytics: Artificial Intelligence (AI) tools are being explored and introduced for:

- \* Legal Research: Streamlining the identification of relevant case precedents and summarizing judgments.

- \* Transcription: Implementing AI-based tools to transcribe court proceedings for enhanced accuracy.

- \* Predictive Analysis: Using data analytics to aid judges in scheduling, workload optimization, and gaining insights into potential case outcomes.

**Role of IT Professionals in the Judiciary**

IT professionals, including software developers, network administrators, cybersecurity experts, and data analysts, are the backbone of this digital transformation. Their roles are crucial for the successful implementation and sustenance of the e-Courts project and related initiatives:

- \* System Development and Maintenance: They design, develop, and maintain the core judicial software, such as the Case Information System (CIS), e-filing portals, and the NJDG. This includes ensuring the software is updated, functional, and user-friendly across all levels of the judiciary.

- \* Infrastructure Management: They are responsible for setting up and maintaining the hardware (servers, computers, networking equipment), Local Area Networks (LANs), and Wi-Fi access in court complexes. They also manage the Cloud Computing Architecture being adopted for efficiency.

\* Data Security and Privacy: Given the sensitive nature of judicial data, IT professionals play a critical role in implementing robust cybersecurity measures to protect against data breaches and ensure the integrity and confidentiality of court records and proceedings.

\* Technical Support and Training: They provide technical support to judges, court staff, lawyers, and litigants. They are also vital in conducting capacity building and training programs to improve digital literacy and ensure effective adoption of the new technological tools.

\* Innovation and Integration: They are tasked with integrating emerging technologies like AI, Machine Learning (ML), and Business Intelligence (BI) tools into judicial processes to enhance decision support systems and improve case management.

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### **Q11. Discuss the role of an auditor of a company and what are their powers.**

The role of a company's auditor is to provide an independent and objective assessment of the company's financial statements, ensuring they present a true and fair view of its financial position. The auditor acts primarily on behalf of the company's shareholders and other stakeholders to enhance the credibility of financial reporting.

#### **Role of a Company Auditor**

The core role involves conducting an audit to express an opinion on the financial statements. Key aspects include:

\* Independent Examination: To meticulously examine the company's books of account, financial records, and systems to ensure they comply with relevant laws, regulations, and accounting standards.

\* True and Fair View: To confirm that the Balance Sheet, Profit and Loss Account (or Income Statement), and Cash Flow Statement accurately reflect the company's financial health and operational results.

\* Reporting to Shareholders: To prepare and issue an Audit Report that contains their opinion on the financial statements, which is presented to the members (shareholders) at the General Meeting.

\* Compliance Verification: To ensure the company has complied with the provisions of the Companies Act and other applicable statutory requirements.

\* Fraud Detection and Reporting: While the primary responsibility for preventing and detecting fraud lies with the company's management, the auditor is required to plan and perform the audit to obtain reasonable assurance that the financial statements are free from material misstatement, whether due to fraud or error, and must report any detected fraud to the appropriate authority.

\* Evaluating Internal Controls: To assess the adequacy and effectiveness of the company's internal financial controls over financial reporting.

#### **Powers of a Company Auditor**

To fulfill their duties effectively, the law grants auditors' specific powers (often referred to as rights):

\* Right of Access to Books and Vouchers: The auditor has the right to access the books of account and vouchers of the company at all times, whether they are kept at the registered office or any other place. This is a fundamental power essential for verifying transactions.

\* Right to Information and Explanation: They are entitled to require from the officers of the company any information and explanations they consider necessary for the performance of their duties. The officers are legally bound to furnish this information.

\* Right to Attend and Be Heard at General Meetings: An auditor has the right to receive all notices of, and other communications relating to, any General Meeting of the company. They are also entitled to attend any General Meeting, either personally or through an authorized

representative (who must also be a qualified auditor), and be heard on any part of the business that concerns them as an auditor.

\* Right to Access Subsidiary Records (for Consolidation): The auditor of a holding company has the right of access to the records of all its subsidiaries and associate companies, insofar as it relates to the consolidation of the holding company's financial statements.

\* Right to Inspect Branch Accounts: Where the accounts of a branch office are not audited by the company's auditor, the company's auditor is entitled to visit the branch office and access its books, accounts, and vouchers.

\* Right to Sign the Audit Report: Only the person appointed as the auditor (or a partner in the case of an audit firm) has the statutory right to sign the audit report and authenticate any other documents required by law to be signed or authenticated by the auditor.

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## **Q12. What do you mean by a prospectus of a company? Explain its different types.**

Prospectus of a Company: A prospectus is a formal, legal document that a company issues to invite the public to subscribe to or purchase its securities (like shares or debentures).

### Meaning of a Prospectus

\* Legal Invitation: It is essentially an invitation or an advertisement to the public to offer to buy the company's shares or debentures.

\* Information Disclosure: It contains all the necessary and material information about the company, its financial performance, its management, the nature of the securities being offered, the objectives of the issue (how the capital will be used), and the associated risks.

\* Informed Decision: Its main purpose is to enable potential investors to make an informed decision about whether or not to invest in the company.

In simple terms, it's a comprehensive disclosure document required by law before a company can raise capital from the public.

### Different Types of Prospectuses

Based on the nature of the offering and the completeness of the document, the Companies Act (such as the Companies Act, 2013 in India) typically recognizes several types of prospectuses:

#### 1. Red Herring Prospectus (RHP)

\* Meaning: A preliminary prospectus filed before the final price and the full quantity of securities to be offered are determined. It is used primarily in the book-building process.

\* Key Feature: It contains most of the information about the company and the issue, except for the price and the number of shares being offered.

\* Finalization: Once the price and quantum are finalized, the company must file a complete prospectus with all the missing details before the subscription list opens.

#### 2. Shelf Prospectus

\* Meaning: A single prospectus filed by an issuer (like a financial institution or certain companies) that allows them to issue securities in multiple tranches over a specified period (e.g., one year), without having to file a new prospectus every time.

\* Benefit: It saves time, effort, and resources for companies that plan to raise capital frequently.

\* Filing Requirement: A fresh prospectus is not required for subsequent issues within the stated period, but the company usually has to file an Information Memorandum detailing the latest changes to their financial position, etc., with each new offer.

### 3. Abridged Prospectus

\* **Meaning:** A memorandum that contains the salient features or a summary of the main prospectus.

\* **Requirement:** According to law, a form for the purchase of securities must be accompanied by an Abridged Prospectus.

\* **Purpose:** It is a shorter, user-friendly version that provides the most important details to an investor in a concise format.

### 4. Deemed Prospectus

\* **Meaning:** A situation where a document that is not formally labeled a 'prospectus' is legally treated as one.

\* **Scenario:** This typically happens when a company offers or allots securities to an intermediary (like an underwriting firm), and that intermediary then offers those securities to the public within a short period. The document through which the intermediary makes the offer to the public is then "deemed" to be a prospectus.

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## Q13. Evaluate Public Interest Litigation (PIL).

Evaluating Public Interest Litigation (PIL) involves analyzing its transformative benefits and its associated challenges within the legal and governance framework.

### Evaluation of Public Interest Litigation (PIL)

PIL is an innovative tool developed by the judiciary, primarily in India, to secure public interest and provide access to justice for the poor and marginalized by relaxing the traditional rule of locus standi (the right to bring an action).

Benefits and Significance: PIL has emerged as a vital mechanism for social change and the enforcement of rights.

\* Access to Justice: The most significant contribution is democratizing justice by allowing any public-spirited individual or organization to file a petition on behalf of those who are poor, uneducated, or disadvantaged and cannot approach the court themselves. This includes giving voice to prisoners, bonded laborers, exploited children, etc.

\* Enforcement of Human Rights: It has been instrumental in expanding the scope of Fundamental Rights (Part III of the Indian Constitution), often linking them to Directive Principles of State Policy (DPSP), leading to the recognition of rights such as the right to a clean environment, right to food, and right to health.

\* Judicial Oversight and Accountability: PIL acts as a check on the executive and legislative branches, ensuring government and public authorities are accountable for their constitutional and legal obligations. It strengthens the concept of Judicial Review.

\* Social Change and Reform: It has been a powerful catalyst for broad-based reforms in areas like environmental protection, consumer welfare, prison conditions, and the eradication of social evils.

\* Cost-Effective Remedy: The procedural formalities are often relaxed, and nominal court fees are required, making it an inexpensive remedy for securing justice for large groups of people.

Challenges and Criticisms: - Despite its importance, the PIL mechanism faces several criticisms.

\* Misuse and Frivolous Cases: The relaxation of locus standi has led to the filing of numerous frivolous or vexatious petitions. These may be motivated by personal interests, political agendas, or even business rivalries rather than genuine public good, thereby wasting judicial time and resources.

\* Judicial Overreach: Critics argue that the judiciary sometimes transgresses the constitutional principle of Separation of Powers by intervening in purely executive or legislative domains. This is termed "judicial overreach" and can lead to the court performing administrative or policy-making functions.

\* Increased Workload and Backlog: The surge in PILs, especially those that lack merit, significantly adds to the already immense workload of the higher judiciary (Supreme Court and High Courts), contributing to the delay in deciding other pending cases.

\* Implementation Difficulties: The implementation of court orders and directions in PIL cases, particularly those requiring massive administrative action or budgetary allocations, can be challenging, leading to prolonged monitoring by the court.

\* Competing Rights: In some cases, judicial intervention through PIL may inadvertently infringe upon the rights or interests of other parties involved, creating new legal complications.

PIL is an extraordinary judicial innovation that has served as a strategic arm of the legal aid movement and a powerful engine for social justice in India. It successfully bypassed technical procedural barriers to make the judiciary accessible to the masses. However, for it to remain an effective tool, the judiciary must exercise self-restraint, strictly distinguish between genuine public interest and private or political motives, and actively discourage its misuse to preserve its sanctity and effectiveness.

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#### **Q14. Discuss the procedure of formation of a company under Indian Companies Act.**

The procedure for the formation of a company under the Indian Companies Act, 2013, is generally divided into several stages. The entire process is now largely done online through the Ministry of Corporate Affairs (MCA) portal using integrated forms like SPICe+ (Simplified Proforma for Incorporating Company Electronically).

1. Promotion Stage: - This is the preliminary stage where the business idea is conceived and preliminary steps are taken.

\* Discovery of Business Opportunity: Identifying an idea and conducting a feasibility study (economic, technical, and legal viability).

\* Role of Promoters: Promoters are the individuals who conceive the idea, arrange the resources, and take the initial steps to incorporate the company.

\* Deciding the Type of Company: Choosing the structure, e.g., Private Limited, Public Limited, or One-Person Company (OPC).

2. Documentation & Digital Preparation: - Before formal application, certain prerequisites must be met by the proposed directors and subscribers.

\* Digital Signature Certificate (DSC): All proposed directors and subscribers must obtain a Class 3 DSC for digitally signing e-forms.

\* Director Identification Number (DIN): Every director must have a DIN. This is usually applied for through the SPICe+ form for a maximum of three first directors who don't already have one.

\* Name Reservation: An application for name availability is filed with the Registrar of Companies (ROC) through the RUN (Reserve Unique Name) service or Part A of the SPICe+ form. The name must be unique and not identical to an existing company or registered trademark.

\* Drafting Foundation Documents:

\* Memorandum of Association (MoA): The charter/constitution of the company, defining its name, registered office state, objects, liability, and capital.

\* Articles of Association (AoA): The internal rules and regulations for the management of the company.

3. Incorporation (Registration) Stage: -This is the crucial step where the application for registration is filed with the ROC.

\* Filing of Integrated Form SPICe+ (INC-32): The main application for incorporation is filed electronically on the MCA portal, along with the MoA (e-MoA), AoA (e-AoA), and other required documents. SPICe+ also facilitates:

\* Application for PAN (Permanent Account Number) and TAN (Tax Deduction and Collection Account Number).

\* Application for mandatory registrations like EPFO (Employees' Provident Fund Organisation) and ESIC (Employees' State Insurance Corporation).

\* Filing of AGILE-PRO: This form is filed along with SPICe+ for mandatory registrations like GSTIN (Goods and Services Tax Identification Number) and opening a bank account.

\* Required Documents/Attachments:

\* Consent of Directors (Form DIR-2).

\* Declaration by a Chartered Accountant, Company Secretary, or Advocate that all legal requirements have been met.

\* Proof of Registered Office address (e.g., utility bill not older than two months, and a No-Objection Certificate from the property owner).

\* Identity and residential proof of subscribers and directors.

\* ROC Scrutiny and Issuance of Certificate: If the ROC is satisfied that all requirements have been complied with, they will register the company and issue a Certificate of Incorporation (COI). The COI is conclusive proof of the company's registration and includes the Corporate Identification Number (CIN).

4. Commencement of Business Stage: - For all companies incorporated on or after November 2, 2018, this is the final mandatory step.

\* Filing of e-Form INC-20A: Within 180 days of incorporation, a declaration must be filed with the ROC that every subscriber to the MoA has paid the value of the shares agreed to be taken by them (i.e., the paid-up capital is brought into the company's bank account).

\* Obtaining Certificate of Commencement of Business: Upon filing INC-20A with the required attachments, the company can legally commence its business operations.

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### **Q15. Explain Annual General Meeting (AGM).**

An Annual General Meeting (AGM) is a formal, mandatory yearly gathering of a company or organization's general membership, primarily its shareholders and the Board of Directors. It is a crucial event for corporate governance, transparency, and accountability.

#### **Key Purposes of an AGM**

The AGM serves as the main platform for interaction between a company's leadership and its owners (shareholders). Its primary goals include:

\* Financial Reporting: The Board of Directors presents the company's annual report, financial statements (like the balance sheet, income statement, and cash flow statement), and performance for the preceding financial year.

\* Strategic Discussion: Management provides updates on the company's operations, strategy, and future plans.

\* Shareholder Engagement: It gives shareholders an opportunity to ask questions, raise concerns, and seek clarification from the board and executives.

\* Voting on Key Matters: Shareholders exercise their voting rights on critical decisions, which typically include:

- \* Approval of the annual accounts and reports.
- \* Election or re-election of members of the Board of Directors.
- \* Appointment and fixation of the remuneration of external auditors.
- \* Approval of dividends.
- \* Voting on other significant company resolutions (special business).
- \* Legal Compliance: For most companies, particularly publicly traded ones, holding an AGM is a legal requirement mandated by corporate laws in their respective jurisdictions.

### **Basic Requirements & Procedure**

The specific rules are governed by local corporate laws (e.g., the Companies Act in India) and the company's own articles of association, but generally include:

- \* Notice Period: A formal notice of the meeting, along with the agenda and required documents, must be sent to all members, often at least 21 days in advance.
- \* Timing: The AGM must be held within a specified period after the close of the financial year (e.g., within six months).
- \* Quorum: A minimum number of members (a quorum) must be present for the meeting's proceedings to be legally valid.
- \* Voting: Shareholders can vote in person, or often, by appointing a proxy to vote on their behalf if they cannot attend.

In essence, the AGM is a yearly democratic exercise where the management is held accountable to the shareholders for the company's performance and is entrusted with direction for the year ahead.

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## **Q16. Discuss the silent features of Indian Company's Act 2013.**

### **Salient Features of the Indian Companies Act, 2013**

The Companies Act, 2013 replaced the half-a-century-old Companies Act, 1956, introducing significant reforms to enhance corporate governance, transparency, and accountability, and to promote ease of doing business.

Here are the key salient features of the Indian Companies Act, 2013:

#### **1. New Company Concepts & Types**

- \* One Person Company (OPC): Introduced a new type of private company that can be formed with only one director and one shareholder, giving a boost to sole entrepreneurs.
- \* Small Company: Introduced a special classification with relaxed compliance requirements.
- \* Dormant Company: Provision for companies that have not engaged in significant business activity or financial transaction for a specified period to register as 'dormant'.
- \* Increased Private Company Member Limit: The maximum number of members in a private limited company was increased from 50 to 200.

#### **2. Corporate Governance & Board Structure**

- \* Independent Directors (IDs): Mandated the appointment of Independent Directors for prescribed classes of public companies (minimum one-third of the total directors for listed companies). The Act also codified their duties and responsibilities.
- \* Women Director: Mandated the appointment of at least one woman director on the board for prescribed classes of companies.

- \* Resident Director: Mandated that every company must have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.
- \* Key Managerial Personnel (KMP): Defined and made the appointment of KMP mandatory for certain companies, clearly defining their roles and responsibilities (e.g., CEO, CFO, Whole-time Director, Company Secretary).
- \* Directors' Duties: For the first time, the specific duties of a director were defined in the Act.
- 3. Enhanced Transparency and Financial Reporting
  - \* Corporate Social Responsibility (CSR): Mandated certain large companies (based on net worth, turnover, or net profit) to spend at least 2% of their average net profits of the three immediately preceding financial years on CSR activities.
  - \* Consolidated Financial Statements (CFS): Made it mandatory for a company having subsidiaries, associates, or joint ventures to prepare and place CFS before the Annual General Meeting, in addition to its standalone financial statements.
  - \* Rotation of Auditors: Mandated the rotation of auditors/audit firms for prescribed companies after a specified period to ensure auditor independence.

#### 4. Investor and Stakeholder Protection

- \* Class Action Suits: Introduced a provision for shareholders and depositors to file a class action suit against the company on grounds of managerial mismanagement or fraud, empowering minority stakeholders.
- \* Insider Trading & Forward Dealings: Prohibited directors and Key Managerial Personnel from engaging in insider trading and forward dealings in the securities of the company.

#### 5. Regulatory Framework & Enforcement

- \* National Company Law Tribunal (NCLT): Established the NCLT and the National Company Law Appellate Tribunal (NCLAT) as quasi-judicial bodies to adjudicate company-law disputes, replacing the Company Law Board and the power of High Courts in some matters.
- \* E-Governance: Promoted the use of electronic platforms for various procedures like maintenance and inspection of documents, e-filing, and keeping books of accounts in electronic format.
- \* Fast Track Mergers: Provided a simpler and faster procedure for mergers and amalgamations of certain classes of companies (e.g., small companies, holding and wholly-owned subsidiary companies) subject to government approvals.
- \* Stringent Penalties: Introduced stricter penalties for non-compliance and fraudulent activities to enforce accountability.

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### **Q17. What do you mean by National Company Law Tribunal? Discuss its role and importance.**

The National Company Law Tribunal (NCLT) is a quasi-judicial body in India that adjudicates matters primarily related to Indian companies.

- \* Quasi-Judicial Body: This means it has powers similar to a court of law, but its authority is limited to specific areas defined by the law (primarily company law and insolvency law).
- \* Establishment: It was constituted by the Government of India on June 1, 2016, under Section 408 of the Companies Act, 2013.
- \* Purpose: It was formed to consolidate the corporate jurisdiction of the Company Law Board, the Board for Industrial and Financial Reconstruction (BIFR), and the powers related to company winding up from the High Courts into a single specialised forum.
- \* Appeal: Decisions of the NCLT can be appealed to the National Company Law Appellate Tribunal (NCLAT), and further to the Supreme Court of India on a point of law.



### **Role and Importance of the NCLT**

The NCLT plays a pivotal and multi-faceted role in ensuring the efficient functioning, governance, and resolution of disputes within the corporate sector.

#### **1. Adjudicating Authority for Insolvency and Bankruptcy**

\* **Role**: The NCLT is the Adjudicating Authority for the Corporate Insolvency Resolution Process (CIRP) and liquidation of companies and Limited Liability Partnerships (LLPs) under the Insolvency and Bankruptcy Code (IBC), 2016.

\* **Importance**: This is arguably its most critical function. It provides a time-bound and structured mechanism for resolving corporate financial distress, which is crucial for:

- \* Maximizing the value of assets of the company.
- \* Promoting entrepreneurship by offering a second chance to honest but failed businesses.
- \* Improving India's 'Ease of Doing Business' ranking by ensuring quick resolution of bad debts.

#### **2. Streamlining Corporate Dispute Resolution**

\* **Role**: It acts as a single forum for handling all proceedings under the Companies Act, 2013, including matters like:

- \* Arbitration, compromise, and arrangements.
  - \* Oppression and Mismanagement of a company (protecting minority shareholders).
  - \* Winding up of companies.
  - \* Power to investigate the affairs of a company and freeze assets.
- \* **Importance**: By consolidating jurisdiction from various bodies (High Courts, Company Law Board, etc.), the NCLT ensures consistency in judgments, reduces litigation costs, and provides a speedier remedy for corporate disputes.

#### **3. Approvals for Mergers and Acquisitions (M&A)**

\* **Role**: The NCLT is responsible for approving schemes of merger, demerger, and corporate restructuring.

\* **Importance**: The Tribunal ensures that such schemes are fair, legal, and that the interests of all stakeholders, especially minority shareholders and creditors, are adequately protected before granting its sanction. This prevents fraudulent or harmful corporate actions.

#### **4. Protecting Stakeholder Rights**

\* **Role**: It handles grievances related to the transfer of shares and can entertain Class Action Suits by groups of shareholders or depositors against a company for alleged wrongful acts.

\* **Importance**: This empowers minority stakeholders, depositors, and small investors, promoting corporate governance and transparency, and holding the management accountable for misconduct.

#### **5. Revival of Sick Companies**

\* **Role**: The Tribunal has powers to review and approve the revival of dormant or sick companies, helping them get back on track where feasible, thus saving jobs and economic value.

In summary, the NCLT is a specialised institution that acts as the primary enforcer of India's corporate and insolvency laws. Its establishment is a significant institutional reform aimed at providing a modern, efficient, and investor-friendly mechanism for corporate dispute resolution, directly contributing to a healthier business environment in the country.

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**Q18. Discuss the types and process of winding-up of company.**

The winding-up (or liquidation) of a company is the process of realizing its assets, paying its debts and liabilities, and distributing any surplus to its members (shareholders), which ultimately leads to the company's dissolution—meaning its legal existence ceases.

Types of Winding-Up: - The winding-up of a company is broadly classified into two main types:

1. Compulsory Winding-Up (Winding-Up by the Tribunal/Court)

This mode is initiated by an order of the National Company Law Tribunal (NCLT) (or the relevant court in some jurisdictions), typically upon a petition filed by a creditor, the company itself, the Registrar of Companies, or other specified parties.

Grounds for Compulsory Winding-Up (Common Examples):

- \* The company is unable to pay its debts (insolvency).
- \* The company has, by Special Resolution, resolved that it should be wound up by the Tribunal.
- \* The company has acted against the interests of the sovereignty and integrity of the country, public order, morality, etc.
- \* The company has failed to file its financial statements or annual returns for five consecutive financial years.
- \* The Tribunal is of the opinion that it is just and equitable that the company should be wound up.

2. Voluntary Winding-Up

This mode is initiated by the members (shareholders) of the company without the intervention of the Tribunal, although the liquidator has to comply with various legal provisions and filings. It is further categorized based on the company's solvency:

Type	Solvency Status	Initiating Party	Key Requirement
Members' Voluntary Winding-Up	Solvent (can pay debts in full)	Shareholders	Declaration of Solvency by the majority of directors.
Creditors' Voluntary Winding-Up	Insolvent (unable to pay debts)	Shareholders, followed by Creditors' meeting	Resolution to wind up, followed by a meeting of creditors where they essentially take over the process.

Process of Winding-Up

The procedure differs significantly based on the type of winding-up.

A. Process of Compulsory Winding-Up (By Tribunal)

- \* Filing of Petition: An eligible petitioner (like a creditor, company, or Registrar) files a formal petition with the NCLT, along with a statement of the company's affairs.
- \* Admission and Advertisement: The Tribunal reviews the petition, and if satisfied, orders its advertisement to inform the public and other interested parties.
- \* Appointment of Liquidator: The Tribunal appoints a Company Liquidator (often the Official Liquidator) to take custody of all the company's property, assets, and books.
- \* Liquidator's Report: The liquidator investigates the company's affairs and submits a report to the Tribunal on its financial position and steps required for liquidation.
- \* Realization and Distribution: The liquidator takes charge of the assets, realizes them (sells them), settles the debts in their statutory priority (including costs of winding-up, preferential creditors, and unsecured creditors), and pays any surplus to the members.

\* Final Dissolution: Once the company's affairs are completely wound up, the liquidator applies to the Tribunal for a Dissolution Order. Upon the order being passed and filed with the Registrar of Companies, the company stands dissolved.

**B. *Process of Voluntary Winding-Up* (Members' or Creditors')**

\* Declaration of Solvency (for Members' VWU only): The majority of directors must make a sworn declaration that they have inquired into the company's affairs and believe the company can pay its debts in full within a specified period. This is filed with the Registrar.

\* Resolution to Wind Up: The members (shareholders) pass a Special Resolution (usually a 75% majority) in a general meeting for the voluntary winding-up of the company and to appoint a liquidator.

\* Creditors' Approval (for Insolvent Company): For a Creditors' Voluntary Winding-Up, a meeting of the creditors must be held, and their approval for the winding-up is necessary.

\* Appointment of Liquidator: A qualified Insolvency Professional is appointed as the liquidator by the members or creditors.

\* Liquidation and Settlement: The liquidator takes custody of the assets, realizes them, and distributes the proceeds. The company must cease all business activities except what is necessary for the beneficial winding-up.

\* Final Meeting and Accounts: Once the affairs are fully wound up, the liquidator calls a final meeting of the members (and creditors, if applicable) to present the final accounts and report on the winding-up.

\* Dissolution: The liquidator files the final accounts and resolution with the Registrar of Companies (ROC) and the Insolvency and Bankruptcy Board of India (IBBI). The company is deemed dissolved from the date the Tribunal passes an order for dissolution or, in some regimes, after a fixed period from the date of filing the final documents with the Registrar of Company's (ROC).

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**Q19. Explain the jurisdiction and powers of Lokpal.**

The Lokpal is an anti-corruption authority established at the central level in India to inquire into allegations of corruption against certain public functionaries. Its jurisdiction and powers are defined by The Lokpal and Lokayuktas Act, 2013.

**Jurisdiction of Lokpal**

The Lokpal's jurisdiction extends to:

- \* The Prime Minister: The PM is covered, except for allegations of corruption relating to:
  - \* International relations
  - \* Security of the State
  - \* The public order
  - \* Atomic energy and space
- \* An inquiry against the PM requires a special process, including approval by a two-thirds majority of the full Lokpal bench.
- \* Union Ministers and Members of Parliament (MPs): They are covered, except for anything said or any vote given by them in Parliament or any committee thereof, which is protected under Article 105(2) of the Constitution.
- \* Central Government Officials: This includes all categories of officials: Group A, B, C, and D.
- \* Chairpersons, Members, Officers, and Directors of statutory bodies, corporations, societies, or trusts established by an Act of Parliament or wholly or partly financed or controlled by the Central Government.

\* Any person who is or has been in charge of a body receiving foreign contributions above a specified limit (currently ₹10 lakh per year) under the Foreign Contribution (Regulation) Act, 2010.

\* Any person involved in the act of abetting, bribe-giving, or bribe-taking or conspiracy relating to any allegation of corruption against a public servant covered under the Lokpal's jurisdiction.

### **Powers of Lokpal**

The Lokpal is vested with significant powers to effectively carry out its anti-corruption mandate:

\* Superintendence over Investigating Agencies: It has the power of superintendence and direction over the Delhi Special Police Establishment (DSPE), including the Central Bureau of Investigation (CBI), for cases referred to it for preliminary inquiry or investigation. The investigating officer in such a case cannot be transferred without the Lokpal's prior approval.

\* Powers of a Civil Court: For the purpose of preliminary inquiry and investigation, the Lokpal and its Inquiry Wing are vested with the same powers as a Civil Court under the Code of Civil Procedure, 1908.

\* Power of Search and Seizure: It can authorize any agency (referred by it) to search and seize documents or assets related to the allegations.

\* Confiscation of Assets: It has the power to order the provisional attachment of assets, proceeds, receipts, and benefits acquired by means of corruption, and can also recommend their final confiscation in special circumstances.

\* Transfer and Suspension: It can recommend the transfer or suspension of a public servant connected with the allegation of corruption.

\* Directions to Prevent Destruction of Records: It can issue directions to prevent the destruction of records during the preliminary inquiry.

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### **Q20. Discuss the Objective Resolutions as moved by Jawahar Lal Nehru.**

The Objective Resolution was a historic resolution moved by Pandit Jawaharlal Nehru in the Constituent Assembly of India on December 13, 1946. It was unanimously adopted by the Assembly on January 22, 1947.

This Resolution outlined the philosophical structure, fundamental principles, and goals for the Constitution of Independent India. It served as the bedrock for the subsequent process of constitution-making and its modified version ultimately forms the Preamble of the Indian Constitution.

### **Key Features of the Objective Resolution**

The Objective Resolution was a moral commitment by the constitution-makers to the core values of the Indian national movement. Its principal objectives included:

\* Sovereignty: Declaring India as an Independent Sovereign Republic.

\* Source of Authority: Stating that all power and authority of the Sovereign Independent India, its constituent parts, and organs of government are derived from the people.

\* Union of States: Proclaiming India as a Union of all territories (British Indian provinces and Indian states) that were willing to be part of the Independent Sovereign India.

\* Autonomy and Residuary Powers: Ensuring that the territories forming the Union shall possess autonomy and exercise all powers and functions of government and administration, except those assigned to or vested in the Union.

\* Justice, Equality, and Liberty: Guaranteeing and securing to all the people of India:

\* Justice (social, economic, and political).

\* Equality of status, of opportunity, and before the law.

- \* Freedom of thought, expression, belief, faith, worship, vocation, association, and action, subject to law and public morality.
- \* Safeguards for Minorities: Providing adequate safeguards for minorities, backward and depressed classes, and tribal areas.
- \* Integrity of the Republic: Maintaining the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to the justice and law of civilised nations.
- \* World Peace: Contributing to the promotion of world peace and the welfare of mankind.

### Significance and Impact

The Objective Resolution was a momentous document that had a profound impact on the shaping of the Constitution:

- \* Guide to Constitution Makers: It served as the guiding philosophy and a blueprint for the Constituent Assembly, ensuring that the Constitution was framed in accordance with the aspirations of the people.
- \* Foundation for the Preamble: The essence and spirit of the Objective Resolution were encapsulated in the Preamble of the Constitution of India, which is often called the "soul" of the Constitution.
- \* Commitment to Ideals: It was a declaration of India's commitment to the values of democracy, justice, liberty, and equality, setting a high moral standard for the new nation.

The Resolution clearly stated the objectives of the Constituent Assembly and laid down the principles that would govern the independent Indian state.

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### **Q21. Discuss the duties of an auditor of a company.**

The duties of a company auditor are primarily statutory and professional, aimed at providing an independent opinion on the company's financial statements. Their core responsibility is to ensure that the financial statements present a true and fair view of the company's financial position and follow relevant laws and accounting standards.

**Statutory and Core Duties**: - The main duties of a company auditor, often prescribed by the Companies Act and Auditing Standards (like those issued by ICAI in India), include:

- \* Preparation of the Audit Report: The fundamental duty is to prepare and sign an Audit Report addressed to the members (shareholders) of the company. This report expresses an opinion on whether the financial statements (like the Balance Sheet and Profit & Loss Account) give a true and fair view of the company's state of affairs.
- \* Compliance Check: Ensuring that the financial statements comply with the provisions of the Companies Act, other relevant statutory requirements, and all applicable Accounting Standards and Auditing Standards.
- \* Making Inquiries: The auditor has a duty to make specific inquiries on certain matters, as deemed necessary, to ensure proper accounting treatment. These inquiries often relate to:
  - \* Whether loans and advances made by the company are properly secured and not prejudicial to the company's interest.
  - \* Whether transactions represented merely by book entries are prejudicial to the company's interests.
  - \* Whether personal expenses have been charged to the revenue account.
  - \* Whether the position stated regarding the allotment of shares for cash is correct.
- \* Reporting on Internal Financial Controls (IFC): For certain classes of companies, the auditor is also required to provide an opinion on the adequacy and operating effectiveness of the company's Internal Financial Controls over financial reporting.

\* Reporting on Books of Account: Stating whether proper books of account, as required by law, have been kept by the company, and whether proper returns adequate for the audit purpose have been received from branches not visited.

\* Fraud Reporting: A significant duty is to report any fraud involving the company that they notice or have reason to believe exists. The reporting mechanism (to the Central Government or the Audit Committee/Board, depending on the monetary threshold and other factors) is specified in the law.

### Professional and Ancillary Duties

Beyond the statutory report, an auditor has several professional duties:

\* Adherence to Auditing Standards: The auditor must comply with all Auditing Standards (SA/AS) while conducting the audit. These standards govern the quality and methodology of the audit process.

\* Maintaining Independence and Objectivity: The auditor must remain independent of the company's management and maintain a high degree of objectivity and professional skepticism throughout the engagement to ensure an unbiased opinion.

\* Assistance in Investigation: If the company is under investigation by regulatory authorities, the auditor has a duty to cooperate and provide necessary assistance, information, and explanations.

\* Attending General Meetings: The auditor has a duty to receive all notices and other communications related to any General Meeting and has the right, and sometimes the duty, to attend the meeting (either personally or through an authorized representative) and be heard on matters concerning the audit.

\* Dealing with Branch Audit Reports: If a company has a branch that has been audited by another branch auditor, the company's auditor must deal with the branch auditor's report in their main audit report in a manner they deem necessary.

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## **Q22. Discuss the features of sole proprietary form of firm.**

The sole proprietorship is the simplest and most common form of business organization, owned, controlled, and managed by a single individual. The key features of a sole proprietorship firm are:

### Single Ownership

\* A sole proprietorship is owned entirely by one person, who is the sole provider of the capital.

\* The owner has complete control over the business's activities, decisions, and management.

### Unlimited Liability

\* This is a defining characteristic: the owner has unlimited liability.

\* There is no legal distinction between the owner and the business.

\* The owner is personally responsible for all business debts and obligations. If the business assets are insufficient to cover debts, the owner's personal assets (like a house or car) can be used to pay off creditors.

### Easy Formation and Closure

\* A sole proprietorship is easy to start with minimal legal formalities and low setup costs. In most cases, formal registration is not required, though some businesses may need a specific license or permit.

\* Similarly, the business can be closed easily by the owner at their discretion, again with minimal legal hassle.

### Sole Risk Bearer and Profit Recipient

\* The proprietor alone bears all the business risks and is accountable for any losses incurred.

\* Conversely, the owner enjoys all the profits generated by the business. There is no need to share profits with any partners or shareholders.

*Lack of Separate Legal Entity*

\* Legally, the business and the owner are considered one and the same. The business does not have a separate legal existence distinct from its owner.

\* This lack of separation is the basis for unlimited liability and impacts the continuity of the business.

*Lack of Business Continuity*

\* The existence of the sole proprietorship is directly tied to the owner.

\* The business may be forced to cease or close upon the owner's death, illness, insolvency, or imprisonment, as there is no legal separation or automatic succession plan built into the structure.

*Business Secrecy*

\* The sole proprietor is the only person making key decisions and managing operations, allowing them to maintain complete secrecy regarding business affairs, finances, and strategies.

\* There are generally no legal requirements to publish business accounts.

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**Q23. Define a partnership firm and what do you mean by partnership deed.**

A Partnership Firm is a form of business organization where two or more persons agree to carry on a business and share its profits (and losses) among themselves.

According to the Indian Partnership Act, 1932, a partnership is defined as "the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all."

\* The persons who have entered into a partnership with one another are individually called Partners.

\* Collectively, they are called a Firm.

\* The name under which the business is carried on is called the Firm Name.

Key characteristics typically include a contractual relationship (agreement), sharing of profits/losses, existence of a business, and mutual agency (each partner is an agent of the firm and of the other partners).

**Partnership Deed: The** Partnership Deed, also known as the Partnership Agreement, is a written legal document that contains the terms and conditions that govern the partnership among the partners.

It is essentially the rulebook for the firm and is crucial for the smooth functioning of the business and avoiding potential disputes. While the Indian Partnership Act allows for an oral agreement, a written Partnership Deed is highly recommended as it provides concrete evidence of the agreed-upon terms.

*Key Contents of a Partnership Deed:*

A comprehensive Partnership Deed typically includes details on:

- \* Name and Address of the firm and partners.
- \* Nature and Scope of the business.
- \* Duration of the partnership (if any).
- \* Capital Contribution by each partner.
- \* Profit and Loss Sharing Ratio.
- \* Salaries or Commission payable to any partner.
- \* Interest on Capital and Interest on Drawings.
- \* Rules for the Admission, Retirement, or Death of a partner.
- \* Procedures for the Dissolution of the firm.
- \* Duties, Rights, and Liabilities of each partner.
- \* Method for Settlement of Accounts and Dispute Resolution.

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**Q24. What do you mean by the statement, " Arbitration is an alternative to resolve disputes.**

The statement "Arbitration is an alternative to resolve disputes" means that arbitration is a method for settling disagreements outside of the traditional court system. It is considered an Alternative Dispute Resolution (ADR) mechanism.

Key Aspects of Arbitration

\* Alternative to Litigation: Instead of going through the formal, often lengthy, and public process of a lawsuit (litigation) in court, the parties agree to use arbitration.

\* Private Process: Arbitration is typically a private process.

\* Neutral Third Party: The dispute is submitted to one or more arbitrators (neutral third parties) who act as private judges.

\* Binding Decision: The parties usually agree beforehand to accept the arbitrator's decision, known as an award, which is legally binding and generally enforceable in courts, similar to a court judgment.

\* Voluntary Basis: The choice to use arbitration is usually based on an arbitration clause in a contract or a separate submission agreement made after a dispute arises.

**Why Choose Arbitration?**

People and businesses often choose arbitration because it can be:

\* Faster: The process tends to be quicker than court proceedings.

\* Less Formal: Rules of procedure and evidence are often more relaxed than in court.

\* Confidential: The proceedings and the resulting award are typically kept private.

\* Specialized Expertise: The parties can select an arbitrator with specialized knowledge in the subject matter of the dispute (e.g., construction, maritime law, intellectual property).

\* Cost-Effective: While not always true, it can sometimes be less expensive than full-scale litigation.

In essence, it offers a contractual path to a final and enforceable resolution, bypassing the public judiciary.

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**Q25. Discuss the differences between arbitration and mediation.**

Arbitration and mediation are both forms of Alternative Dispute Resolution (ADR), offering ways to resolve conflicts outside of traditional court litigation. While they share the goal of achieving a resolution with the help of a neutral third party, their processes, the role of the neutral party, and the nature of the outcome are fundamentally different.

Here is a comparison of the key distinctions:

Feature	Arbitration	Mediation
Role of the Neutral Party	The Arbitrator acts like a private judge. They hear evidence, review arguments, apply the law, and ultimately decide (an award).	The Mediator acts as a neutral facilitator. They guide communication, explore options, and help the parties reach their own voluntary settlement.
Decision-Making Authority	The Arbitrator is the decision-maker. They have the authority to impose a final ruling on the dispute.	The Parties are the decision-makers. The mediator has no authority to impose a settlement.
Nature of the Outcome	The outcome is an Award, which is typically final and legally binding (if agreed upon by the parties beforehand), similar to a court judgment.	The outcome is a Settlement Agreement, which is non-binding unless the parties mutually agree to it and sign a contract.
Formality of	Generally, more formal and structured,	Generally, less formal and more



the Process	resembling a mini-trial with presentation of evidence and sometimes witness testimony.	flexible, focusing on negotiation and mutual agreement.
Control Over the Outcome	Less control for the parties, as the outcome is determined by the neutral arbitrator.	Full control for the parties, as they must agree to any final resolution.
Dispute Suitability	Often preferred for complex, high-stakes disputes where a conclusive, binding, and law-based decision is necessary	Often preferred when preserving a working relationship between the parties is important, or for smaller, less complex matters.

### Key Takeaways

\* Arbitration is Adjudicatory: It results in an imposed, often binding decision, where the parties present their case for a neutral third party to rule on.

\* Mediation is Facilitative: It helps the parties negotiate and results in a voluntary settlement, where the parties themselves control the outcome.

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### Q26. Discuss the concept of Tort.

**The Concept of Tort:** A tort is a civil wrong, other than a breach of contract, that causes a claimant (the injured party) to suffer loss or harm, resulting in legal liability for the person who commits the act (the tortfeasor). The word "tort" comes from the Latin word tortum, meaning "twisted" or "wrong."

The primary goal of tort law is to provide a legal remedy, usually monetary damages, to the injured party to compensate them for the harm they suffered and to shift the burden of loss from the injured party to the party at fault.

#### **Essential Elements of a Tort**

While the specific elements vary depending on the type of tort, generally, a successful tort claim requires proving:

\* **A Wrongful Act or Omission:** The defendant must have committed an act, or failed to act when required (omission), that resulted in harm.

\* **Legal Duty:** The defendant owed a legal duty to the plaintiff. For example, all drivers have a duty to drive safely.

\* **Breach of Duty:** The defendant failed to adhere to the required standard of care (breached the duty).

\* **Causation:** The defendant's breach must be the direct and proximate cause of the plaintiff's injury or damage.

\* **Damage/Injury:** The plaintiff must have suffered actual, legally recognizable harm (physical injury, property damage, reputational harm, etc.).

**Categories of Torts:** - Torts are broadly categorized based on the element of intent:

1. **Intentional Torts:** - These involve actions the defendant committed with the intent to commit the act and, often, the intent to cause the resulting harm.

\* Examples:

\* Assault (threat of harm)

\* Battery (unwanted physical contact)

\* False Imprisonment (unlawful detention)

\* Defamation (libel is written, slander is spoken)

\* Trespass (to land or property)

2. **Negligent Torts** (Negligence): - This is the most common type of tort. It occurs when a defendant fails to exercise the level of care that a reasonably prudent person would have

exercised under the same circumstances, and this failure causes injury. Intent to harm is not required.

\* Key Elements (often referred to as the 4 Ds): Duty, Default (Breach), Damage, and Direct Causation.

\* Examples:

\* Car accidents caused by distracted driving.

\* Medical malpractice.

\* "Slip and fall" injuries on a property owner's hazardous premises.

3. Strict Liability Torts: - Liability is imposed on the defendant without the need to prove fault (neither intent nor negligence) simply because the activity or product is inherently dangerous or defective. The focus is purely on the harm that occurred.

\* Examples:

\* Product Liability (manufacturers or sellers are liable for injuries caused by defective products).

\* Injury caused by keeping dangerous animals.

\* Engaging in abnormally dangerous activities, like blasting or handling explosives.

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## **Q27. Discuss briefly the problem of Alienation and Secessionism in few states in India.**

The problem of Alienation and Secessionism in certain states of India is a complex, multi-faceted issue rooted in historical, socio-economic, political, and cultural factors. These movements often emerge when a group feels marginalized, neglected, or culturally distinct from the central government or the majority community, leading to demands for greater autonomy, separate statehood, or, in extreme cases, complete secession.

### Key Regions and Issues

The most prominent regions affected by such movements have historically been:

\* Jammu and Kashmir (now two Union Territories):

\* Root Cause: The unresolved political status, historical context of accession, and the subsequent alienation of a large section of the population.

\* Nature of Movement: Historically, elements demanding complete secession and the merger with Pakistan, fueled by religious identity, geopolitical factors, and cross-border support. The problem is deeply intertwined with national security concerns.

\* The Northeast Region (e.g., Nagaland, Manipur, Assam, Mizoram, Tripura):

\* Root Causes: Geographical isolation, distinct tribal and ethnic identities, perceived economic underdevelopment and neglect by the central government (the 'mainland'), demographic changes due to migration, and a fear of losing cultural identity and control over resources.

\* Nature of Movement: Diverse movements demanding outright secession (e.g., in Nagaland, once by the Mizo National Front), greater autonomy, or creation of separate states based on ethnic lines. While some conflicts, like the one in Mizoram, have been resolved through peace accords, others, such as in Nagaland and Manipur, remain complex and ongoing.

\* Punjab (Khalistan Movement):

\* Root Causes: Religious-political identity, a sense of economic grievance (e.g., regarding water sharing and agricultural policies in the past), and historical events, particularly the events of the 1980s that intensified the feelings of alienation.

\* Nature of Movement: Historically, a demand for a separate, sovereign Sikh state called 'Khalistan'. This movement was largely subdued after the 1990s but its ideology persists in fringe groups and in the diaspora.

### Common Factors Driving Alienation

The feeling of alienation—a precursor to secessionism—is often driven by:

\* Political Neglect: A perception that regional concerns, especially those of minority ethnic or religious groups, are ignored in national policy-making.

\* Economic Disparities: Lack of equitable economic development, high unemployment, and the perceived exploitation of local natural resources without adequate benefit to the local population.

\* Identity and Cultural Fear: Anxiety over the preservation of distinct linguistic, religious, and cultural identities in the face of a dominant national culture or demographic influx from other states.

\* Mishandling of Grievances: The failure of state institutions to address early-stage political or economic grievances through democratic means, sometimes leading to the use of force that further alienates the populace.

\* External Support: The involvement of neighboring or foreign states who provide arms, training, or financial support to secessionist groups.

While the Indian state has generally adopted a combination of dialogue, devolution of powers, economic packages, and military-law enforcement measures (like the Armed Forces Special Powers Act or AFSPA in some regions) to manage these issues, the persistence of alienation in certain pockets continues to pose a challenge to national integration and stability.

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## **Q28. Briefly discuss the measures taken by the Government of India to check the problem of Alienation and Secessionism in India.**

The Government of India employs a multi-pronged strategy combining security, political, administrative, and socio-economic measures to check the problems of alienation and secessionism.

### Security and Law Enforcement

\* Deployment of Security Forces: The government deploys various security forces, including the Indian Army, Central Armed Police Forces (CAPFs), and state police, to counter active militancy and maintain law and order in disturbed areas like parts of Jammu & Kashmir and the Northeast.

\* Special Laws: Acts like the Armed Forces (Special Powers) Act (AFSPA) in certain regions grant special powers to the armed forces to deal with insurgency and maintain public order. Other stringent laws like the Unlawful Activities (Prevention) Act (UAPA) are also used against secessionist and extremist groups.

\* Military Operations: Targeted military operations are conducted against armed insurgent groups, although their application is often reviewed and sometimes criticized for human rights concerns.

### Political and Administrative Measures

\* Political Dialogue and Peace Accords: The government engages in political negotiations and enters into peace accords with groups willing to renounce violence.

\* Example: The Mizoram Accord (1986) successfully ended the Mizo insurgency, leading to Mizoram's elevation to statehood. Other accords have been signed with various groups in Nagaland, Tripura, and Assam.

\* Reorganization of States: The creation of new states and Union Territories, often along linguistic or ethnic lines (e.g., in the Northeast), addresses aspirations for greater self-governance and distinct cultural identity, thereby reducing the feeling of alienation.

\* Granting Autonomy: Providing various forms of regional and local autonomy through provisions like the Sixth Schedule of the Constitution (for tribal areas in the Northeast) and the establishment of Autonomous District Councils (ADCs) addresses sub-regional aspirations.

\* Constitutional Changes: In a significant move, the government abrogated Article 370 and Article 35A in 2019, changing the special status of Jammu and Kashmir and reorganizing it into two Union Territories to facilitate its complete integration with the rest of India.

### Socio-Economic and Developmental Initiatives

\* Inclusive Development: Focused efforts are made to accelerate socio-economic development in regions affected by secessionism, addressing root causes like economic neglect, underdevelopment, and unemployment.

\* Examples: Special economic packages, investment in infrastructure (roads, railways, connectivity), and promoting industries are key components. The Act East Policy and specific development programs for the North Eastern Region are notable examples.

\* Cultural Recognition: Promoting and recognizing the distinct cultural, linguistic, and ethnic identities of various groups helps foster a sense of belonging within the larger national framework.

\* Rehabilitation and Surrender Policy: Policies are in place to encourage militants to surrender and join the mainstream, often including provisions for vocational training and financial assistance for rehabilitation.

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### **Q29. Briefly discuss the need for reformed engineering serving at the Union and State level in India.**

The need for reformed Engineering Services at the Union and State levels in India stems primarily from the necessity to ensure that the nation's technical expertise is effectively utilized in governance, policy-making, and project execution in an era of rapid technological change and complex infrastructural demands.

#### Key Reasons for Reform

\* Bridging the Policy-Implementation Gap:

\* There is a persistent issue where generalist administrators (like IAS officers) hold top decision-making positions in technical departments, often overriding the recommendations of experienced domain-expert engineers.

\* Reforms are needed to ensure technical leadership is placed at the helm of engineering departments, aligning authority with technical responsibility and enhancing the quality and efficiency of project execution.

\* Addressing Rapid Technological Advancements:

\* Contemporary challenges in areas like emerging technologies, renewable energy, cybersecurity, and smart infrastructure require specialized and continuously updated knowledge.

\* The current system often lacks mechanisms for continuous skill upgradation and the induction of specialists in high-level government roles to handle modern, complex projects. Lateral entry of technical experts is one proposed reform to address this.

\* Enhancing Professional Status and Career Progression:

\* Engineers in government services often report slower career progression and a lack of recognition compared to generalist administrative services, leading to demotivation and a potential loss of talent.

\* Reforms should focus on improving career value, promotion avenues, and interdepartmental mobility to retain highly qualified engineers within the technical services.

\* Standardization and Accountability:

\* The creation of a unified or regulated system, perhaps through an All India Service (AIS) for engineers or an Engineering Commission, has been recommended to standardize recruitment, training, and professional standards across states and the Union.

\* This would introduce greater accountability and transparency by establishing a consistent framework for performance evaluation and ethical conduct among engineering professionals.

\* Focus on "Viksit Bharat" (Developed India) Goals:

\* Achieving the national goal of becoming a developed nation ("Viksit Bharat") requires massive and high-quality infrastructure development, digital transformation, and sustainable urban planning.

\* Reformed engineering services, with a structure that prioritizes expertise, innovation, and efficiency, are essential to effectively design and execute the complex projects necessary to meet these strategic national goals.

The overall goal of the reform is to make the engineering services more dynamic, efficient, specialized, and influential in the developmental process of the country.

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### **Q30. Briefly discuss laws at workplace.**

Here is a brief discussion of major workplace laws, which govern the relationship between employers, employees, unions, and the government:

#### Key Categories of Workplace Laws

Workplace laws (or labor/employment laws) exist primarily to protect employees, ensure fair treatment, and establish minimum standards for working conditions. While specific acts vary by country, they generally fall into these major categories:

##### \* Anti-Discrimination and Equal Opportunity Laws:

\* These laws prohibit unfair treatment, hiring, or firing based on protected characteristics like race, color, religion, sex, national origin, age, or disability.

\* They mandate equal pay for equal work regardless of gender.

\* They require employers to provide a work environment free from harassment (including sexual harassment).

##### \* Wage and Hour Laws:

\* These establish the minimum wage that must be paid to employees.

\* They govern rules for overtime pay for work exceeding a standard number of hours (e.g., 40 hours per week).

\* They include regulations on breaks, payment frequency, and, in some jurisdictions, prohibitions on child labor.

##### \* Workplace Safety and Health Laws:

\* These laws mandate that employers provide a safe and healthy work environment free from recognized hazards.

\* They often require employers to maintain safety equipment, conduct inspections, and record workplace injuries. (e.g., the Occupational Safety and Health Act - OSHA in the US).

##### \* Family and Medical Leave Laws:

\* These grant eligible employees the right to take unpaid, job-protected leave for specific family and medical reasons, such as the birth of a child, the care of a seriously ill family member, or the employee's own serious health condition (e.g., the Family and Medical Leave Act - FMLA in the US).

##### \* Labor Relations Laws:

\* These protect the right of employees to organize, form or join trade unions, and engage in collective bargaining with their employers over wages, benefits, and working conditions. They also regulate strikes and workplace disputes.

##### \* Social Security and Employee Benefits:

\* These establish requirements for employer contributions to benefits like pensions/provident funds, social insurance (for medical care, sickness), and gratuity upon long-term service.

In essence, workplace laws set the legal floor for compensation, safety, fair treatment, and employee rights in all establishments.

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**Q31. What do you mean by Contract Law? What are the various elements of Contract?**

Contract law is a body of law that governs the creation and enforcement of legally binding agreements between two or more parties, known as contracts.

Its primary purpose is to ensure that promises made are honored and to provide a framework, including remedies, for when those promises are not fulfilled (a breach of contract). These agreements can be written, oral, or even implied by conduct.

**Essential Elements of a Valid Contract**

For an agreement to be considered a valid and legally enforceable contract, it must generally contain several essential elements. If any of these elements are missing, the agreement may be deemed void or voidable:

\* 1. Offer: This is a clear, definite proposal made by one party (offeror) to another (offeree), expressing a willingness to enter into a contract on specific terms. It must be communicated to the other party.

\* 2. Acceptance: This is the unequivocal and unqualified agreement by the offeree to the exact terms of the offer. It must be communicated to the offeror. A change in terms constitutes a counter-offer, which terminates the original offer.

\* 3. Consideration: This is the value that is exchanged between the parties. It is the reason each party enters the agreement. Consideration can be money, goods, services, or a promise to do something (or to refrain from doing something). Essentially, each party gives something up to get something in return.

\* 4. Capacity (Competency): All parties must be legally competent to enter into a contract. This generally means they must be:

\* Of legal age (the age of majority, usually 18).

\* Of sound mind (not mentally incapacitated).

\* Not otherwise disqualified by law.

\* 5. Legality (Lawful Object): The purpose and subject matter of the contract must be legal and not violate public policy. Contracts for illegal acts (like selling banned substances) are automatically void and unenforceable.

\* 6. Mutual Assent ("Meeting of the Minds"): This refers to the genuine agreement and understanding between all parties regarding the fundamental terms of the contract. The consent must be free—not induced by coercion, undue influence, fraud, or mistake.

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**Q32. What do you mean by Arbitration? Explain briefly the Dispute Resolution process through Arbitration.**

What is Arbitration?

Arbitration is a private, formal procedure for resolving disputes outside of court. It is defined by the following characteristics:

\* Consensual: It can only take place if both parties have voluntarily agreed to submit their dispute to arbitration, usually through a clause in a contract (called an arbitration agreement).

\* Binding Decision: The dispute is submitted to one or more neutral third parties, called arbitrators (or an arbitral tribunal), who hear the evidence and arguments from both sides.

\* Arbitral Award: The arbitrator(s) issue a final, legally enforceable decision, known as an Arbitral Award. This award is generally binding and can only be set aside (overturned) in extremely limited circumstances.

\* Private and Flexible: Unlike litigation, arbitration is typically a private process. The parties often have the flexibility to choose the rules, the location, the language, and, most importantly, the arbitrator(s), who are often experts in the subject matter of the dispute.

The Dispute Resolution Process through Arbitration (Briefly): The arbitration process can vary based on the specific rules chosen (e.g., ICC, AAA, or national laws), but it generally follows these stages:

\* Initiation of Arbitration:

- \* One party (the Claimant) sends a formal Request for Arbitration or a Notice of Arbitration to the other party (the Respondent), as well as to the administering institution (if one is involved).
- \* This notice officially states the existence of the dispute and the claim being made.

\* Constitution of the Tribunal:

- \* The parties select the arbitrator(s). This is usually one or three arbitrators, depending on the agreement.

\* If three, each party typically appoints one arbitrator, and those two then appoint the third, presiding arbitrator.

- \* All arbitrators must be impartial and independent.

\* Pleadings and Information Exchange:

\* The parties submit written statements detailing their claims and defenses, along with supporting documents (similar to court filings but often less formal).

\* There is a phase of discovery or document production, where parties request and exchange relevant information and evidence from each other.

\* The Hearing:

- \* This is the equivalent of a trial in court.

\* Parties present their case, examine witnesses, cross-examine the opposing party's witnesses, and make oral arguments before the arbitral tribunal.

- \* The hearing is private and generally less formal than a court trial.

\* The Award:

- \* After the hearing and any final submissions, the tribunal deliberates.

\* They issue a final, written Arbitral Award that determines the rights and obligations of the parties and resolves the dispute.

\* Enforcement:

\* Since the award is binding, the losing party is expected to comply. If they refuse, the winning party can seek to enforce the award through national courts, which is often simpler than enforcing a foreign court judgment, especially in international disputes (thanks to treaties like the New York Convention).

\*\*\*\*\*END\*\*\*\*\*

# **ELECTION COMMISSION OF INDIA**

## *COMPOSITION, POWERS & FUNCTIONS AND ELECTORAL PROCESS*

BNC501

2025-26

UNIT-4



## **ELECTION COMMISSION OF INDIA (ECI)**

- The **Election Commission of India (ECI)** is a permanent and independent established by the Constitution of India to **ensure free and fair** elections in the country.
  - Since it is established directly under the provisions of the Constitution, it is a **Constitutional Body**.
- The ECI is an **All-India body** in the sense that it is **common** to both the **Central** and the **State** governments.
- The Constitution vests the **Election Commission of India (ECI)** with the power of superintendence, direction, and control of elections to
  - **Parliament** – Lok Sabha and Rajya Sabha
  - **State Legislatures** – State Legislative Assembly and State Legislative Council (if exist)
  - **Office of President of India**
  - **Office of Vice-President of India**
- It is to be noted that the ECI is **not concerned with conducting** elections to **Panchayats and Municipalities** in the States.
  - For this purpose, the Constitution of India provides for a separate **State Election Commission** in each State.

## COMPOSITION OF ELECTION COMMISSION OF INDIA

Article 324 of the Constitution has made the following provisions about the composition of the Election Commission of India:

- \* It shall consist of the **Chief Election Commissioner (CEC)** and **such number of other Election Commissioners (ECs)** as the **President** may from time to time fix.
- \* The **appointment of CEC and other ECs** shall be made by the **President**. When any other Election Commissioner is so appointed, the **Chief Election Commissioner** shall act as the Chairman of the ECI.
- \* The President may also appoint after consultation with the ECI such **Regional Commissioners (RCs)** as he may consider necessary to assist the ECI.
- \* The **conditions of service and tenure of office** of the **Election Commissioners and the Regional Commissioners** shall be determined by the **President** (subject to any related law made by the Parliament).

## APPOINTMENT OF MEMBERS OF ELECTION COMMISSION OF INDIA (ECI)

As per the **Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023**, the Chief Election Commissioner and the Election Commissioners are appointed by the President of India on the recommendation of a three-membered **Selection Committee** consisting of:

- \* The Prime Minister of India
  - \* A Union Minister nominated by the Prime Minister
  - \* The Leader of Opposition (LoP) in the Lok Sabha
- \* A **Search Committee headed by the Cabinet Secretary** suggests five names to the Selection Committee. The Selection Committee is not bound to these name suggestions and may consider any person other than those suggested by the Search Committee. It is to be noted that the **process of appointment** of the Chief Election Commissioner and the Election Commissioners has **changed recently in 2023**.

**Before** this, they were appointed by the President **on the recommendation of the Union CoM (Council of Ministers)**.

## **Term of Members of ELECTION COMMISSION OF INDIA (ECI)**

**According to the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991, the Chief Election Commissioner and the Election Commissioners hold office for a term of 6 years or until they attain the age of 65 years, whichever is earlier.**

## **Resignation of Members of ELECTION COMMISSION OF INDIA (ECI)**

**According to the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991, the Chief Election Commissioner and the Election Commissioners can resign at any time by writing to the President.**

## Removal of Members of ELECTION COMMISSION OF INDIA (ECI)

### *Removal of the Chief Election Commissioner*

The Chief Election Commissioner can be removed in the same manner and on the same grounds **as a judge of the Supreme Court.**

In other words, he/she can be removed by the President on the basis of a resolution passed to that effect by both Houses of Parliament with a **Special Majority**, either on the grounds of **proved misbehavior or incapacity.**

### *Removal of Election Commissioner and Regional Commissioners*

Any other Election Commissioner or a Regional Commissioner is removed from office **on the recommendation of the Chief Election Commissioner.**

Thus, the protection of security of tenure, which is available to the Chief Election Commissioner, is not available to the other Election Commissioners.

The Election Commission of India (ECI) relies on well-**structured machinery** comprising various roles and responsibilities to support the electoral process:

\* **Deputy Election Commissioners (DEC)**: These Commissioners are **drawn from civil services** and appointed by the ECI with a tenure system. They are assisted by the **Secretaries, Joint Secretaries, Deputy Secretaries, and Under Secretaries**.

\* **Chief Electoral Officer (CEO)**: These officers are appointed at the **State level**, by the Chief Election Commissioner in consultation with the **State Government**.

\* **District Returning Officer (DRO)**: These officers are appointed at the **district level**. The Collector acts as the **DRO for every constituency** in the district.

**Returning Officer (RO)**: These officers are appointed by the DRO for every constituency.

**Presiding Officer (PO)**: These officers are appointed by the DRO for every polling booth.

# POWERS AND FUNCTIONS OF THE ELECTION COMMISSION OF INDIA

## (A) ADMINISTRATIVE FUNCTIONS

- \* To determine territorial areas of electoral constituencies based on the Delimitation Commission Act of Parliament.
- \* To prepare and periodically revise electoral rolls and to register all eligible voters.
- \* To notify the dates and schedules of elections and to scrutinize nomination papers.
- \* To grant recognition to political parties and allot election symbols to them.
- \* To determine the Model Code of Conduct (MCC).
- \* To prepare a roster for publicity of policies of political parties on radio and TV.
- \* To cancel polls in the event of rigging, booth capturing, etc.
- \* To request the President or Governor to requisition the staff necessary for conducting elections.
- \* To supervise the machinery of elections throughout the country to ensure free and fair elections.
- \* To register political parties for elections and grant them the status of national or state parties based on their poll performance.

## **(B) ADVISORY FUNCTIONS**

- \* To advise the President on matters relating to disqualifications of members of Parliament.
- \* To advise the Governor on matters relating to disqualifications of members of the State Legislature
- \* To advise the President whether elections can be held in a State under the President's Rule.

## **(C) QUASI-JUDICIAL FUNCTIONS**

- \* To act as a court for settling disputes related to granting recognition to political parties and allotment of election symbols to them.
- \* To appoint officers to inquire into disputes relating to electoral arrangements.



## Independence of Election Commission of India (ECI)

**Constitutional Provisions Ensuring Independence of ECI:** Article 324 of the Indian Constitution has made certain provisions to ensure the independent and impartial functioning of the Election Commission of India (ECI). The most important of them can be seen as follows:

- \* The **Chief Election Commissioner (CEC)** is provided with the **security of tenure**. He/she can be removed only in the manner and on the same grounds as mentioned in the Constitution.
- \* Though the Constitution does not protect the security of tenure for other **Election Commissioners** or a **Regional Commissioner**, they cannot be removed from office except **on the recommendation of the CEC**.
- \* The **service conditions** of the **Chief Election Commissioner and other Election Commissioners cannot be varied** to his/her disadvantage after their appointment.

## **Factors Hampering the Independence of ECI**

The Constitution has **not prescribed the qualifications** for members of the Election Commission of India.

The Constitution has **not specified the term** of members of the Election Commission of India.

The Constitution has **not prohibited varying service conditions of Election Commissioners** after their appointment.

The Constitution has **not debarred retiring Election Commissioners from any further appointment** by the Government.

## **TYPES of ISSUES HAMPERING IMPARTIAL & EFFECTIVE FUNCTIONING of ECI in INDIA**

Some of the prominent challenges faced by the ECI are as follows:

**Political Interference** – The ECI faces pressure from political parties and powerful interest groups, which seek to influence electoral outcomes through unfair means. Such political interference undermines the autonomy and impartiality of the ECI, posing a threat to the credibility of elections.

**Limited Powers** – The ECI's power to enforce its decisions and punish offenders is limited. This hinders its ability to effectively implement regulations and ensure compliance with electoral laws.

**Electoral Fraud and Malpractice** – The ECI grapples with the perennial challenge of combating electoral fraud and malpractice, such as voter intimidation, use of money and muscle powers, etc.

**Electoral Violence** – Electoral violence, including clashes between political parties and attacks on polling booths, continues to remain a significant concern for the ECI.

**Technological Challenges** – With the increasing use of technology in elections, the ECI faces challenges related to the security and integrity of the electoral process. For example, the rigging of Electronic Voting Machines (EVMs).

**Disinformation and Fake News** – The proliferation of disinformation, hate speeches, and fake news on social media platforms poses a challenge to the ECI's efforts to ensure informed and fair elections.

**Electoral Reforms** – Implementing comprehensive electoral reforms to address systemic issues, such as regulations of political party funding, internal party democracy, etc is a persistent challenge for the ECI.

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**SALARY & ALLOWANCES OF THE MEMBERS OF THE ELECTION COMMISSION OF INDIA (ECI)**

**According to the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991, the Chief Election Commissioner (CEC) and two Election Commissioners (ECs) receive equal salaries, allowances, and other prerequisites that are similar to those of the judge of the Supreme Court.**

## MAJOR CONSTITUTIONAL PROVISIONS RELATED TO ELECTIONS IN INDIA

Article 324 to Article 329 in Part XV of the Indian Constitution contains detailed provisions regarding elections in India. Here's a brief overview of these provisions:

Article No.	Subject-matter
Article 324	Superintendence, direction, and control of elections are to be vested in an Election Commission.
Article 325	No person is to be ineligible for inclusion in or to claim to be included in a special, electoral roll on grounds of religion, race, caste, or sex.
Article 326	Elections to the House of the People and the Legislative Assemblies of States to be based on adult suffrage.
Article 327	Power of Parliament to make provisions with respect to elections to Legislatures.
Article 328	Power of State Legislature to make provisions with respect to elections to such Legislature.
Article 329	Bar to interference by Courts in electoral matters.

END.....