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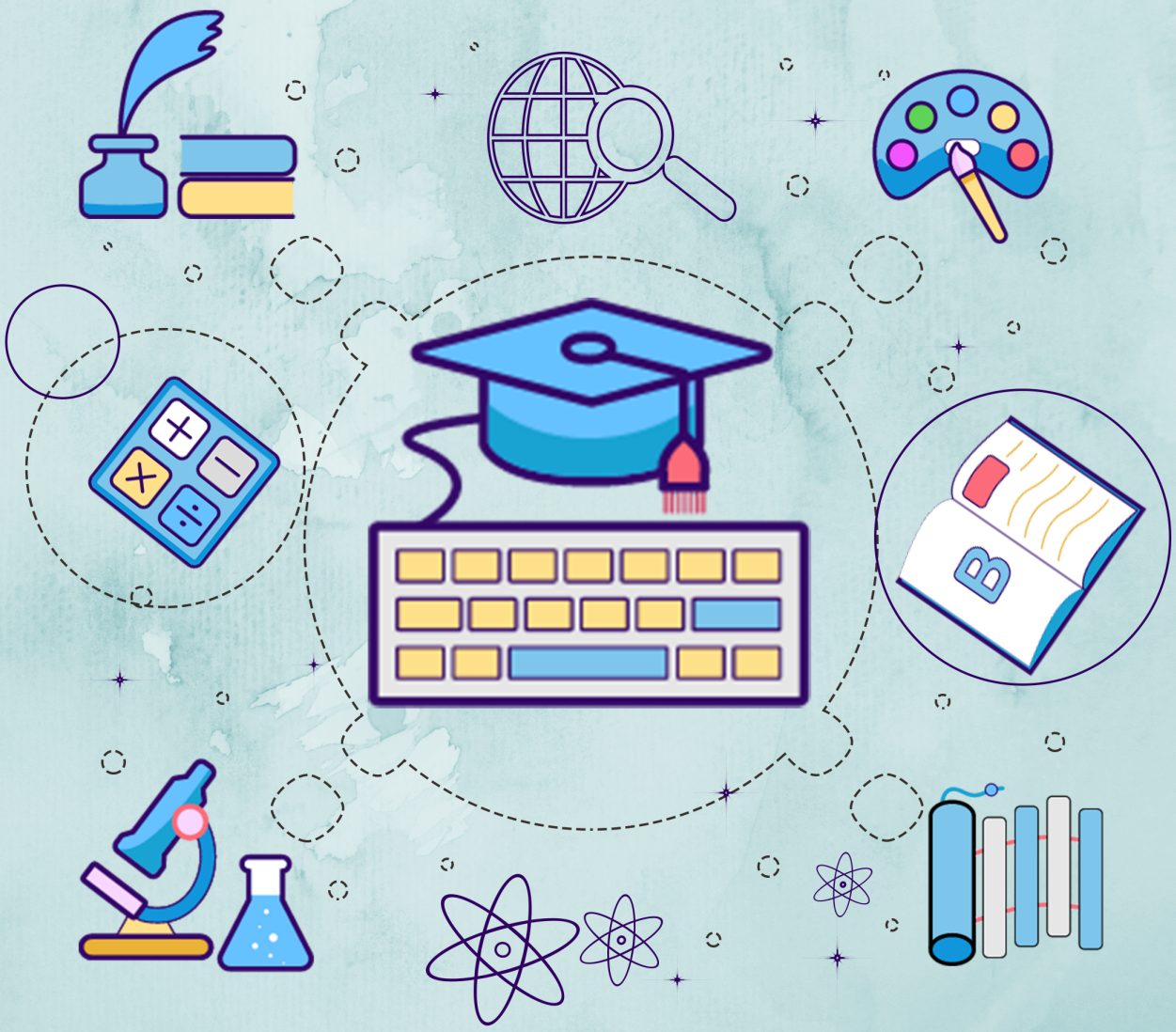

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CONSTITUTION OF INDIA (MCN 202)

Module 3

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Module – 3

- The Union Executive
- The Parliament
- The Union Judiciary

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The Union Executive

- **Articles 52 to 78 in Part V of the Constitution deal with the Union executive.**
- **The Union executive consists of the President, the Vice President, the Prime Minister, the council of ministers and the Attorney General of India.**

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The President

- The President is the head of the Indian State.
- He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.

ELECTION OF THE PRESIDENT

- The President is elected not directly by the people but by members of electoral college consisting of:

1. The elected members of both the Houses of Parliament.
2. The elected members of the legislative assemblies of the states.
3. The elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry.

- ***Veto power***: A bill passed by the Parliament can become an act only if it receives the assent of the President.

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Qualifications for Election as President of India

A person to be eligible for election as President should fulfill the following qualifications:

1. He should be a citizen of India.
2. He should have completed 35 years of age.
3. He should be qualified for election as a member of the Lok Sabha.
4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

Note:

- ✓ First president of India: Dr. Rajendra Prasad. No person except Dr. Rajendra Prasad has occupied the office for two terms.
- ✓ Currently, we have Ram Nath Kovind as the 15th president of India.

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Term of President's Office

- The President holds office for a term of five years
- He can resign from his office at any time by addressing the resignation letter to the Vice President.
- Further, he can also be removed from the office before completion of his term by the process of impeachment.

Impeachment of President

- The President can be removed from office by a process of impeachment.
- The impeachment charges can be initiated by either House of Parliament.
- These charges should be signed by one-fourth members of the House and a 14 days' notice should be given to the President.
- After the impeachment resolution is passed by a majority of two-thirds of the total membership of both Houses, then the President stands removed from his office from the date on which the resolution is so passed.

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POWERS AND FUNCTIONS OF THE PRESIDENT

1. Executive powers: He appoints the prime minister and the other ministers, attorney general of India, the chief election commissioner, administers the union territories.
2. Legislative powers: He can summon the Parliament and dissolve the Lok Sabha and can hold Joint sessions of both houses. He nominates 12 members of the Rajya Sabha (Various fields) and nominate two members to the Lok Sabha from the Anglo-Indian Community
3. Financial powers: He constitutes a finance commission after every five years and make advances out of the contingency fund
4. Judicial powers: He appoints the Chief Justice and the judges of Supreme Court and high courts.
5. Diplomatic powers: He represents India in international forums and affairs and sends and receives diplomats like ambassadors, high commissioners, and so on.
6. Military powers: He is the supreme commander of the defense forces of India. In that capacity, he appoints the chiefs of the Army, the Navy and the Air Force.
7. Emergency powers: (a) National Emergency (Article 352); (b) President's Rule (Article 356 & 365); and (c) Financial Emergency (Article 360)

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The Vice-President

- The Vice-President occupies the second highest office in the country.
- The Vice-President, like the president, is elected not directly by the people but by the method of indirect election. He is elected by the members of an electoral college consisting of the members of both Houses of Parliament.
- First Vice President of India : Dr. S. Radhakrishnan. Presently, Venkaiah Naidu is the Vice President of India.

Qualifications

- To be eligible for election as Vice-President, a person should fulfill the following qualifications:

1. He should be a citizen of India.
2. He should have completed 35 years of age.
3. He should be qualified for election as a member of the Rajya Sabha.
4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

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Term of Office (Vice President)

- The Vice-President holds office for a term of five years.
- He can resign from his office at any time by addressing the resignation letter to the President.
- He can also be removed from the office before completion of his term. A formal impeachment is not required for his removal.
- He can be removed by a resolution passed at least 14 days' advance by a majority of all the members of the Rajya Sabha and agreed to by the Lok Sabha.

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POWERS AND FUNCTIONS - VP

- He acts as the ex-officio Chairman of Rajya Sabha.
- He acts as President when a vacancy occurs in the office of the President due to his resignation, impeachment, death or otherwise.

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The Prime Minister

- Acc to Indian constitution, president is the head of the State while Prime Minister is the head of the government.
- The President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. (Article 75)
- Constitutionally, the Prime Minister may be a member of any of the two Houses of parliament.

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POWERS AND FUNCTIONS OF THE PRIME MINISTER (Art 78)

In Relation to Council of Ministers

1. Head of the Union council of ministers
2. Recommends ministers to be appointed by the president
3. Allocates and reshuffles various portfolios
4. He guides, directs, controls, and coordinates the activities of all the ministers.

In Relation to the President

1. To communicate to the President all decisions of the council of ministers relating to the administration.
2. Advises the president with regard to the appointment of important officials like attorney general of India, Comptroller and Auditor General of India, chairman and members of the UPSC, election commissioners etc.,

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In Relation to Parliament

- Prime Minister is the leader of the Lower House
- Summoning and dissolution of the Lok Sabha,

Other Powers & Functions

- Chairman of the NITI Ayog, National Integration Council, Interstate Council, National Water Resources Council and some other bodies.
- Chief spokesman of the Union government, leader of the party in power, crisis manager-in-chief during emergencies etc.,

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Central Council of Ministers

- The Prime Minister is appointed by the President, while the other ministers are appointed by the President on the advice of the Prime Minister.
- The council of ministers consists of three categories of ministers, namely,

1. Cabinet ministers (Important ministries)
2. Ministers of state (Independent charge of ministries)
3. Deputy ministers

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CONSTITUTIONAL STATUS OF COUNCIL OF MINISTERS (Role)

- Article 74 & 75 deals with the status of the council of ministers.
- Article 74 - Council of Ministers to aid and advise President
- Article 75: Total number of ministers, including the Prime Minister shall not exceed 15% of the total strength of the Lok Sabha.

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Attorney General of India

- The Constitution (Article 76) has provided for the office of the Attorney General for India.
- He is the highest law officer in the country.
- The Attorney General (AG) is appointed by the president.
- He must be a citizen of India and he must have been a judge of some high court for five years or an advocate of some high court for ten years or an eminent jurist.
- He holds office during the pleasure of the president. (No fixed term)

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DUTIES AND FUNCTIONS OF AG

- To give advice to the Government of India upon legal matters.
- To perform duties of a legal character that are assigned to him by the president.
- To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
- He has the right to speak and to take part in the proceedings of both the Houses of Parliament

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The Parliament

- The Parliament is the legislative organ of the Union government.
- Articles 79 to 122 in Part V of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers of the Parliament

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ORGANISATION/COMPOSTION OF PARLIAMENT

- Under the Constitution, the Parliament of India consists of three parts: the President, the Council of States('Rajya Sabha') and the House of the People ('Lok Sabha')
- The Rajya Sabha is the Upper House (Second Chamber or House of Elders) and the Lok Sabha is the Lower House (First Chamber or Popular House).
- Though the President of India is not a member of either House of Parliament, he is an integral part of the Parliament. This is because a bill passed by both the Houses of Parliament cannot become law without the President's assent.

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Rajya Sabha (Upper House)

Composition of Rajya Sabha

- The maximum strength of the Rajya Sabha(Fourth Schedule of the Constitution) is fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the president.

1. Representation of States: The representatives of states in the Rajya Sabha are elected by the elected members of state legislative assemblies. The seats are allotted to the states in the Rajya Sabha on the basis of population.

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2. Representation of Union Territories: The representatives of each union territory in the Rajya Sabha are indirectly elected by members of an electoral college specially constituted for the purpose.
3. Nominated Members:The president nominates 12 members to the Rajya Sabha from people who have special knowledge or practical experience in art, literature, science and social service.

- The tenure of upper house is 6 years.
- The Rajya Sabha (first constituted in 1952) is a continuing and permanent body and not subject to dissolution.

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Lok Sabha (Lower House)

Composition of Lok Sabha

- The maximum strength of the Lok Sabha is fixed at 552. Out of this, 530 members are to be the representatives of the states, 20 members are to be the representatives of the union territories and 2 members are to be nominated by the president from the AngloIndian community.
- Its normal term is five years from the date of its first meeting after the general elections

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1. Representation of States: The representatives of states in the Lok Sabha are directly elected by the people from the territorial constituencies in the states. (Universal Adult Franchise)
2. Representation of Union Territories: The Constitution has empowered the Parliament to choose the representatives of the union territories in the Lok Sabha.
3. Nominated Members: The president can nominate two members from the Anglo-Indian community.

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MEMBERSHIP OF PARLIAMENT (Rajya Sabha & Lok Sabha)

Qualifications

The Constitution lays down the following qualifications for a person to be chosen a member of the Parliament (MP)

- He must be a citizen of India.
- He must be not less than 30 years of age in the case of the Rajya Sabha and not less than 25 years of age in the case of the Lok Sabha.
- He must be a member of a scheduled caste or scheduled tribe in any state or union territory, if he wants to contest a seat reserved for them.

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Disqualifications

Under the Constitution, a person shall be disqualified for being elected as a member of Parliament:

- If he is of unsound mind and stands so declared by a court.
- If he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state
- If he is so disqualified under any law made by Parliament.
- He must not have been found guilty of certain election offences or corrupt practices in the elections.
- He must not have been convicted for any offence resulting in imprisonment for two or more years.
- He must not have been dismissed from government service for corruption or disloyalty to the State etc.,

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Note: Facts

- There is a Speaker and a Deputy Speaker for the Lok Sabha and a Chairman and a Deputy Chairman for the Rajya Sabha.
- The Speaker and Deputy Speaker is elected by the Lok Sabha from amongst its members
- The presiding officer of the Rajya Sabha is known as the Chairman. The vice-president of India is the ex-officio Chairman of the Rajya Sabha
- The Deputy Chairman is elected by the Rajya Sabha itself from amongst its members

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FUNCTIONS OF PARLIAMENT

1. Legislative Powers and Functions: The primary function of Parliament is to make laws for the governance of the country
2. Executive Powers and Functions: It also supervises the activities of the Executive with the help of its committees like committee on government assurance, committee on subordinate legislation, committee on petitions, etc.
3. Financial Powers and Functions: The enactment of the budget, Tax Matters etc.,
4. Constituent Powers and Functions: Amendment of the Constitution requires consent from parliament
5. Judicial Powers and Functions : Impeach the President, Removal of the Vice-President etc.,
6. Electoral Powers and Functions: Election of the President and Vice-president. The Lok Sabha elects its Speaker and Deputy Speaker, while the Rajya Sabha elects its Deputy Chairman.
7. Other powers and functions: Approves all the three types of emergencies, It can increase or decrease the area, alter the boundaries and change the names of states of the Indian Union etc.,

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Union Judiciary

- The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the high courts below it.
- Under a high court (and below the state level), there is a hierarchy of subordinate courts, that is, district courts and other lower courts.

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Supreme Court of India

- The Supreme Court of India was inaugurated on January 28, 1950.
- Articles 124 to 147 in Part V of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the Supreme Court.

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COMPOSITION AND APPOINTMENT OF JUDGES

- At present, the Supreme Court consists of thirty-four judges (one chief justice and thirty three other judges).

Appointment of Judges

- 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 the Supreme Court and high courts as he deems necessary.
- The other judges are appointed by president after consultation with the chief justice.

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Qualifications of Judges

- A person to be appointed as a judge of the Supreme Court should have the following qualifications:

1. He should be a citizen of India.
2. (a) He should have been a judge of a High Court for five years; or (b) He should have been an advocate of a High Court for ten years; or (c) He should be a distinguished jurist in the opinion of the president.

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JURISDICTION AND POWERS OF SUPREME COURT

The jurisdiction and powers of the Supreme Court can be classified into the following:

1. Original Jurisdiction: The Supreme Court decides the disputes between different units of the Indian Federation
2. Writ Jurisdiction: The Supreme Court is empowered to issue writs including habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of the fundamental rights.
3. Appellate Jurisdiction: The Supreme Court is primarily a court of appeal and hears appeals against the judgments of the lower courts.
4. Advisory Jurisdiction: The Constitution (Article 143) authorizes the president to seek the opinion of the Supreme Court.

5. A Court of Record: The judgments, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony
6. Power of Judicial Review: It is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments
7. Constitutional Interpretation : The Supreme Court is the ultimate and final interpreter of the Constitution. It is the guardian of the Constitution and guarantor of the fundamental rights of the citizens.
8. Other Powers: It decides the disputes regarding the election of the president and the vice-president. It enquires into the conduct and behaviour of the chairman and members of the Union Public Service Commission on a reference made by the president. Its law is binding on all courts in India

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Appeal by Special Leave

- It is a special power of Supreme court.
- The Supreme Court is authorised to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country (except military tribunal and court martial).

This provision contains the four aspects as under:

- It is a discretionary power and hence, cannot be claimed as a matter of right.
- It can be granted in any judgement whether final or interlocutory.
- It may be related to any matter–constitutional, civil, criminal, income-tax, labour, revenue, advocates, etc.
- It can be granted against any court or tribunal and not necessarily against a high court (of course, except a military court).
- Thus, the scope of this provision is very wide and it vests the Supreme Court with a plenary jurisdiction to hear appeals.

Hingston Xavier, AP, Christ College of Engg

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