

UNIT-III (EXECUTIVE AND JUDICIARY)

President of India

The Indian President is the head of the state and he is also called the first citizen of India. He is a part of Union Executive, provisions of which are dealt with Article 52-78 including articles related to President (Article 52-62). Under these articles, information on how a President is elected, his powers and functions, and also his impeachment process is given.

Powers and Functions of President of India

1. Executive Powers of President

- For every executive action that the Indian government takes, is to be taken in his name
- He may/may not make rules to simplify the transaction of business of the central government
- He appoints the attorney general of India and determines his remuneration
- He appoints the Comptroller and Auditor General of India (CAG), Chief Election Commissioner and other Election Commissioners, Chairman and members of the Union Public Service Commission, State Governors, Finance Commission of India chairman and members.
- He seeks administrative information from the Union government.
- He requires PM to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council.
- He appoints National Commissions of SC, ST and OBC.
- He appoints inter-state council
- He appoints administrators of union territories
- He can declare any area as a scheduled area and has powers with respect to the administration of scheduled areas and tribal areas.

2. Legislative Powers of President

- He summons or prorogues Parliament and dissolve the Lok Sabha
- He summons a joint sitting of Lok Sabha and Rajya Sabha in case of deadlock
- He addresses the Indian Parliament at the commencement of the first session after every general election
- He appoints speaker, deputy speaker of Lok Sabha, and chairman/deputy chairman of Rajya Sabha when the seats fall vacant.
- He nominates 12 members of the Rajya Sabha
- He can nominate two members to the Lok Sabha from the Anglo-Indian Community
- He consults the Election Commission of India on questions of disqualifications of MPs.
- He recommends/ permits the introduction of certain types of bills.
- He promulgates ordinances during the recess of the Parliament.
- He lays the reports Comptroller and Auditor General, Union Public Service Commission, Finance Commission, etc. before the Parliament.

3. Financial Powers of President

- To introduce the money bill, his prior recommendation is a must
- He causes Union Budget to be laid before the Parliament
- To make a demand for grants, his recommendation is a pre-requisite
- Contingency Fund of India is under his control
- He constitutes the Finance Commission every five years

4. Judicial Powers of President

- Appointment of Chief Justice and Supreme Court/High Court Judges are on him

- He takes advice from the Supreme Court, however, the advice is not binding on him
- He has pardoning power: Under article 72, he has been conferred with power to grant pardon against punishment for an offence against union law, punishment by a martial court, or death sentence.

5. Diplomatic Powers of President

- International Treaties and agreements that are approved by the Parliament are negotiated and concluded in his name
- He is the representative of India in international forums and affairs

6. Military Powers of President

- He is the commander of the defence forces of India. He appoints Chief of the Army, Navy and Air Force.

7. Emergency Powers of President

- National Emergency (Article 352)
- President's Rule (Article 356 & 365)
- Financial Emergency (Article 360)

Vice-President of India

Vice-President has the second-highest office in the country. Article 63 of the Indian Constitution mentions the post of Vice-President.

Powers and Functions of Vice-President of India

- He acts as the ex-officio Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha. In this respect, he resembles the American vice-president, who also acts as the Chairman of the Senate– the Upper House of the American legislature.
- He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise. He can act as President only for a maximum period of six months, within which a new President has to be elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.
- The election of a person as Vice-President cannot be challenged on the ground that the electoral college was incomplete (i.e., existence of any vacancy among the members of the electoral college).
- If the election of a person as Vice-President is declared void by the Supreme Court, acts done by him before the date of such declaration of the Supreme Court are not invalidated (i.e., they continue to remain in force).
- While acting as President or discharging the functions of President, the Vice-President does not perform the duties of the office of the chairman of Rajya Sabha. During this period, those duties are performed by the Deputy Chairman of Rajya Sabha.

GOVERNOR OF A STATE

Governor, as President, heads the state government. Article 153-167 in the Indian Constitution deal with the provisions related to the state governments of the country. The Indian President appoints Governor for each state by warrant under his hand and seal. Central Government is responsible to nominate the governor for each state.

Powers and Functions of Governor

1. Executive Powers of the Governor

- Every executive action that the state government takes, is to be taken in his name.
- How an order that has been taken up his name is to be authenticated, the rules for the same can be specified by the Governor.
- He may/may not make rules to simplify the transaction of the business of the state government.
- Chief Ministers and other ministers of the states are appointed by him.
- It is his responsibility to appoint Tribal Welfare Minister in the states of Chattisgarh, Odisha, Madhya Pradesh and Jharkhand.
- He appoints the advocate general of states and determines their remuneration
- He appoints the State Election Commissioner, Chairman and Members of the State Public Service Commission and Vice-Chancellors of the universities in the state.
- He seeks information from the state government.
- A constitutional emergency in the state is recommended to the President by him.
- The governor enjoys extensive executive powers as an agent of the President during the President's rule in the state.

2. Legislative Powers of the Governor

- It's in his power to prorogue the state legislature and dissolve the state legislative assemblies
- He addresses the state legislature at the first session of every year
- If any bill is pending in the state legislature, Governor may/may not send a bill to the state legislature concerning the same
- If the speaker of the legislative assembly is absent and the same is Deputy Speaker, then Governor appoints a person to preside over the session
- As President nominates 12 members in Rajya Sabha, Governor appoints 1/6 of the total members of the legislative council from the fields of Literature, Science, Art, Cooperative Movement and Social Service.
- Governor nominates 1 member in state legislative assembly from Anglo-Indian Community.
- He can consult Election Commission for the disqualification of members.
- With respect to the bill introduced in the state legislature, he can give his assent, withhold his assent, return the bill and reserve the bill for the President's consideration.
- An ordinance can be promulgated by him when either the Legislative Assembly or Council (Unicameral/Bicameral) are not in session.
- The reports of State Finance Commission, State Public Service Commission, Comptroller and Auditor General (Concerning the state finance) laid by him.

3. Financial Powers of the Governor

- He looks over the state budget being laid in the state legislature
- His recommendation is a prerequisite for the introduction of a money bill in the state legislature
- He recommends for the demand for grants which otherwise cannot be given
- Contingency Fund of State is under him and he makes advances out that to meet unforeseen expenditure. (Download the notes on the types of funds in India from the linked article.)
- State Finance Commission is constituted every five years by him.

4. Judicial Powers of the Governor

- He has the pardoning powers against punishments.
- President consults the Governor while appointing judges of High Court.
- In consultation with the state High Court, Governor makes appointments, postings, and promotions of the district judges.
- In consultation with the state high court and state public service commission, he also appoints persons to the judicial services.

5. Governor's Discretionary Powers

- The Governor of state, unlike the President of India, is conferred with power to act at his own discretion. There are two categories of discretion for the governor. One is Constitutional Discretion and the other is Situational Discretion.

PARLIAMENT OF INDIA

India has a parliamentary system of government. The Union Parliament is the supreme legislative body in the country. The Parliament consists of the two Houses (Lok Sabha and Rajya Sabha) and the President of India.

Functions of Parliament

1. Legislative Functions

- The Parliament legislates on all matters mentioned in the Union List and the Concurrent List.
- In the case of the Concurrent List, where the state legislatures and the Parliament have joint jurisdiction, the union law will prevail over the states unless the state law had received the earlier presidential assent. However, the Parliament can any time, enact a law adding to, amending, varying or repealing a law made by a state legislature.
- The Parliament can also pass laws on items in the State List under the following circumstances:
 - If Emergency is in operation, or any state is placed under President's Rule (Article 356), the Parliament can enact laws on items in the State List as well.
 - As per Article 249, the Parliament can make laws on items in the State List if the Rajya Sabha passes a resolution by $\frac{2}{3}$ majority of its members present and voting, that it is necessary for the Parliament to make laws on any item enumerated in the State List, in the national interest.
 - As per Article 253, it can pass laws on the State List items if it is required for the implementation of international agreements or treaties with foreign powers.
 - According to Article 252, if the legislatures of two or more states pass a resolution to the effect that it is desirable to have a parliamentary law on any item listed in the State List, the Parliament can make laws for those states.

2. Executive Functions (Control over the Executive)

- By a *vote of no-confidence*, the Parliament can remove the Cabinet (executive) out of power. It can reject a budget proposal or any other bill brought by the Cabinet. A motion of no-confidence is passed to remove a government from office.
- The MPs (Members of Parliament) can ask questions to the ministers on their omissions and commissions. Any lapses on the part of the government can be exposed in the Parliament.
- *Adjournment Motion*: Allowed only in the Lok Sabha, the chief objective of the adjournment motion is to draw the attention of the Parliament to any recent issue of urgent public interest. It is considered an extraordinary tool in Parliament as the normal business is affected.
- The Parliament appoints a Committee on Ministerial Assurances that sees whether the promises made by the ministers to the Parliament are fulfilled or not.

- *Censure Motion*: A censure motion is moved by the opposition party members in the House to strongly disapprove any policy of the government. It can be moved only in the Lok Sabha. Immediately after a censure motion is passed, the government has to seek the confidence of the House. Unlike in the case of the no-confidence motion, the Council of Ministers need not resign if the censure motion is passed.
- *Cut Motion*: A cut motion is used to oppose any demand in the financial bill brought by the government.

3. Financial Functions

- The Union Budget prepared by the Cabinet is submitted for approval by the Parliament. All proposals to impose taxes should also be approved by the Parliament.
- There are two standing committees (Public Accounts Committee and Estimates Committee) of the Parliament to keep a check on how the executive spends the money granted to it by the legislature.

4. Amending Powers

- The Parliament has the power to amend the Constitution of India. Both Houses of the Parliament have equal powers as far as amending the Constitution is concerned. Amendments will have to be passed in both the Lok Sabha and the Rajya Sabha for them to be effective.

5. Electoral Functions

- The Parliament takes part in the election of the President and the Vice President. The electoral college that elects the President comprises of, among others, the elected members of both Houses. The President can be removed by a resolution passed by the Rajya Sabha agreed to by the Lok Sabha.

6. Judicial Functions

- A privilege motion is moved by a member when he feels that a minister or any member has committed a breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts. Read more on privilege motion.
- In the parliamentary system, legislative privileges are immune to judicial control.
- The power of the Parliament to punish its members is also generally not subject to judicial review.
- Other judicial functions of the Parliament include the power to impeach the President, the Vice President, the judges of the Supreme Court, High Courts, Auditor-General, etc.

7. Other powers/functions of the Parliament

- Issues of national and international importance are discussed in the Parliament. The opposition plays an important role in this regard and ensures that the country is aware of alternate viewpoints.
- A Parliament is sometimes talked of as a 'nation in miniature'.
- In a democracy, the Parliament plays the vital function of deliberating matters of importance before laws or resolutions are passed.
- The Parliament has the power to alter, decrease or increase the boundaries of states/UTs.
- The Parliament also functions as an organ of information. The ministers are bound to provide information in the Houses when demanded by the members.

EMERGENCY PROVISIONS

A state of emergency in India refers to a period of governance that can be proclaimed by the President of India during certain crisis situations. Under the advice of the cabinet of ministers, the President can overrule many provisions of the Constitution, which guarantees Fundamental Rights to the citizens of India. Fundamental rights, except Articles 20 and 21 of the Indian Constitution, are suspended during an emergency. The emergency provisions are contained in Part XVIII of the Constitution of India, from Article 352 to 360. These provisions enable the Central government to meet any abnormal situation effectively. The rationality behind the incorporation is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.

Types of Emergencies: -

1. National Emergency

- National emergency can be declared on the basis of war, external aggression or armed rebellion. The Constitution employs the expression 'proclamation of emergency' to denote an emergency of this type.
- **Grounds of declaration:**
 - Under Article 352, the president can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion.
 - The President can declare a national emergency even before the actual occurrence of war or armed rebellion or external aggression
 - When a national emergency is declared on the grounds of 'war' or 'external aggression', it is known as 'External Emergency'. On the other hand, when it is declared on the grounds of 'armed rebellion', it is known as 'Internal Emergency'.
- **Parliamentary approval and duration:**
 - The proclamation of emergency must be approved by both the houses of parliament within one month from the date of its issue.
 - However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
 - If approved by both the houses, the Emergency continues for 6 months and can be extended to an indefinite period with an approval of the Parliament for every six months.
 - Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority.
- **Revocation of proclamation:**
 - A proclamation of Emergency may be revoked by the President at any time by a subsequent proclamation. Such proclamation does not require parliamentary approval.
 - The emergency must be revoked if the Lok Sabha passes a resolution by a simple majority disapproving its continuation.

2. State Emergency (President Rule)

- Article 355 imposes a duty on the centre to ensure that the government of every state is carried on in accordance with the provisions of the constitution. It is this duty in the performance of which the centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in a state.
- **Grounds of imposition**
 - Article 356 empowers the President to issue a proclamation if he is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the constitution.

- Article 365 says that whenever a state fails to comply with or to give effect to any direction from the centre, it will be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the constitution.
- **Parliamentary approval and duration**
 - A proclamation imposing president's rule must be approved by both the houses of parliament within two months from the date of its issue.
 - If the proclamation of President's rule is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided that the Rajya Sabha approves it in the meantime.
- **Scope of judicial review:**
 - The 38th Amendment act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which would not be challenged in any court on any ground.
 - But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review.

3. Financial Emergency

- **Grounds of declaration**
 - Article 360 empowers the president to proclaim a Financial Emergency if he is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.
- **Parliamentary approval and duration**
 - A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue.
 - If the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
 - Once approved by both the houses of Parliament, the Financial Emergency continues indefinitely till it is revoked.

UNION JUDICIARY

The Union Judiciary consists of the Supreme Court of India. The Supreme Court is the ultimate court of appeals for the nation. It has original, appellate and advisory jurisdiction. Supreme Court of India consisting of a Chief justice of India (CJI) and 34 judges including the CJI.

1. Appointment of Judges of the Supreme Court

- The judges of the supreme court are appointed by the president. The chief justice is appointed by the president after consultation with such judges of supreme court and the other judges are appointed by president after the consultation with the chief justice and such other judges of the supreme court. The consultation with the chief justice is obligatory in case of appointment of a judge other than chief.

2. Jurisdiction of Supreme Court

- Article 131 elucidates **the original jurisdiction** of the Apex Court. Original jurisdiction is the power of the court to hear and adjudicate upon the matter as the court of first instance. It provides that the Court will be competent to exercise original jurisdiction:

- In disputes between the Union Government and one or more States
- In such disputes, where the Union Government and one or more states constitute one party and one or more states constitute the other party
- In disputes between two or more states
- Article 143 confers **the advisory jurisdiction** upon the Apex Court. The advisory opinion of the Supreme Court can be requested by the President on any question of law or fact which is of public importance and where the President considers obtaining such opinion to be expedient.
- Articles 132 and 133 provide for **the appellate jurisdiction** of the Supreme Court. The Supreme Court can entertain an appeal against a High Court's "judgment, decree or final order" provided that the High Court certifies that the matter involves a "substantial question of law".

STATE JUDICIARY

High Courts are the highest courts in a state. Presently, there are 25 High Courts in India, with some states having a common High Court.

Powers and Functions of the High Court

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

1. Original Jurisdiction

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

2. Appellate Jurisdiction

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

3. HC as a Court of Record

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

4. Administrative Powers of HC

- It superintends and controls all the subordinate courts.

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

5. HC's Power of Judicial Review

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

6. HC's Power of Certification

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

WRIT JURISDICTION

Writs are a written order from the Supreme Court or High Court that commands constitutional remedies for Indian Citizens against the violation of their fundamental rights. There are five types of writs:

1. Habeas Corpus

- The Latin meaning of the word 'Habeas Corpus' is 'To have the body of.' This writ is used to enforce the fundamental right of individual liberty against unlawful detention. Through Habeas Corpus, Supreme Court/High Court orders one person who has arrested another person to bring the body of the latter before the court.
- The Supreme Court or High Court can issue this writ against both private and public authorities.
- Habeas Corpus cannot be issued in the following cases:
 - When detention is lawful
 - When the proceeding is for contempt of a legislature or a court
 - Detention is by a competent court
 - Detention is outside the jurisdiction of the court

2. Mandamus

- The literal meaning of this writ is 'We command.' This writ is used by the court to order the public official who has failed to perform his duty or refused to do his duty, to resume his work. Besides public officials, Mandamus can be issued against any public body, a corporation, an inferior court, a tribunal, or government for the same purpose.
- Unlike Habeas Corpus, Mandamus cannot be issued against a private individual.
- Mandamus cannot be issued in the following cases:
 - To enforce departmental instruction that does not possess statutory force
 - To order someone to work when the kind of work is discretionary and not mandatory
 - To enforce a contractual obligation
 - Mandamus can't be issued against the Indian President or State Governors
 - Against the Chief Justice of a High Court acting in a judicial capacity

3. Prohibition

- The literal meaning of 'Prohibition' is 'To forbid.' A court that is higher in position issues a Prohibition writ against a court that is lower in position to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. It directs inactivity.

- Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.
- It can't be issued against administrative authorities, legislative bodies and private individuals or bodies.

4. Certiorari

- The literal meaning of the writ of 'Certiorari' is 'To be certified' or 'To be informed.' This writ is issued by a court higher in authority to a lower court or tribunal ordering them either to transfer a case pending with them to itself or quash their order in a case. It is issued on the grounds of an excess of jurisdiction or lack of jurisdiction or error of law. It not only prevents but also cures for the mistakes in the judiciary.
- Pre-1991: The writ of Certiorari used to be issued only against judicial and quasi-judicial authorities and not against administrative authorities
- Post-1991: The Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting the rights of individuals
- It cannot be issued against legislative bodies and private individuals or bodies.

5. Quo-Warranto

- The literal meaning of the writ of 'Quo-Warranto' is 'By what authority or warrant.' Supreme Court or High Court issue this writ to prevent illegal usurpation of a public office by a person. Through this writ, the court enquires into the legality of a claim of a person to a public office.
- Quo-Warranto can be issued only when the substantive public office of a permanent character created by a statute or by the Constitution is involved
- It can't be issued against private or ministerial office.