

STATE EXECUTIVE

(Article 153- 167)

- The Governor is not an employee of the Centre or does not come under the Government of India. He is an independent office, and is only the nominee of Centre.
- Qs - The President must always consults with the State Government before the appointment of the Governor — False.

The consultation should be done. If made compulsory, then it would become at the will of the CM that the Governor will be appointed, and not in the hands of the Centre.

President	Governor
More Stable office - Has a impeachment process by Law	Not so Stable -> only till pleasure of President, no security of tenure . and no fixed term of office.
More Credible office -> Elected (indirect)	Less Credible- > Appointed by Presi.
More Popular Office -> As elected, and P has eligibility criteria of being a MP.	
In the absence of P, Vice President takes over . - VP is also elected	No Such Provision of Vice Governor. Article 160 -> Discharge of Function, provision can be decided by President . So when Governor is absent, President can appoint anyone as additional Charge for Governor. - Here again he is <u>Appointed</u> . (not elected)
P can Commute, Pardon, Respite, Reprieve, Remit (C, P, R, R, R) - of any Army Court. (P is the head of the Armed Forces.)	No power
C, P, R, R, R - on any subject of Parliament law.	C, P, R, R, R - on any subject of State List.
C, P, R, R, R - on Death Sentence.	R, R, R - On Death Sentence (check)

President	Governor
As per Article 74(1) - There is no recognition of Discretionary powers of the President.	Article 163(1): Recognises the discretionary power of Governor. Article 163(2) : Decision of Governor is final.

-Ve: There is **Dilution of democracy or against federalism, when**

1. Governor is appointed by President. As President is elected by the Centre's legislature, So governor should also be appointed by State's legislature. But he is appointed by President, an executive. It attains a **unitary structure**.

2. Both the Central and States Executive's Salary is determined by **Union Legislature**.(Salary are determined by Parliament.) This also highlights **more accountability of Governor to Centre**, and reduces the accountability to the States.

3. Democracy will still be intact, when President it absent , but taken over by VP, as he is also elected. But Democracy will be lost, when the additional charge taker is also an appointee.

4. In the absence of P, VP takes over, but in State there is no vice Governor. This diminishes the importance of Role of State Executive.

UNITARY FEATURE:

1. During appointment of Governor

Others:

1. There is no time limit for the decision of the governor in cases of Pardoning powers.

2. Article 163 (2) allows Governor to decide on which cases are under his discretion and which are not. Further this cant be challenged in the court. So, in states, where Centre is not of the same party, Governor can use his discretion, to make favourable decisions to the centre.

- To highlight Governor's office is not political,

- his criteria for qualification does not include membership of SLA/ MP. He is not a popularly elected person.
- He must vacate his office if he was a MP/member of SLA.

- To ensure uniformity:

- Emoluments, Allowances, Privileges, should be **decided by Parliament.**

- If he is Governor of 2 or more states, then the proportion is decided by the **President on rec by CoM**

But salaries are from **Consolidated Fund of the State**.

Pensions are from **Consolidated Fund of India**

Office of Profit - Not defined in the constitution. President, VP, Governor, Ministers, MLA - not form of office of profit.

--+ve: Article 157: Qualification of Governor : SIGNIFIES CONCEPT OF SINGLE CITIZENSHIP.

How? there is no limitation about from where the Governor should be. A G can be appointed to any place, i.e., no condition for domicile/ state citizenship. This **spreads unity and fraternity**.

Q. Governor of the Indian States is not an appointed Office. Analyse(200 words).

So analyse, what will happen if Governor is elected/ appointed.

If Elected	If Appointed
Expenditure Costs	Holds office as for as pleasure of President, so no security of tenure
Conflict of Power between CM and Governor, as both will represent the State, Governor will also try to exercise power, as he is elected.	Not accountable to the People.
He would belong to a party, and cannot be neutral.	Disconnect between people and executive, as the culture will be very different. So may not be able to understand the real problems of the people.
More responsible and accountable to the State.	Can work in the national interests, rather than the personal motives of people.
Can prevent the misuse of power by the Centre via Article 163, 164	Allows Centre to maintain control over the states.
Would violate the parliamentary form of Government System in the states,	Away From local politics.
Leadership crisis during election - as confusion arises around whom to rally around CM/Governor	Can act as a Constitutional Nexus between the Centre and the States ,
	Can destabilise the Government run by the Opposition Party.

	People who are appointed are usually - Partymen, active politicians, people who were made to resign from Government following strictures from judiciary or on being guilty found by inquiry commissions.- But Nehru's Dream was to create a eminent, non-partisan, and non political man for post of Governor.
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WAY Forward:

—> As per **ARC's** Recommendation, appointment should be consulted with the State Government for the smooth functioning of the machinery.

—>Other ARC Recom:

i)Aptm should be a subject of Parliament's approval.

ii)Practise of consulting the opposition leaders of Lok Sabha on every selection of Governor

iii)P be given discretionary power to appoint governor.

—>**Rajamannar Committee** : Body of jurists, lawyers, experienced admin should be set up to select the panel / appoint the Governor.

—> **Puunchi Commission** : Removal can be similar to the impeachment process of President, but at the State Level.

The Governor is being increasingly used by the Centre to implement its policies at the state, diminishing the role of Governor as an executive head. To ensure a good governance, the appointment and removal of the post should not be Politicised, as ensured by a few criteria which does not require Governor to be a mP/MLA.

Post of Governor represents the legacy of the Colonial India.

The political development of the contemporary India has put forth a number of challenges. Thus the mode of Governor's selection must be a fair. to select a fair minded man of high calibre who can effectively discharge the limited discretionary powers of the Governor.

Ways for Removing the CoM:

1. CM can advice Governor to remove one Minister.
2. Through Defection
3. No Confidence Motion.

Cases:

*Appointment of party in Goa , Karnataka, Uttarkand.

The parties failed to get a majority. So it is at the discretion of the Governor to choose the CM. He had 4 options:, as per **Sarkaria**

Commission:

- a) Call the largest Pre - poll Alliance. -> But none existed.
- b) Single largest party with max seats (after election)
- c) Largest post - poll alliance -> None
- d) Individuals can be appointed as CM and asked to prove majority.

But the Governor of G, neglected 2) which was favourable to Congress. and adopted d). and gave **10 days** time to prove its majority.

So, (write in answer) **Governors powers has been misused for several purposes in the past.**

Article 162: Extent of Power of Executive: Recognises the clear cut division of powers (between Centre and State). Positive feature of Federalism (check). It extends only to those areas, where State Legislature can make laws.

SO how about President? Can he make laws only in areas of Union List/Concurrent List? - Read.

Discretionary Powers of the GOVERNOR:

I) Appointing a CM:

1. Governors may not always follow the so - called '**Sri Prakasam Doctrine**' - where the Governor invites the leader of the largest party to form the government. Ex in Kerala (E.M.S. Namboodiripad), West Bengal (Jyothi Basu).

2. Governor may **sometimes invite disqualified people**, to form the Government. Ex - Jayalalitha's appointment by Fathima Bibi, when she was convicted in a corruption case. But in Bihar, Laloo Yadav was not invited to form Govt on same charges.

3. Referring to a President's Rule (Constitutional Discretion)

4. Inviting a candidate whose party has very little votes, might not form a government full representative of the people. This would be **AGAINST DEMOCRACY**

II) Dismissing a Ministry:

1. This can be used by the Centre for Political purposes. Ex - Governor may not remove the ministry even when the party has become a minority through instruments of defection.

2. Governor can dismiss the CM/Ministry in spite of a majority if it faces charges of corruption, in the name of purity of administration.

III) Dissolution of the Legislative Assembly:....

Others: (In Fadia)

- 1.
- 2.
- 3.
- 4.
- 5.

Critical Evaluation of Discretionary Powers:

Governor enjoys discretionary powers under **Article 163(2)**. Those powers are not absolute. Though the SL as well as the Ministry cannot act as a check on the Governor, since G acts under the pleasure of the President, P acts as a check on the Governor. P can take action on the Governor, or can dismiss him. Governor is not a free agent during normal / abnormal times.

CM

Article 164: “The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor”:

appoint CM - Discretion of G

appoint CoM - Binding on G on advice of CM

Pleasure of G- Is not a discretionary power of G. (It is done on advice of CoM to G, to resign a person)

-> When the Individual Responsibility fails, **Constitutional safeguard has been provided in terms of Collective responsibility.**

-> **No Confidence Motion is only a legislative tool** and not a Constitutional tool to check the legislature.

-> Even after Minister is removed by Governor, he only loses the Minister portfolio, but not the MLA/MLC post.

Article 164(1A) - 91st CAA, 2003 - Atal Bihari Vajpayee - Total strength of CoM inclusion CM should be 15% of **SLA**.

States were given 6 months to comply with this Act, written in this Act.

Article 164(3): Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

Analysis:

*Oath for **President, VP, Governor** : Given in **Constitution**

Oath for **MP, PM, MLA, CM, SC/HC judge, CAG (not AGI/AGS)**: Gn in **3rd Schedule**.

*Can be administered only by Governor for States : for MLA/MLC.

But, in Union(for judiciary) - President/ Any other person can

Article 124(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

Check for MPs -?

Article 164(4) : (4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

Legislature implies : Both SLA or SLC. This is a loophole.

Analysis:

* A Minister can be from either **SLA/ SLC**.

* He can be either **nominated/ elected**.

Article 164(5): (5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

Analysis:

* For Governor - Article 158(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

* For President also, cant be reduced during Tenure - So for the executives, this is one of the safeguard.

* But for Ministers, there is no such safeguard. **Their salaries can be diminished**. It is one of the '**legislative checks over the executive**'.

- * For Union Ministers, also, it can be reduced. Article 75(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.
- * Governor/ President -> Cant reduce
- * Union/State ministers -> Can reduce.

Article 165(1).The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

Analysis:

- * At Centre he is **Attorney General**, State - **Advocate General** (Qualified to be appointed as HC judge).
- * Governor 's power : TO determine duties, fix **salaries and allowances**, hold office till pleasure. But all this is on the advice of the CoM, not a discretion of the GOVERNOR.

Article 166: Governor makes rules for :

- I) All executive actions are taken under his name
- II) Orders/Instruments to be followed under rules given by Governor.
Ex- Paytm ..so how a transaction must be
- III) conduct of Business (Not CM)

QS : a) In terms of Legal matters of Executive , India is a federal State
B) IN terms of Finance matters of Executive, India is not a federal State.

ANs- Both are true. in a) we have both Union and State to form laws.
in b) There is only one CAG for both Centre and state. There is GST, Taxation decided by Centre.But there are Fc, SFC - which are federal.

DISCRETIONARY POWERS OF THE GOVERNOR:

STATE LEGISLATURE

Article 168.(1) For every State there shall be a Legislature which shall consist of the Governor, and—

- (a) in the States of [Andhra Pradesh], Bihar, [Maharashtra], 7 [Karnataka], Tamil Nadu, Telangana, Uttar Pradesh,], two Houses;**
- (b) in other States, one House**

Analysis:

- * There is no uniformity in the structure of State legislatures across the country. 22 states - 1 House, 7 States - 2 houses. Y SLC?:
 - i) Population density is high-
 - ii) Greater Geographical Areas.
 - iii) **State Finances** (Most State did not have enough money to set this up).
- * in the bare act, TN is still there. In 2014 -> TN was removed. In 2010 -> Formed.
- * **Indian Constitution** did not mention about **SLC for JK**. It is the **JK Constitution provides for bicameral legislature for JK**. But after Oct 31, 2019 -> JK Reorganisation Act, 2019 will be passed. and hence the JK will lose its bicameral nature.
- * Thus, as per IC no. of bicameral states today = 6.

Article 168(2) : Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

Analysis: It is compulsory for every state Legislature to have a governor and Legislature Assembly, SLC is optional.

Article 169(1) Creation/Abolition of SLC: Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

- State Assembly passes a law for creation /abolition by a special majority. After this.

- Parliament will pass a law by simple majority

Analysis:

- * Governor does not have any say in the creation of the SLC, inspite of being the State Executive head. Only bills passed in SLA gets the assent of G, but here, only a resolution is passed, which does not require the assent. Only Presidents assent is needed at end, as a Bill in introduced in Parliament.
- * Bill intro in either of the houses by **Ministry of Home Affairs**.
- * **This clause is an example of FEDERALISM**, as without the resolution in the State(permission), Centre cannot change the structure.

In current affairs: **Odisha, MP, Assam, Rajasthan** - demanding the creation of SLC.

Article 169(3): No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

UNION LEGISLATURE	STATE LEGISLATURE
(Lok Sabha)/Union Legislature does not have power to create a SLC	SLA has such power.

Article 170(1) Composition of the Legislature Assembly : 60< MLAs<500, Direct election, Territorial Constituencies
(Constituencies are divided based on no.of ppl)

170(2):number of seats allotted to it shall, so far as practicable, be the same throughout the State.

170(3) Population is based on 2001 Census data (**87th CAA, 2003**), till 1st relevant dat after 2026 has been published.i.e., till 2031.

Analysis:

- * Since the representatives represent the same no of people in each constituency, it is a sound example of **DEMOCRACY**, as all **are represented**.
- * If the population change happens, and if the max number is changed, then a CAA will happen like 87th CAA.

JUDICIARY

Article 124(1): There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven, other Judges,

Analysis:

- * This article can't be amended for removing the judiciary, as a DEMOCRACY has 3 organs. Removing would violate a democratic institution. So it forms the **Basic Structure doctrine**.
- * **EXECUTIVE** is a Federal Feature → ? The division of powers is clearly laid down in 7th Schedule to distribute between Centre, State and local Governments. and also, Central Govt is not the head of State Govts.
- * **JUDICIARY** - is a **UNITARY FEATURE** → ? SC is the head of the other courts(HC and lower courts.)
- * Power of the Parliament(Union legislature) to determine the no.of judges in SC, **is a check and balance on the judiciary**.
- * **Judicial System in USA :**
Have 2 courts - one to look at State Lists, one to look at Centre list subjects. But in India, any court can interpret any law.
- * The Parliament clause, allows the increase in number of judges without a constitutional Amendment, by passing a Act by **simple majority**.
- **Qs**- Increase in the no.of Judges requires a CAA? - False. A law by Parliament is enough
- **Qs**- Max no. of judges is set by Parliament(check)- True.

News: Now, the number of judges has been Increased to 34 under Article 124.

Article 124(2) - Judge appointed by President. He shall be a judge upto 65 years of age. Administers Oath to President, by Schedule 3.

Analysis: A tool of check and balance on the Judiciary by the Executive(as P is executive).

#DEMOCRACY #BALANCE OF POWER

Therefore the pillars of democracy- Executive, Legislature, judiciary maintain a system of check and balances, such that

- Executive administers the oath and appoints the Judges, whereas the

**- Legislature will determine the number of judges in SC.
A perfect balance of power is maintained.**

Article 124(3) : Qualification for appointment

- i) Citizen of India and**
- ii) A judge of HC for 5 yrs or**
- iii) An advocate of HC for 10 years or**
- iv) Distinguished jurist - in opinion of President.**

Analysis:

- * It is not the discretion of the President, but on the advice of the Collegium headed by CJI, CoM.
- * This way, the Judiciary is maintaining its independence from the Executive (CoM).

Article 124(4) : Grounds of removal for SC judges.- “A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of ...”proven misbehaviour/incapacity — Special majority¹ — passed by both houses of Parliament - resolution can be introduced any house.

Analysis:

- * 2 roles of Parliament in this article 124:
 - 1. Allows the parliament by law to fix the no. of judges
 - 2. Allows Parliament to pass a resolution to remove the judges

Qs. In which of the following scenario is the Parliament allowed to discuss the conduct of the judges?

- a. To fix the no. of judges**
- b. Impeachment of the judge.**

Ans- b only. as in Article 121, -Parliament is allowed to discuss the conduct of the judges only when they are removed -> to ensure there is no interference from the legislature, and hence independence of Judiciary.

**Qs: a. Salary of the SC Judges can be discussed in the Parliament.
b. Salary of SC Judges can be voted upto by Parliament.**

¹Concept of membership. Ex- Case of Rajya Sabha, Vacancies : 50
So, maximum Membership : 250
total membership : 245
Then membership : 245-45 = 200

Ans - a only. As, salaries are charged expenditure².

Qs: 1. It is not mandatory for a HC judge to act as an Ad Hoc judge when asked not to do so.

2. It is not mandatory for a Retired judge to act as an SC Judge.

Ans - 2 only. It is compulsory for HC judge to accept the orders of CJI (Article 127(2)- It shall be the duty ...)

PROCESS OF REMOVAL OF JUDGES(Both HC and SC same process)- Article 124 and Judges Inquiry Act, 1968:

1. Resolution in Rajya Sabha - 50 members
Resolution in Lok Sabha - 100 members
Resolution is addressed to the **President**, but is submitted to the Speaker/Chairman.
2. Inquiry Committee set up by Parliament has - 2 SC judges + eminent Jurist.

Article 124(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the the misbehaviour or incapacity of a Judge under clause (4).

Check and balance of the Parliament.

Article 124(6): Judge of a SC

- **Appointed by P**
- **Oath by P/any other person appointed by P.**
- **Any judge of SC cannot practise after retirement** (in any court of law).

Analysis:

- * For COM/ PM - Only P can administer oath.
- * For VP, CJI, Sc judges - P/anybody appointed by him.
- * Logic behind why cant they work? -> As they
 1. Can influence other judges.
 2. Can favour any political party and can act as solicitor general.

² Expenditure of 2 types:

1. Charged expenditure - Compulsory expenditure, Paid from CFI, can be discussed in Parliament, but no voting is required. Ex- Salary, Pension
2. Proposed Expenditure - money for infrastructure projects. Permission and voting required from Parliament.

Article 125 . Salaries, Allowances, Privileges

- **shall be determined by Parliament**
- **Cannot be varied to his disadvantage**

Analysis:

- * Ensures Independence of Judiciary, as the amount cannot be varied suddenly, if the Executive doesn't like the judge. IT can only be increased by the Act. If a judge gives a judgement against a Minister/ MP, the parliament could have decreased his salary, if this clause wasn't available. Therefore, charged expenditure ensures independence.
- * only during Financial Emergence -Article 360, salaries can be reduced.

Article 126 - Appointment of acting Chief Justice.

Article 127 - Ad Hoc Judges

* When no sufficient judges in SC, CJI, with consent of President(Mandatory consent), and consultation(not mandatory) of CJ of HC, may appoint HC judge as a SC judge(Ad Hoc Judge)

* These AD hoc provision are present for both Executive (Ministers- a member can become a Minister for 6 months, without being a MP) and the Judiciary(Ad hoc judges), but not for the Legislature (MPs)

- * **Mandatory to accept the order to discharge the duties.**

Article 128 : Retired Judges at Sitting of Supreme Court

* With prior consent of Presi., can appoint a **retired HC/ SC judge.**

* Salaries are determined by **President (usually by Parliament).**

* Powers and jurisdiction - same as SC judge.

* Always treated as an acting judge. He is not deemed to be a judge. This explains my doubt-> How can he hold a position after retirement as per Article 124? Because, he is only assumed as an acting judge, and not appointed as a judge. Acting is not same as appointment.

- * **Not mandatory to accept the offer.**

Article 129: SC to be a Court of Record and Power to punish for contempt of Court.

Analysis:

- * the recording of court can be used as a law/ guidelines. - Ex - Visaka Guidelines.

- * Contempt of Court - > means, SC has enforcement powers. i.e., can punish those who obstruct justice delivery/ cause bad name to judiciary.

SC	NHRC
Judicial Body	Quasi judicial body
By Article 129 has contempt powers which allows it for enforcement. It can punish. So this article is extremely imp.	Toothless tiger, as it does not have the powers of enforcement under the Protection of Human Rights Act, 1993.
they can differ in composition....	...

News - NHRC Amendment Bill, 2019 was passed, but still no contempt powers have been given.

Article 130 : Seat of SC

- Shall sit in Delhi or,
- Decided by CJI (Prior approval of President)- will be determined time to time.

Analysis : (In Interview/Prelims):

- * For COM(Executive), PM will decide the place of convening.
- * For Parliament, President (on advice of CoM) may decide place.
- * For Judiciary, CJI (on approval of P) can decide and we can say it is also given constitutionally.

Article 131: Original Jurisdiction of SC:

- (a) between the Government of India and one or more States; or
- (b) between the Government of India and any State or States on one side and one or more other States on the other; or
- (c) between two or more States,

Analysis:

- * Aka Exclusive Jurisdiction.
- * This will not apply for **Keshavnanda Bharati Vs State of Kerala**. Y? It is individual Vs State, so to High Court/lower court, but through Appellate Jurisdiction
- * This shall not apply in :
 - * 1. Disputes arising out of any Treat/ Agreement / Covenant before Constitution are not under Jurisdiction of SC. So IPC, 1860? It comes under, as it is a **law**. others like - **RBI Act, 1934, Official Secrets Act, 1924, Passports Act, Foreigners Act, Foreigner Tribunals Act**. - But in this Case, President can ask for opinion from the SC.

* Wherever mentioned in the Constitution - Ex- Article 262- Inter State Water Disputes.

Centre and States	
States Vs States	
Treaty, Agreement, Covenant	
River Water Disputes Act	

Article 131(A) - Exclusive Jurisdiction of SC regarding Constitutional Validity of Central Laws

Added by. - **42nd CAA, 1976(Indira Govt)** (increased the power)

Removed by - **43rd CAA, 1977(Morarji Desai)** (decreased power of SC's original juri, saying HC also has the power to interpret Central Laws.) Therefore interpreting Central laws is not exclusive to SC.

- Q. 1.43rd CAA,1977 reduced the original Jurisdiction of SC**
2. 43rd CAA,1977 reduced the overall jurisdiction of SC.

Ans. -1 only. Explained above.

Article 132 - Appellate Jurisdiction of SC.(in general)

— against the decisions of HC.

—civil/criminal/ any other matter

Condition : Significant interpretation of the Constitution is involved.

Article 133 - Appellate Jurisdiction of SC in Civil cases (marriage, divorce, inheritance)

Condition:

1) Substantial Qs of law of general importance.

2) If HC says, need to be decided by SC.

Both the cases will have to be said by HC.

Article 134 - Appellate Jurisdiction of SC in Criminal cases. Any case can be escalated to SC from HC if

Condition:

1)Death sentence issued by HC

2)Fit for appeal to SC

3)Essential qs of law of general importance /Justice.

Article 134(2) - Parliament may increase the Appellate Jurisdiction of SC in criminal matters by a law.

ex- In constitution it says, when its a death sentence, person can appeal in SC. But Parliament may pass a law saying if order is for life imprisonment also, they can seek appeal from SC.

Article 132 (other cases)	a. Significant qs of interpretation of Constitution.
Article 133 (civil cases)	a. Qs of law of General Importance b. Should be heard by SC (HC thinks)
Article 134 (criminal cases)	a. Qs of law of General Importance b. Should be heard by SC (HC thinks)

The certificate(that SC should listen to appeal) for above will be given by HC.- only for above 5 cases- not when individual can appeal in case of death sentence and others. as per **Article 134A - 44th CAA, 1978(Morarji Desai Govt)**

Article 135- Residuary Powers of SC

For other cases which do not involve significant interpretation of constitution / cases that do not fall under 133/134, but were once heard by the Federal Court, those matters will be heard here, **after Parliament makes a law.**

Article 136 -Special Leave Petition:

- **Discretionary power of SC.**
- **SC** - grants special leave/appeals against order from any court / tribunal , where SC thinks a miscarriage of justice/inadequate justice delivery has taken place and significant involvement of law involves. Ex- for cases which HC may not grant a certificate for few cases under 134A, but SC might think that requires interpretation of SC, it can grant special leave.
- Exception : ~~Army Court/Tribunal~~

Q1.Judiciary in India is an independent organ. Elucidate.

1. Salary - can't be Reduced and charged upon.
2. No practise after retirement.
3. Collegium decides its own judges.
4. Removal - Concurrence of Legislature with Executive.
5. Conduct can't be discussed - Article 121.

Q2. Indian Democracy has 3pillars, which are independent as well as retain a system of checks and balances. Comment.(200 words)

1- Identify the keywords.- Independent Pillars, Checks and balances.

2- Intro will be less, Body will be explanative, Conclusion will be less.

Intro:

India has 3 pillars: E-J-L. They are independent yet, interdependent. They also form the basic structure of the Constitution.

Body:

1. Presi is the supreme Commander of the Armed Forces, but he can use the powers only after due regulation from the Parliament.

2. P, the executive head of State is elected by the Legislature (by Both Centre and State.)

3. VP is also appointed and removed by Legislature.

4. Mention Legislative powers of President.

5. P is also removed by the legislature.

Independence of Executive: (Mention all powers of President.)

1. Mention financial powers.

2. P (executive power) appoints SC judges and gives final assent.

3. Judicial power to deprive,

4. can withdraw pleasure from CoM, both indiv/CoM.

5. P on reach of EC, decides the disqualification of MPs

Independence of Judiciary:

1. As per Second Judges Case, the Collegium System to appoint its own judges

2. Power to decide place of proceedings.

3. Can appoint retired Judges/ Adhoc Judges after consent of President.

4. Article 13; Power of judicial review.

5. All election inquiry about President's election will be looked into by **SC, and his decision is final.**

6. Legisl can't discuss conduct of judges, except when...

Independence of Executive:

1. Any decision given by CoM to President can't be challenged in any court of law.

2.. Parliamentary privileges.

Conclusion:

IN the past 7 decades, this sys, a part of BS has worked well of India Democracy, ensuring the transparency and the thorough Constitution

