

# 2

UNIT

## Union Executive and State Executive

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Union Executive & State Executive

#### PART-1

*Powers of Indian Parliament, Functions of Rajya Sabha, Functions of Lok Sabha, Powers and Functions of the President, Comparison of Powers of Indian President with the United States.*

#### Questions-Answers

#### Long Answer Type and Medium Answer Type Questions

**Que 2.1.** What are the powers of Indian Parliament ?

**Answer**

- i. All the legislative powers of the Indian federal Government are vested in the Parliament.
- ii. The laws framed by the Indian Parliament are enforced in the whole of the country.
- iii. Its powers can be classified into following heads :
  1. **Legislative powers** : All the subjects in our constitution are divided among state, union and concurrent lists. In concurrent list Parliamentary law is over riding than state legislative law.
  2. **Executive powers** : According to parliamentary form of government executive is responsible to the parliament for its acts and policies. Hence parliament exercises control by various measures like committees, question hour, zero hour etc.
  3. **Financial powers** : It includes enactment of budget, scrutinizing the performance of government with respect of financial spending through financial committees (post budgetary control).
  4. **Constituent powers** : To amend the constitution, to pass any laws required, etc.
  5. **Judicial powers** : It includes :
    - i. Impeachment of President for violation of constitution.
    - ii. Removal of judges of Supreme Court and High court.
    - iii. Removal of Vice-President.
    - iv. Punish members for breach of privileges like sitting in the house when the member knows he is not an eligible member, serving as member before taking oath etc.

- 6. Electoral powers :** It has its participation in the election of President and Vice-President. The members of Lok Sabha elect speaker and deputy speaker from among its members. Similarly members of Rajya Sabha elect deputy chairman.
- 7. Other powers :** It includes :
- To discuss various issues of national and international importance.
  - Imposing emergency.
  - Increase or decrease area, change names, alter the boundary of the states.
  - Create or abolish state legislature, etc.

**Que 2.2.** Write a short note on Rajya Sabha (Council of States).

**Answer**

- The Rajya Sabha (Council of States) is the Upper House of our Parliament.
- It consists of not more than 250 Members, out of which, 238 Members represent the States and Union Territories and 12 Members are nominated by the President from amongst the persons having special knowledge and practical experience in respect of such matters as literature, science, art and social service.
- At present, the actual strength of Rajya Sabha is 245.
- A permanent body, Rajya Sabha is not subject to dissolution. However, one-third of its Members retire biennially.
- A Member who is elected for a full term retains his membership for six years. He is eligible for re-election.
- A Member elected/nominated to a casual vacancy serves for the remainder term only.
- Members of Rajya Sabha are elected by the elected members of the State Legislative Assemblies in accordance with the system of proportional representation by means of the single transferable vote.

**Que 2.3.** What are the powers and functions of the Rajya Sabha?

**Answer**

**1. Legislative Powers :**

- In the sphere of ordinary law-making the Rajya Sabha enjoys equal powers with the Lok Sabha.

- An ordinary bill can be introduced in the Rajya Sabha and it cannot become a law unless passed by it.
- 2. Financial Powers :**
- In the financial sphere, the Rajya Sabha is a weak House.
  - A money bill cannot be introduced in the Rajya Sabha. It can be initiated only in the Lok Sabha.
  - If the Rajya Sabha proposes some amendments and the bill is returned to the Lok Sabha, it depends upon the Lok Sabha to accept or reject the proposed amendments.
- 3. Executive Powers :**
- The Union Council of Ministers is collectively responsible before the Lok Sabha and not the Rajya Sabha.
  - Lok Sabha alone can cause the fall of the Council of Ministers by passing a vote of no-confidence.
- 4. Amendment Powers :**
- Rajya Sabha and Lok Sabha can together amend the constitution by passing an amendment bill with 2/3 majority in each House.
- 5. Electoral Powers :**
- The Rajya Sabha has some electoral powers also.
  - The elected members of the Rajya Sabha along with the elected members of the Lok Sabha and all the State Legislative Assemblies together elect the President of India.
  - The members of the Rajya Sabha and Lok Sabha together elect the Vice-President of India.
  - Members of the Rajya Sabha also elect a Deputy Chairman from amongst themselves.
- 6. Judicial Powers :**
- The Rajya Sabha acting along with the Lok Sabha can impeach the President on charges of violation of the Constitution.
  - The Rajya Sabha can also pass a special address for causing the removal of a judge of the Supreme Court or of any High Court.
  - The charges against the Vice-President can be leveled only in the Rajya Sabha.
  - The Rajya Sabha can pass a resolution for the removal of some high officers like the Attorney General of India, Comptroller and Auditor General and Chief Election Commissioner.
- 7. Miscellaneous Powers :** The Rajya Sabha and Lok Sabha jointly perform the following functions :

- a. Approval of the ordinances issued by the President,
- b. Ratification of an emergency proclamation,
- c. Making any change in the jurisdiction of the Supreme Court and the High Courts, and
- d. Making any change in the qualifications for the membership of the Lok Sabha and the Rajya Sabha.
- 8. Two Special Powers of Rajya Sabha :** The Rajya Sabha enjoys two exclusive powers :
- The Power to declare a subject of State List as a subject of National Importance.
  - Power in respect of Creation or Abolition of an All India Service.

**Que 2.4.** Write a short note on Lok Sabha (House of the People).

**Answer**

- Lok Sabha is composed of representatives of the people chosen by direct election on the basis of the adult suffrage.
- The maximum strength of the House envisaged by the Constitution is 552.
- This is made up by election of upto 530 members to represent the States, upto 20 members to represent the Union Territories and not more than two members of the Anglo-Indian Community to be nominated by the Hon'ble President.
- The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is the same for all States.
- The Lok Sabha, unless sooner dissolved, continues to operate for five years from the date appointed for its first meeting.

**Que 2.5.** What are the powers and functions of the Lok Sabha ?

**Answer**

**Powers and function of Lok Sabha :**

**1. Legislative Power :**

- The Lok Sabha together with the Rajya Sabha has the power to frame laws on subjects in the union list, concurrent list, and the residuary subjects.

- b. Ordinary bill can be introduced in either of two houses of the Parliament, yet almost 95% of the bills are introduced in the Lok Sabha.
- c. Because of its large membership the Lok Sabha has a dominant position in the house.
- 2. Executive Power :**
- Under article 75(3) of constitution, council of the minister has been made responsible to the Lok Sabha.
  - The council of minister remains in office till it enjoys the confidence of the Lok Sabha, if it loses the confidence of Lok Sabha the Council of Ministers shall have to resign.
- 3. Financial Power :**
- The Lok Sabha has a superior position in the financial matter as a money bill can only be introduced in the Lok Sabha.
  - A money bill can only be delayed by the Rajya Sabha for a maximum of 14 days.
  - In case of any dispute as to whether a particular bill is money bill or not the decision of the speaker of the Lok Sabha is final.
- 4. Judicial Power :** The Lok Sabha possesses the following judicial power :
- The charges of impeachment against President, Judges of Supreme Court and the High court can be framed in either of two houses by a two-thirds majority of the members present voting.
  - Though the impeachment charges against the Vice President of India are framed by Rajya Sabha, it is essential that regulation is passed by the Lok Sabha also.
  - In case of the violation of the discipline in the Lok Sabha, the members are free to take action against the defaulting members.
- 5. Amendment Power :**
- A Constitutional Amendment Bill can be introduced in either House of the Parliament.
  - It is deemed to have been passed only when it is passed by both the houses of the parliament in accordance with the provision of Article 368 of the constitution.
  - The Lok Sabha and Rajya Sabha can together amend all articles of the Constitution with the exception of those which requires special approval by one half of the state legislature.
- 6. Approval Over the Declaration of Emergency :**
- The constitution empowers the Indian President to declare three types of emergencies :

- i. National emergency
  - ii. Constitutional emergency
  - iii. Financial emergency
- b. But each such a declaration of emergency has to be got approved by both of the houses of parliament.
- c. In case the Lok Sabha dissolved at the time of the declaration of emergency it, has to be approved by the Rajya Sabha.
- 7. Miscellaneous Power :**
- a. It gives approval to the ordinance issued by the president.
  - b. It changes the boundary of state, to establish new states and change the name of states.
  - c. It makes changes in the jurisdiction of the Supreme Court and High Court according to the provision of the constitution.
  - d. Revising the salary and allowances of the member of the Parliament.
  - e. To discuss the report of UPSC Auditor General of India and Finance Commission etc.

**Que 2.6.** What is the difference between Lok Sabha and Rajya Sabha ?

**Answer**

S.No.	Lok Sabha	Rajya Sabha
1.	Lok Sabha is also known as House of the People.	Rajya Sabha is also known as Council of States.
2.	The tenure of Lok Sabha continues for 5 years, except dissolved earlier.	Rajya Sabha is a Permanent body.
3.	The Speaker heads the Lok Sabha.	Vice President of India heads the Rajya Sabha.
4.	25 years is the minimum age to become a member of Lok Sabha.	30 years is the minimum age to become a member of Rajya Sabha.
5.	Strength of Lok Sabha is 552 members.	Strength of Rajya Sabha is 250 members.

**Que 2.7.** What are the powers and functions of the President of India ?

**Answer**

**A. Executive Powers of President :**

1. **Head of the Union Administration :** All executive orders are issued in the name of the President.

**2. Appointments of officials of the State :**

- a. The President makes appointments to the key posts to run the government's administration.
- b. He appoints the Prime Minister and the Council of Ministers, the Chief Justice and the Judges of Supreme Court and the High Courts, the Governors of the States, Attorney General of India, Comptroller and Auditor General, Chairman and members of the UPSC, Chairman and members of the Planning Commission.

**B. Legislative Powers of President :**

1. The President addresses the Sessions of the Parliament.
2. The President has the power to address either House of Parliament at any time.
3. He can send messages to either House of the Parliament. He summons and prorogues the Houses.
4. He can dissolve the Lok Sabha and order fresh elections.
5. No Bill can become a law without the assent and the signature of the President.
6. Under Article 123, the President can promulgate an Ordinance.

**C. Diplomatic Powers of President :**

1. India is represented on International forum by the President of India.
2. He sends and receives ambassadors.
3. All international treaties and agreements are concluded on behalf of the President subject to ratification by the parliament.

**D. Financial Powers of President :**

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

**E. Military Powers of President :**

1. Article 53 vests the supreme command of the Armed Forces of India in the President.

2. President of India can declare war or conclude peace, under the regulation by the parliament.

**F. Judicial Powers of President :**

1. Appointment of Chief Justice and Supreme Court/High Court Judges are on him.
2. He takes advice from the Supreme Court however; the advice is not binding on him.
3. He has pardoning power. He can pardon or remit or suspend a sentence of punishment given by the court martial or a sentence of death passed by a court.

**G. Emergency Powers of President :**

1. It is a situation in which the Head of the State (President) assumes extraordinary powers.
2. The President of India can proclaim a state of emergency in the following cases :
  - i. National or general emergency,
  - ii. Breakdown of Constitutional machinery,
  - iii. Financial emergency.

**Que 2.8.** Compare the powers of Indian President with the United States President.

**Answer**

S. No.	Indian President	United States President
1.	The Indian President is elected by the elected members of the Parliament.	The American President is elected by the people of America.
2.	The Indian Constitution has set up Parliamentary system in which all executive powers are to be exercised by a Council of Ministers, which is responsible to Parliament.	The American Constitution has vested all executive powers in the President.
3.	The Indian President appoints his ministers on the advice of his Prime Minister and they are responsible not to him but to Parliament.	The American President chooses his own Ministers. They are his nominees and are responsible to him alone.

4.	The Indian president holds the office for 5 years and is eligible for re-election any number of times.	The American President holds the office for 4 years and he can seek re-election only once.
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**PART-2**

*Powers and Functions of the Prime Minister, Judiciary - The Independence of the Supreme Court, Appointment of Judges, Judicial Review, Public Interest Litigation, Judicial Activism, LokPal, Lok Ayukta, The Lokpal and Lok Ayuktas Act 2013.*

**Questions-Answers**
**Long Answer Type and Medium Answer Type Questions**

**Que 2.9.** Who is Prime Minister of India ? Describe the powers and functions of the prime minister of India.

**Answer**

1. The Prime Minister of India is the head of the government and country.
2. He is appointed by the President of India after the political party wins a general election and nominates a candidate for the post.
3. The leader of that political party is hence appointed as the Prime Minister of India.

**Powers of Prime Minister :** Prime Minister of India performs his functions by taking responsibilities listed below :

1. **The leader of Country :** The Prime Minister of India is the Chief Head of the Government of India.
2. **Portfolio allocation :** The Prime Minister has the authority to assign respective portfolios to the Ministers.
3. **Chairman of the Cabinet :** The Prime Minister is the chairman of the cabinet and conducts the meetings of the Cabinet. He can impose his decision if there is a crucial opinion difference and conflict among the members.
4. **Official Representative of the country :** Prime minister represents the country for high-level international meetings and he is the ambassador of the country.

5. **The link between the President and the Cabinet :** The Prime Minister acts as the link between the President and cabinet. He communicates all decisions of the Cabinet to the President which is related to the administration of the affairs of the Union and proposals for legislation.
6. **Head :** The Prime Minister is the head of many organisation and programs like Nuclear Command Authority, NITI Aayog, Appointments Committee of the Cabinet, Department of Atomic Energy, Department of Space and Ministry of Personnel, Public Grievances and Pensions.
7. **Chief Advisor :** He also plays the role of chief advisor to the President.

**Que 2.10.** | Describe the main functions of Prime Minister related to the Council of Ministers.

**Answer**

The main functions of Prime Minister related to the Council of Ministers are as follows :

1. The Prime Minister recommends the names of members of his team to appoint as a Minister. The President can only make those people as ministers whose names are recommended by the Prime Minister.
2. Prime Minister determines which department will be given to which minister and he can also change the allotted department of any Minister.
3. He also presides over the meeting of the Council of Ministers and can change the decisions according to his wishes.
4. He can ask any minister to resign or advise the president to dismiss him in case of differences of opinion.
5. He also controls and directs the activities of all Ministers.
6. He can bring about the collapse of the Council of Ministers by resigning from office.

**Que 2.11.** | What do you mean by judiciary ?

**Answer**

1. The judiciary is that branch of the government that interprets the law, settles disputes and administers justice to all citizens.
2. The Indian Judiciary administers a common law system of legal jurisdiction, in which customs, precedents and legislation, all codify the law of the land.

3. The Indian judiciary is considered the watchdog of democracy, and also the guardian of the Constitution.
4. For Indian democracy to function effectively, it is imperative to have an impartial and independent judiciary.

**Que 2.12.** | What are the functions of judiciary in India ?

**Answer**

Following are the functions of judiciary in India :

1. The judiciary in India provides justice to the people.
2. The judiciary in India interprets and applies the laws.
3. The judiciary in India plays a role in making laws.
4. The judiciary in India protects rights of the citizens.
5. The judiciary in India is the guardian of the Constitution of India.
6. The judiciary in India also plays a federal role.
7. The judiciary in India is responsible for efficient management of the judicial administration.
8. The judiciary in India has advisory functions.
9. The judiciary in India conducts judicial inquiries.

**Que 2.13.** | Write a short note on independence of Supreme Court.

**Answer**

1. The Supreme Court is a Federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution.
2. Therefore, its independence becomes very essential for the effective discharge of the duties assigned to it.
3. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the Legislature (Parliament).
4. It should be allowed to do justice without fear or favour.
5. The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Supreme Court :
  - i. Mode of appointment.
  - ii. Security of tenure.
  - iii. Fixed service conditions.

- iv. Expenses charged on the consolidated fund.
- v. Conduct of judges cannot be discussed.
- vi. Ban on practice after retirement.
- vii. Power to punish for its contempt.
- viii. Freedom to appoint its staff.
- ix. Its jurisdiction cannot be curtailed.
- x. Separation from Executive.

**Que 2.14.** Explain appointment judges in Indian judiciary.

#### Answer

1. Judges are the main aspects of the judiciary.
2. Judges are respected in our country and people have lots of faith and hopes on them, thus it is necessary to make sure that the appointment of judges is proper and not biased.
3. Various provisions of our Indian Constitution deals with the appointment of Judges which has to be followed in every aspect of appointment.

#### Appointment of Judges in the District Courts :

##### A. Qualifications :

1. Article 233 of the Indian Constitution deals with the appointment of District Judges.
2. Following are the qualifications for a person to be appointed as a District Judge :
  - a. The person has to be in practice as an advocate or pleader for seven years or more.
  - b. The person should not be in working in any other services of the Union or the State.
  - c. The person has to be recommended by the High Court for employment.

##### B. Procedure for appointment :

1. According to Article 233, the appointment can be done only after consulting the Governor of the State and also the Judges of the High Court that is exercising jurisdiction in the State.
2. Article 235 of the Indian Constitution provides powers to the High Courts to have control over the persons in the judicial service in the district court and other subordinate courts.

#### Appointment of Judges in the High Courts :

##### A. Qualifications :

1. The qualifications regarding the appointment of a person as a judge in the High Courts are provided in Article 217.
2. According to the Article :
  - a. The person appointed must be a citizen of India.
  - b. The person appointed should have held a judicial office in the territory of India for at least ten years.
  - c. The person appointed should have been an advocate in the High Court for at least ten years.

##### B. Procedure for appointment :

#### According to Article 217 of the Indian Constitution :

1. The judges of the High Courts can be appointed only by the warrant of the President and his seal.
2. The appointment can be done only after consulting the Chief Justice of India and the Governor of the State.
3. The appointment of Judges other than the Chief Justice can be done after consulting the Chief Justice of the High Court.

#### Appointment of Judges in the Supreme Court :

##### A. Qualification :

1. The qualifications regarding the appointment of a person as a judge in the Supreme Court are provided in Article 124.
2. The person who satisfies all these necessary qualifications is only recommended. They are :
  - a. The recommended person must be a citizen of India.
  - b. They should not be above 65 years of age.
  - c. They must have been a judge of one or more High courts continuously for five years.
  - d. They must have been an advocate in the high court for at least ten years.
  - e. The recommended person must be a distinguished jurist in the opinion of the President.

##### B. Procedure for appointment :

1. Article 124 of the Indian Constitution deals with the appointment of Chief Justice and Judges of the Supreme Court.
2. The collegium system is still followed for the appointment of the Judges.

3. Article 124 of the Constitution says only seven judges can be appointed in the Supreme Court and the appointment can be increased when the Parliament deems it to be necessary.
4. The President has the power to appoint Judges after consulting the Chief Justice of India, the other Judges of the Supreme Court and also in certain cases other judges of the High Court.

**Que 2.15.** What do you mean by Judicial Review ? Describe Judicial Review In India.

**Answer**

1. Judicial Review can be understood as a form of court proceeding, usually in the Administrative Court where the lawfulness of a decision or action is reviewed by the judge.
2. Where there is no effective means of challenge, judicial review is available.
3. The concern behind Judicial Review is that whether the law has been correctly applied with and right procedures have been followed.

**Judicial Review in India :**

1. Judicial review plays an important role as a protector when the executive, judiciary and legislature harm the Constitutional values and deny the rights.
2. The judicial assessment is considered as an indispensable feature in the country.
3. In India, there is parliamentary form of democracy where every section of people is involved in decision making and policy making process.
4. It is true that the primary duty of the court is to apply rule of law and is the groundwork of social equality.
5. By exercising new powers of Parliament, rule of law which is to be applied by the court cannot be modified.
6. All those here, who are doing public duty, are accountable. They have to work within the democratic provisions of the Constitution of India.
7. The concept of separation of power and rule of law is judicial review.
8. The influence of judicial assessment has been under Articles 226 and 227 in case of High Court and Articles 32 and 136 of the Constitution of India for the review.

**Que 2.16.** Write a short note on Public Interest Litigation (PIL).

**Answer**

1. Public Interest Litigation (PIL) means litigation filed in a court of law, for the protection of "Public Interest", such as Pollution, Terrorism, Road safety, Constructional hazards etc.
2. Any matter where the interest of public at large is affected can be redressed by filing a Public Interest Litigation in a court of law.
3. Public interest litigation is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large.
4. Public interest litigation is the power given to the public by courts through judicial activism.
5. However, the person filing the petition must prove that the petition is being filed for a public interest and not just as a frivolous litigation.
6. Some of the matters which are entertained under PIL are :
  - a. Bonded Labour matters.
  - b. Neglected Children.
  - c. Non-payment of minimum wages to workers and exploitation of casual workers.
  - d. Atrocities on women.
  - e. Environmental pollution and disturbance of ecological balance.

**Que 2.17.** Explain the significance of PIL.

**Answer**

1. The aim of PIL is to give to the common people access to the courts to obtain legal redress.
2. PIL is an important instrument of social change and for maintaining the Rule of law and accelerating the balance between law and justice.
3. The original purpose of PILs has been to make justice accessible to the poor and the marginalised.
4. It is an important tool to make human rights reach those who have been denied rights.
5. It democratises the access of justice to all. Any citizen or organisation who is capable can file petitions on behalf of those who cannot or do not have the means to do so.
6. It helps in judicial monitoring of state institutions like prisons, asylums, protective homes, etc.

7. It is an important tool for implementing the concept of judicial review.

**Que 2.18. Who can file a PIL and against whom ?**

**Answer**

1. Any citizen can file a public case by filing a petition :
  - a. In the SC under Article 32.
  - b. In the High Courts under Article 226.
2. However, the court must be satisfied that the Writ petition fulfils some basic needs for PIL as the letter is addressed by the aggrieved person, public spirited individual and a social action group for the enforcement of legal or Constitutional rights to any person who are not able to approach the court for redress.
3. A Public Interest Litigation can be filed against a State/Central Govt., Municipal Authorities, and not any private party.

**Que 2.19. Explain the procedure to file PIL in India.**

**Answer**

**Steps to be taken for filing a Writ Petition/PIL :**

1. Approach a public interest lawyer or organization to file the case.
2. Collect necessary documents such as title deeds, proof of residence, identity proof, notice, resettlement policy if any, and photographs of the eviction.
3. List names and addresses of all aggrieved parties approaching the court.
4. List names and addresses of government agencies from which relief is sought.
5. List facts giving rise to violations of Fundamental Rights.
6. List dates indicating the duration of stay at the site, when the eviction took place, when and if an eviction notice was provided, and other important details related to the eviction.
7. Clearly mention the 'prayers' or the relief being sought from the court.

**Que 2.20. What do you mean by judicial activism ? Also mention various methods of judicial activism which are followed in India.**

**Answer**

1. Active role of the judiciary in upholding the rights of citizens and preserving the constitutional and legal system of the country is known as judicial activism.
2. Public Interest Litigation (PIL) made judicial activism possible in India.
3. Judicial activism is seen as a success in liberalizing access to justice and giving relief to disadvantaged groups.
4. The active role of the Indian judiciary particularly that of the Supreme Court has been appreciated both within and outside India.

**Judicial Activism Methods :** There are various methods of judicial activism which are followed in India. They are :

1. Judicial review.
2. Public Interest Litigation (PIL).
3. Constitutional interpretation.
4. Access of international statute for ensuring constitutional rights.
5. Supervisory power of the higher courts on the lower courts.

**Que 2.21. What is the significance of Judicial Activism ?**

**Answer**

1. It is an effective tool for upholding citizen's rights and implementing constitutional principles when the executive and legislature fails to do so.
2. Citizens have the judiciary as the last hope for protecting their rights when all other doors are closed.
3. There are provisions in the constitution itself for the judiciary to adopt a proactive role.
4. According to experts, the shift from locus standi to public interest litigation made the judicial process more participatory and democratic.
5. Judicial activism counters the opinion that the judiciary is a mere spectator.

**Que 2.22. What is Lokpal ? Describe the structure of Lokpal.**

**Answer**

1. Lokpal is an anti-corruption body or ombudsman, responsible for looking into corruption complaints at the national level.

2. It is a statutory body without any constitutional status.

**Structure of Lokpal :**

1. Lokpal is a multi-member body that consists of one chairperson and a maximum of 8 members.
2. Chairperson of the Lokpal should be either the former Chief Justice of India or the former Judge of Supreme Court or an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
3. Out of the maximum eight members, half will be judicial members and minimum 50% of the members will be from SC/ST/OBC/Minorities and women.
4. The judicial member of the Lokpal is either a former Judge of the Supreme Court or a former Chief Justice of a High Court.
5. The non-judicial member should be an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
6. The members are appointed by the president on the recommendation of a Selection Committee.
7. The term of office for Lokpal Chairman and Members is 5 years or till the age of 70 years.

**Que 2.23. What are Lokpal jurisdiction and powers ?**

**Answer**

**Jurisdiction of Lokpal :**

1. Jurisdiction of Lokpal includes Prime Minister, Ministers, members of Parliament, Groups A, B, C and D officers and officials of Central Government.
2. Its jurisdiction also includes any person who is or has been in charge (director/manager/secretary) of any body/society set up by central act or any other body financed/controlled by central government and any other person involved in act of abetting, bribe giving or bribe taking.
3. The Lokpal Act mandates that all public officials should furnish the assets and liabilities of themselves as well as their respective dependents.

**Powers of Lokpal :**

1. It has the powers to superintendence over, and to give direction to CBI.
2. The Inquiry Wing of the Lokpal has been vested with the powers of a civil court.
3. Lokpal has powers of confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.
4. Lokpal has the power to recommend transfer or suspension of public servant connected with allegation of corruption.
5. Lokpal has the power to give directions to prevent the destruction of records during the preliminary inquiry.

**Que 2.24. What are the limitations of Lokpal ?**

**Answer**

**Limitations of Lokpal :**

1. Lokpal is not free from political influence as the appointing committee itself consists of members from political parties.
2. The appointment of Lokpal can be manipulated in a way as there is no criterion to decide who is an 'eminent jurist' or 'a person of integrity'.
3. The 2013 act did not provide concrete immunity to the whistle blowers. The provision for initiation of inquiry against the complainant if the accused is found innocent will only discourage people from complaining.
4. The judiciary has been excluded from the ambit of the Lokpal.
5. The Lokpal is not given any constitutional backing and there is no adequate provision for appeal against the Lokpal.

**Que 2.25. What is Lok Ayukta ? Describe the role of Lok Ayukta.**

**Answer**

1. The Lok Ayukta (also Lokayukta) is an anti-corruption ombudsman organization in the Indian states.
2. Once appointed, Lokayukta cannot be dismissed nor transferred by the government, and can only be removed by passing an impeachment motion by the state assembly.
3. The Lokayukta, along with the Income Tax Department and the Anti Corruption Bureau, mainly helps people publicise corruption among the Politicians and Government Officials.

**Role of Lok Ayukta :**

1. Lokayukta investigates cases of corruption, where substantiated, recommend action.
2. Lokayukta is a great check on corruption.
3. Lokayukta brings about transparency in the system.
4. Lokayukta makes administrative machinery citizen friendly.
5. Lokayukta functions largely depend upon jurisdiction vested in him and facilities provided for taking cognizance of citizens grievances.

**Que 2.26.** Explain Lokpal and Lok Ayuktas Act, 2013. Give the salient features of the Lokpal and Lok Ayuktas Act, 2013.

**Answer**

The Lokpal and Lok Ayuktas Act, 2013, commonly known as The Lokpal Act, is an anti-corruption Act of Indian Parliament in India which seeks to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain important public functionaries including the Prime Minister, cabinet ministers, members of parliament, Group A officials of the Central Government and for matters connecting them.

**Salient features of the Lokpal and Lok Ayuktas Act, 2013 :**

1. Lokpal at the Centre and Lokayukta at the level of the states.
2. A mandate for setting up of the institution of Lokayukta through enactment of a law by the State Legislature within a period of 365 days from the date of commencement of the Act.
3. Lokpal will consist of a chairperson and a maximum of eight members, of which 50 per cent shall be judicial members.
4. 50 per cent of members of Lokpal shall be from SC/ST/OBCs, minorities and women.
5. The selection of chairperson and members of Lokpal shall be through a Selection Committee consisting of the Prime Minister, the Speaker, Lok Sabha, Leader of Opposition in the Lok Sabha, Chief Justice of India (CJI) or a sitting Supreme Court judge nominated by CJI, eminent jurist to be nominated by the President of India on the basis of recommendations of the first four members of the Selection Committee.
6. The Prime Minister has been brought under the purview of the Lokpal.
7. Lokpal's jurisdiction will cover all categories of public servants.
8. All entities receiving donations from foreign source in the context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs. 10 lakh per year are brought under the jurisdiction of Lokpal.

9. Provides adequate protection for honest and upright public servants.
10. Lokpal will have power of superintendence and direction over any investigative agency including CBI for cases referred to them by Lokpal.
11. A high powered committee chaired by the Prime Minister will recommend selection of the Director, CBI.
12. Directorate of Prosecution headed by a Director of Prosecution under the overall control of Director, CBI.
13. The Director of Prosecution, CBI will be appointed by the Central Government on the recommendation of the CVC for a period of not less than two years.
14. Transfer of officers of CBI investigating cases referred by Lokpal can be affected with the approval of Lokpal.
15. The Bill also incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while prosecution is pending.
16. The Bill lays down clear time lines for preliminary enquiry and investigation and trial and towards this end, the Bill provides for setting up of special courts.

**PART-3**

*State Executives - Powers and Functions of the Governor, Powers and Functions of the Chief Minister, Functions of State Cabinet, Functions of State Legislature, Functions of High Court and Subordinate Courts.*

**Questions-Answers****Long Answer Type and Medium Answer Type Questions**

**Que 2.27.** Write a short note on State Executive.

**Answer**

1. The State Executive consists of the Chief Minister, the Council of Ministers and the Governor.
2. It has the same Parliamentary pattern as followed by the Union Government with the upper hand being given to the Union in certain matters.
3. This has been done to maintain the unitary spirit of the structure of the country.

4. The Governor plays the twofold role of being the constitutional head at the state level as well as being a link between the state government and the centre.
5. He/She acts on the advice of the Council of Ministers and all executive actions are taken in his name.

**Que 2.28. | What are the powers and functions of the Governor ?**

**Answer**

Powers and functions of the Governor are given below under four heads :

- A. Executive Powers of the Governor :** The following comes under his executive powers :
1. Every executive action that the state government takes is to be taken in his name.
  2. 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.
  3. He may/may not make rules to simplify the transaction of the business of the state government.
  4. Chief Ministers and other ministers of the states are appointed by him.
  5. He appoints the advocate general of states and determines their remuneration.
  6. He seeks information from the state government.
  7. A constitutional emergency in the state is recommended to the President by him.
  8. The governor enjoys extensive executive powers as an agent of the President during the President's rule in the state.
- B. Legislative Powers of the Governor :** The following are the legislative powers of the governor :
1. It's in his power to prorogue the state legislature and dissolve the state legislative assemblies.
  2. He addresses the state legislature at the first session of every year.
  3. If any bill is pending in the state legislature, Governor may/may not send a bill to the state legislature concerning the same.
  4. 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.
  5. He can consult Election Commission for the disqualification of members

6. With respect to the bill introduced in the state legislature, he can give his assent, withhold his assent, return the bill, reserve the bill for the President's consideration.
- C. Financial Powers of the Governor :** The following are the financial powers and functions of the Governor :
1. He looks over the state budget being laid in the state legislature.
  2. His recommendation is a prerequisite for the introduction of money bill in the state legislature.
  3. He recommends for the demand for grants which otherwise cannot be given.
  4. Contingency Fund of State is under him and he makes advances out that to meet unforeseen expenditure.
  5. State Finance Commission is constituted every five years by him.
- D. Judicial Powers of the Governor :** The following are the judicial powers and functions of the Governor :
1. He has the following pardoning powers against punishment :
    - i. Pardon
    - ii. Reprieve
    - iii. Respite
    - iv. Remit
    - v. Commute
  2. President consults the Governor while appointing judges of High Court.
  3. In consultation with the state high Court, Governor makes appointments, postings, and promotions of the district judges.
  4. In consultation with the state high court and state public service commission, he also appoints persons to the judicial services.

**Que 2.29. | What are the powers and functions of the Chief Minister ?**

**Answer**

The powers and functions of Chief Minister can be classified under following heads :

- A. In relation to the Council of Ministers :** The Chief Minister is the head of state council of ministers. He performs the following functions :
1. He recommends to the governor on who to appoint as ministers.
  2. He designates or reshuffles the portfolios of the ministers.

3. He can ask a minister to resign.
  4. Meeting of the council of ministers is headed by him.
  5. All activities of the ministers are guided and controlled by the Chief Minister.
  6. If he resigns, the entire council of ministers collapses.
- B. In relation to the Governor :** In relation to the governor, the Chief Minister performs the following functions :
1. All the activities, decisions that are taken up by the council of ministers are communicated to the governor by the chief minister.
  2. To report to the governor, information about the administrative affairs if and when asked by the governor.
  3. If any minister has decided on any issue, the same has to be reported to the Governor by the Chief Minister when the same has not been considered by the council.
  4. He gives his advice to the governor for the appointment of the following persons :
    - i. Advocate-General
    - ii. Chairman of state public service commission
    - iii. The state election commission, etc.
- C. In relation to the State Legislature :** Chief Minister is the leader of the house and holding this position, he performs the following functions :
1. Before a governor prorogues and summons the sessions of the state legislature, the Chief Minister's advice is a must.
  2. Legislative Assembly can be dissolved at any time on his recommendation to the governor.
  3. All government policies are announced by him on the floor of the house.
- D. Other than above mentioned functions, he also performs the following functions :**
1. He chairs the State Planning Board.
  2. He is a vice-chairperson of the concerned zonal council by rotation, holding that office for a period of one year at a time.
  3. He is a member of Inter-State Council and National Development Council which are headed by the Prime Minister.

**Que 2.30.** Write a short note on State Legislature.

### Answer

1. Chapter III of Part VI of the Indian Constitution deals with the State Legislature.
2. Though a uniform pattern of Government is prescribed for the States, it is not so in the matter of the composition of the Legislature.
3. While the Legislature of every State shall consist of the Governor and the State Legislature, in some of the States, the Legislature shall consist of two Houses, namely, the Legislative Assembly and the Legislative Council, while in the rest, there shall be only one House, namely the legislative assembly.
4. The constitution provides for the abolition of the second chamber in a state where it exists as well as for the creation of such a chamber in a state where there is none at present.

#### Legislative Assembly :

1. The Legislative Assembly is the popularly elected chamber and is the real Centre of power in a State.
2. The maximum strength of an assembly must not exceed 500 or its minimum strength fall below 60.
3. But some of the States have been allowed to have smaller Legislative Assemblies, e.g. Sikkim, Arunachal Pradesh, Goa, etc.

#### Legislative Council :

1. The Legislative Council of a State Comprises not more than one-third of the total number of members in the Legislative Assembly of the State and in no case less than 40 members.
2. The system of the composition of the Council as provided for in the Constitution is not final.
3. The final power is given to the Parliament of the Union.

### Que 2.31. What are the powers and functions of State Legislature ?

### Answer

The functions of the state's Legislative Council are only advisory in nature. In practical terms, the Legislature of a State implies its Legislative Assembly which possesses the following major powers and functions :

1. It can create laws on any subject in the State List; it can also create laws on the Concurrent List provided the law does not contradict or conflict any law already made by the Parliament.

2. The Assembly asserts control over the Council of Ministers.
3. The assembly controls the State's finances.
4. The Assembly has constituent powers.
5. It elects its Speaker as well as Deputy Speaker. It can also remove them by a no-confidence vote.
6. It participates in the election of India's President.
7. It also considers reports presented by agencies such as the Auditor-General, State Public Service Commission, and others.

**Que 2.32.** What are the powers and functions of the High Court ?

**Answer**

The functions of the High Court are describe below :

**A. Original Jurisdiction :**

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

**B. Appellate Jurisdiction :**

1. In civil cases: an appeal can be made to the High Court against a district court's decision.
2. In criminal cases: it extends to cases decided by Sessions and Additional Sessions Judges.
3. The jurisdiction of the High Court extends to all cases under the State or federal laws.
4. In constitutional cases: if the High Court certifies that a case involves a substantial question of law.

The powers of the High Court are describe below :

**A. As a Court of Record :**

1. High Courts are also Courts of Record (like the Supreme Court).

2. The records of the judgments of the High Courts can be used by subordinate courts for deciding cases.
3. All High Courts have the power to punish all cases of contempt by any person or institution.

**B. Administrative Powers :**

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

**C. Power of Judicial Review :**

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

**D. Power of Certification :**

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

**Que 2.33.** Write a short note on Subordinate Courts.

**Answer**

1. In the judicial organisation of every state, the High Court is the apex body.
2. Below the High Court, there are other courts which constitute the subordinate judiciary.
3. The provisions related to subordinate courts are provided in the 6th part of the Indian Constitution. Articles 233-237 deal with the subordinate courts.
4. These Subordinate Courts are of two types, namely, Civil and Criminal.
5. The disputes relating to property, succession, ownership and other such rights come under the jurisdiction of Civil Courts, which dispose of these cases in accordance with the Civil Procedure Code.

6. The Criminal cases related to murder, robbery, arson, cheating, assault and rape etc. These cases are disposed of by the Criminal Courts in accordance with the Criminal Procedure Code and Indian Penal Code.
7. Both the Civil and Criminal Courts are graded into three each. The gradation of these courts is related to the nature of the dispute, the amount of property in case of Civil Courts and the nature of crime in case of Criminal Courts.

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## Basic Information about Legal System

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