

MODULE 3

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.

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. The Executive Head of the Indian Republic is called the President. The President is the Head of the State and is the first citizen of the country and represents the nation. The Official Residence of the President is known as Rashtrapati Bhavan. He / she does not belong to any political party. He / she is the Custodian of the Constitution and symbol of unity of the nation. He / she is elected by an Electoral College consisting of Lok Sabha, Rajya Sabha and the Members of the Legislative Assemblies of various States. No court of law can question his / her conduct. He / she may be removed for violation of the Constitution by a process known as Motion of Impeachment.

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;
- and
3. the elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry¹

Electoral College (Value of the Vote)

Article 55 has devised a way by which a value is attached to each vote of a Member of Parliament and Member of Legislative Assembly. This is an attempt to emphasize the federal character of the Office of the President.

$$\text{The Value of the Vote of an MLA} = \frac{\text{Population of the State}}{\text{Total No. of MLAs}} \times \frac{1}{1000}$$

$$\text{The Value of the Vote of an MP} = \frac{\text{Value of Votes of all MLAs of 28 States}}{\text{Total No. of MPs}}$$

Qualifications for Election as President

A person to be eligible for election as President should fulfil 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. A sitting President or VicePresident of the Union, the Governor of any state and a minister of the Union or any state is not deemed to hold any office of profit and hence qualified as a presidential candidate.

Further, the nomination of a candidate for election to the office of President must be subscribed by at least 50 electors as proposers and 50 electors as seconders. Every candidate has to make a security deposit of ₹15,000 in the Reserve Bank of India. The security deposit is liable to be forfeited in case the candidate fails to secure one-sixth of the votes polled. Before 1997, number of proposers and seconders was ten each and the amount of security deposit was ₹2,500. In 1997, they were increased to discourage the non-serious candidates.

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.**

TERM, IMPEACHMENT AND VACANCY

Term of President's Office

The President holds office for a term of five years from the date on which he enters upon his office. However, 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.

The President can hold office beyond his term of five years until his successor assumes charge. He is also eligible for re-election to that office. He may be elected for any number of terms⁶. However, in USA, a person cannot be elected to the office of the President more than twice.

Impeachment of President

The President can be removed from office by a process of impeachment for 'violation of the Constitution'. However, the Constitution does not define the meaning of the phrase 'violation of the Constitution'.

The impeachment charges can be initiated by either House of

Parliament. These charges should be signed by one-fourth members of the House (that framed the charges), 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 that House, it is sent to the other House, which should investigate the charges. The President has the right to appear and to be represented at such investigation. If the other House also sustains the charges and passes the impeachment resolution by a majority of two-thirds of the total membership, then the President stands removed from his office from the date on which the resolution is so passed.

Thus, an impeachment is a quasi-judicial procedure in the Parliament. In this context, two things should be noted: (a) the nominated members of either House of Parliament can participate in the impeachment of the President though they do not participate in his election; (b) the elected members of the legislative assemblies of states and the Union Territories of Delhi and Puducherry do not participate in the impeachment of the President though they participate in his election.

No President has so far been impeached.

Vacancy in the President's Office

A vacancy in the President's office can occur in any of the following ways:

1. On the expiry of his tenure of five years.
2. By his resignation.
3. On his removal by the process of impeachment.
4. By his death⁷.
5. Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.

When the vacancy is going to be caused by the expiration of the term of the sitting President, an election to fill the vacancy must be held before the expiration of the term. In case of any delay in conducting the election of new President by any reason, the outgoing President continues to hold office (beyond his term of five years) until his successor assumes charge. This is provided by the Constitution in order to prevent an 'interregnum'. In this situation, the VicePresident does not get the opportunity to act as President or to discharge the functions of the President.

If the office falls vacant by resignation, removal, death or otherwise, then election to fill the vacancy should be held within six months from the date of the occurrence of such a vacancy. The newly-elected President remains in office for a full term of five years from the date he assumes charge of his office.

When a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise, the Vice-President acts as the President until a new President is elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.

In case the office of Vice-President is vacant, the Chief Justice of India (or if his office is also vacant, the seniormost judge of the Supreme Court available) acts as the President or discharges the functions of the President⁸

When any person, ie, Vice-President, chief justice of India, or the seniormost judge of the Supreme Court is acting as the President or discharging the functions of the President, he enjoys all the powers and immunities of the President and is entitled to such emoluments, allowances and privileges as are determined by the Parliament.

POWERS AND FUNCTIONS OF THE PRESIDENT

The powers enjoyed and the functions performed by the President can be studied under the following heads.

1. Executive powers
2. Legislative powers
3. Financial powers
4. Judicial powers
5. Diplomatic powers
6. Military powers
7. Emergency powers

Executive Powers

Executive Powers: He / she appoints the leader of the majority party or group in the Lok Sabha as the Prime Minister. He / she also appoints the Ministers recommended by the Prime Minister. The Governors / Lieutenant Governors of the States / Territories; Ambassadors; High Commissioners; Consuls; Attorney-General; Comptroller & Auditor General; Finance Commission; The Chief Election Commissioner; Chairman & Members of Union Public Service Commission; and Special Officers for Scheduled Castes & Tribes and Linguistic Minorities are appointed by the President. He / she is the Commander-in-Chief of the Armed Forces (Army, Navy and Air force). Wars, if any, are declared in the name of the President.

Legislative Powers

Legislative Powers: He / she has the power to summon the Parliament. He / she may address a joint sitting of both the Houses. A Bill passed by both the Houses of Parliament becomes an Act only after it receives the assent of the President. He / she has a right to send back the Bills for reconsideration. When the Parliament is not in session, he / she has the power to legislate on the recommendation of the Union Cabinet. Such legislation is known as an Ordinance. However, for an early

dissolution, the advice of the Prime Minister is needed.

Financial Powers

The financial powers and functions of the President are:

- (a) Money bills can be introduced in the Parliament only with his prior recommendation.
- (b) He causes to be laid before the Parliament the annual financial statement (ie, the Union Budget).
- (c) No demand for a grant can be made except on his Recommendation
- (d) He can make advances out of the contingency fund of India to meet any unforeseen expenditure.
- (e) He constitutes a finance commission after every five years to recommend the distribution of revenues between the Centre and the states.

Judicial Powers

The judicial powers and functions of the President are:

- (a) He appoints the Chief Justice and the judges of Supreme Court and high courts.
- (b) He can seek advice from the Supreme Court on any question of law or fact. However, the advice tendered by the Supreme Court is not binding on the President.
- (c) He can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person convicted of any offence:
 - (i) In all cases where the punishment or sentence is by a martial;
 - (ii) In all cases where the punishment or sentence is for an offence against a Union law; and
 - (iii) In all cases where the sentence is a sentence of death

Diplomatic Powers

The international treaties and agreements are negotiated and concluded on behalf of the President. However, they are subject to the approval of the Parliament. He represents India in international forums and affairs and sends and receives diplomats like ambassadors, high commissioners, and so on.

Military Powers

He is the supreme commander of the defence forces of India. In that capacity, he appoints the chiefs of the Army, the Navy and the Air Force. He can declare war or conclude peace, subject to the approval of the Parliament.

Emergency Powers

In addition to the normal powers mentioned above, the Constitution confers extraordinary powers on the President to deal with the following three types of emergencies⁹ :

- (a) National Emergency (Article 352);
- (b) President's Rule (Article 356 & 365); and
- (c) Financial Emergency (Article 360)

Veto: It is the power of the executive to withhold or refuse assent to legislation. The purpose is to prevent ill-conceived legislation as well legislations, which may be ultra vires or unconstitutional

Vetoes are classified into

Absolute Veto: It is the power to say no to a Bill passed by both Houses of Parliament. Such a bill never becomes an Act. The power cannot be overridden by the legislature. The President has his / her power in relation to all Bills except Money Bills.

Qualified Veto: It is that power to veto which can be overridden by the legislature by a special majority (in case of United States of America). In India, there is no requirement of special majority. If a Bill is adopted again by the Houses, the President cannot withhold assent. Hence, there is no qualified veto.

Suspensive Veto: It is a veto that may be overridden by an ordinary or simple majority. Our President exercises this veto when he / she returns a Bill for reconsideration.

Pocket Veto: When a Bill is presented to the President, he / she either gives his / her assent or refuse to give his / her assent. The Constitution does not prescribe any time limit within which the President has to declare his / her assent. The President may simply keep the Bill on his / her table indefinitely. Such action which is neither negative nor positive is called Pocket veto.

DISQUALIFICATIONS.

He / she comes to the same position as if he / she had never committed the crime.

Reprieve: It is temporary suspension of death sentence generally pending the proceedings for pardon or commutation.

Respite: It means awarding a lesser sentence in place of one originally awarded e.g., on the ground of pregnancy of a woman offender.

Remission: It reduces the length of sentence without affecting its character i.e. sentence of rigorous imprisonment for two years may be remitted to one year.

Commutation: It substitutes one form of punishment for another of a lighter character i.e. death sentence may be commuted to life imprisonment. Rigorous imprisonment can be commuted to simple imprisonment, which in turn may be commuted to fine.

Vice-President

Article 63 of the constitution provides that, 'there shall be a Vice President of India'. According to Article 65, 'in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice President shall act as President

until the date on which a new President elected'.

'When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice President shall discharge his functions until the date on which the President resumes his

duties' [Article 65 (2)].

The Vice-President occupies the second highest office in the country. He is accorded a rank next to the President in the official warrant of precedence. This office is modelled on the lines of the American Vice-President.

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 fulfil 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.

ELECTION

He is elected by the members of an electoral college consisting of the members of both Houses of Parliament.¹ Thus, this electoral college is different from the electoral college for the election of the President in the following two respects:

1. It consists of both elected and nominated members of the Parliament (in the case of president, only elected members).
2. It does not include the members of the state legislative assemblies (in the case of President, the elected members

of the state legislative assemblies are included). All doubts and disputes in connection with election of the Vice-President are inquired into and decided by the Supreme Court whose decision is final.

Term of Office

The Vice-President holds office for a term of five years from the date on which he enters upon his office. However, 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 by a majority of all the then members of the Rajya Sabha and agreed to by the Lok Sabha. This means that this resolution should be passed in the Rajya Sabha by an effective majority and in the Lok Sabha by a simple majority.

Vacancy in Office

A vacancy in the Vice-President's office can occur in any of the following ways:

1. On the expiry of his tenure of five years.
2. By his resignation.
3. On his removal.
4. By his death.⁶
5. Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.

When the vacancy is going to be caused by the expiration of the term of the sitting vicepresident, an election to fill the vacancy must be held before the expiration of the term.

If the office falls vacant by resignation, removal, death or otherwise, then election to fill the vacancy should be held as soon as possible after the occurrence of the vacancy. The newlyelected vice-president remains in office for a full term of five years from the date he assumes charge of his office.

POWERS AND FUNCTIONS

The functions of Vice-President are two-fold:

1. He acts as the *ex-officio* Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha. In this respect, he resembles the American vicepresident who also acts as the Chairman of the Senate—the Upper House of the American legislature.
2. He acts as President when a vacancy occurs in the office of the President due to his resignation, impeachment, death or

otherwise.⁷ He can act as President only for a maximum period of six months within which a new President has to be elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.⁸

While acting as President or discharging the functions of President, the Vice-President does not perform the duties of the office of the chairman of Rajya Sabha. During this period, those duties are performed by the Deputy Chairman of Rajya Sabha

During any period when the Vice-President acts as President or discharges the functions of the President, he is not entitled to the salary or allowance payable to the Chairman of Rajya Sabha, but the salary and allowance of the President.

TABLE 11.2 Comparison of the offices of President and Vice President

	President	Vice President
Election	The President is elected by an electoral college consisting of only the elected members of both Houses of Parliament and Legislative Assemblies of State. The nominated members have no right to vote.	The electoral college is limited to members of both Houses of Parliament. Members of State Assemblies do not participate. But nominated members of the Parliament eligible to vote.
Manner of Election	Election in both the cases is by secret ballot and in accordance with the system of proportional representation by single transferable vote.	
Qualifications	<ul style="list-style-type: none"> • Citizen of India • Completed the age of 35 years • Qualified for election to Lok Sabha 	<ul style="list-style-type: none"> • Citizen of India • Completed the age of 35 years • Qualified for election to Rajya Sabha
Condition	Both must not hold any office of profit	
Term of Office	Five years from the date of entering office	Five years from the date of entering office
Resignation	May resign office by writing addressed to the Vice President	May resign office by writing addressed to the President
Removal	May be removed by impeachment. (Majority of two-third of the total membership of the house. I.e., two-third of 552 and two-third of 250 respectively, in Lok Sabha and Rajya Sabha).	No impeachment but may be removed by resolution passed by a majority of the then members of the Rajya Sabha (effective majority) and agreed to by the Lok Sabha (simple majority).
Re-election	Eligible for re-election any number of times	Eligible for re-election any number of times
Functions	<ul style="list-style-type: none"> • Numerous functions under the constitution. 	<ul style="list-style-type: none"> • The only function is acting as a Chairman of the Council of States. • When the office of the President is vacant, he acts as the President or discharges the functions of the President.

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.

In the scheme of parliamentary system of government provided by the constitution, the President is the nominal executive authority (*de jure* executive) and Prime Minister is the real executive authority (*de facto* executive). In other words, president is the head of the State while Prime Minister is the head of the government.

The Prime Minister is the head of the Council of Ministers and is the leader of the nation. He is the pivot of the government system. The office has been borrowed from English parliamentary system.

APPOINTMENT OF THE PM

The Prime Minister is appointed by the President. Usually the President appoints the leader of the party that enjoys the majority support of the Lok Sabha as the PM. When any one party emerges out with the required majority in the House, the President will not be facing any challenge in the appointment of the PM.

However, in case of a hung Parliament in which no political party gains the required majority the President has to apply his discretion. In such circumstances, the President follows a convention. He invites the leader of the single largest party in the Lok Sabha to form the government. When he fails to form the government, President may call the leader of the alliance of parties formed before the election.

In case the alliance also fails to make, only then he appoints the leader of the post-election alliance.

The PM like other ministers needs to be a member of Parliament. However, he need not to be a member of Parliament at the time of appointment. Also, the constitution does not bar the PM being a member of either House of the Parliament. However, the PM being a member of Lok Sabha is considered more appropriate than he being a member of Rajya Sabha. This is on the moral ground as the PM is the leader of the nation and he needs to be representing the people rather than any State.

OATH, TERM AND SALARY

Before the Prime Minister enters upon his office, the president administers to him the oaths of office and secrecy.² In his oath of office, the Prime Minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,

3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

The term of the Prime Minister is not fixed and he holds office during the pleasure of the president. However, this does not mean that the president can dismiss the Prime Minister at any time. So long as the Prime Minister enjoys the majority support in the Lok Sabha, he cannot be dismissed by the President. However, if he loses the confidence of the Lok Sabha, he must resign or the President can dismiss him.

The salary and allowances of the Prime Minister are determined by the Parliament from time to time. He gets the salary and allowances that are payable to a member of Parliament. Additionally, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc. In 2001, the Parliament increased his sumptuary allowance from ₹1,500 to ₹3,000 per month.

POWERS AND FUNCTIONS OF THE PRIME MINISTER

The powers and functions of Prime Minister can be studied under the following heads:

In Relation to Council of Ministers

The Prime Minister enjoys the following powers as head of the Union council of ministers:

1. He recommends persons who can be appointed as ministers by the president. The President can appoint only those persons as ministers who are recommended by the Prime Minister.
2. He allocates and reshuffles various portfolios among the ministers.
3. He can ask a minister to resign or advise the President to dismiss him in case of difference of opinion.
4. He presides over the meeting of council of ministers and influences its decisions.
5. He guides, directs, controls, and coordinates the activities of all the ministers.
6. He can bring about the collapse of the council of ministers by resigning from office.

Since the Prime Minister stands at the head of the council of ministers, the other ministers cannot function when the Prime Minister resigns or dies. In other words, the resignation or death of an incumbent Prime Minister automatically dissolves the council of ministers and thereby generates a vacuum. The resignation or death of any other minister, on the other hand, merely creates a vacancy which the Prime Minister may or may not like to fill.

In Relation to the President

The Prime Minister enjoys the following powers in relation to the President:

1. He is the principal channel of communication between the President and the council of ministers.⁴ It is the duty of the

prime minister:

- (a) to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation;
- (b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
- (c) if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

2. He 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, chairman and members of the finance commission and so on.

In Relation to Parliament

The Prime Minister is the leader of the Lower House. In this capacity, he enjoys the following powers:

- 1. He advises the President with regard to summoning and proroguing of the sessions of the Parliament.
- 2. He can recommend dissolution of the Lok Sabha to President at any time.
- 3. He announces government policies on the floor of the House.

Other Powers & Functions

In addition to the above-mentioned three major roles, the Prime Minister has various other roles. These are:

- 1. He is the chairman of the NITI Ayog (which succeeded the

planning commission), National Integration Council, InterState Council, National Water Resources Council and some other bodies.

2. He plays a significant role in shaping the foreign policy of the country.

3. He is the chief spokesman of the Union government.

4. He is the crisis manager-in-chief at the political level during emergencies.

5. As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and so on.

6. He is leader of the party in power.

7. He is political head of the services.

Thus, the Prime Minister plays a very significant and highly crucial role in the politico-administrative system of the country. Dr. B.R. Ambedkar stated, 'If any functionary under our constitution is to be compared with the US president, he is the Prime Minister and not the president of the Union'.

CONSTITUTIONAL STATUS OF COUNCIL OF MINISTERS (Role)

Article 74—Council of Ministers to aid and advise President

1. There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. However, the President may require the Council of Ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.

2. The advice tendered by Ministers to the President shall not be inquired into in any court.

Article 75—Other Provisions as to Ministers

1. The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

2. The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. This provision was added by the 91st Amendment Act of 2003.

3. A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection

shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.

4. The ministers shall hold office during the pleasure of the President.

5. The council of ministers shall be collectively responsible to the Lok Sabha.

6. The President shall administer the oaths of office and secrecy to a minister.

7. A minister who is not a member of the Parliament (either house) for any period of six consecutive months shall cease

to be a minister.

8. The salaries and allowances of ministers shall be determined by the Parliament.

Article 77–Conduct of Business of the Government of India

1. All executive action of the Government of India shall be expressed to be taken in the name of the President.

2. Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President. Further, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

3. The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

Article 78–Duties of Prime Minister

It shall be the duty of the Prime Minister

1. To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation

2. To furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for

3. If the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council

Article 88–Rights of Ministers as Respects the Houses

Every minister shall have the right to speak and take part in the proceedings of either House, any joint sitting of the Houses and any Committee of Parliament of which he may be named a member. But he shall not be entitled to vote.

DEPUTY PRIME MINISTER

- The constitution does not provide for the post of Deputy PM.
- It is created according to the political contingencies.
- Though known as Deputy PM, the post does not carry any responsibility.
- Under the Council of Ministers Act, 1952, the Deputy PM is equal to other ministers.
- Since independence there have been seven Deputy PMs namely Vallabhbhai Patel, Morarji Desai, Charan Singh, Jagjivan Ram, Yashwantrao Chavan, Devi Lal and Lal Krishna Advani.

Central Council of Ministers

APPOINTMENT 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. This means that the President can appoint only those persons as ministers who are recommended by the Prime minister.

Usually, the members of Parliament, either Lok Sabha or Rajya Sabha, are appointed as ministers. A person who is not a member of either House of Parliament can also be appointed as a minister. But, within six months, he must become a member (either by election or by nomination) of either House of Parliament, otherwise, he ceases to be a minister. A minister who is a member of one House of Parliament has the right to speak and to take part in the proceedings of the other House also, but he can vote only in the House of which he is a member.

Functions:

Ensuring the smooth functioning of the administration
Framing the policies of the government and taking decisions accordingly
Preparing the Union Budget
Drafting the Bills to be introduced in the Parliament
Formulating the foreign policy of the Country
Suggesting Amendments to the Constitution

The meeting of the Union Cabinet is held once in a week. The Prime Minister presides

over it. The proceedings of the meeting are kept confidential. However, each Minister is responsible for his / her portfolio and jointly all the Ministers are responsible collectively to the Lok Sabha. The Ministry will remain in the Office only when they command the confidence of the Lok Sabha. When it withdraws the confidence, the Ministry has to resign. The total number of Ministers including the Prime Minister shall not exceed 15% of the total number Members of Lok Sabha (as per 91st Amendment Act, 2003). Ministers may be chosen from the Lok Sabha or Rajya Sabha. A Minister who is member of one House has the right to speak and to take part in the proceedings of the other House. A Minister is allowed to vote only in the House of which he / she is a Member. All the members of the Council of Ministers do not belong to the same rank. The Constitution does not classify Ministers into different ranks but in practice four ranks have come to be recognized:

Cabinet Ministers: He / she has a right to be present and participate in every meeting of the Cabinet. For proclamation of an emergency under Article 352, the advice must come from the Prime Minister and other Ministers of Cabinet rank.

Minister of State with Independent charge: He / she is a Minister of State who does not work under a Cabinet Minister. When any matter concerning his / her Department is on the agenda of the Cabinet, he / she is invited to attend the meeting.

Minister of State: He / she is a Minister who does not have independent charge of any Department and works under a Cabinet Minister. The work to such Minister is allotted by his / her Cabinet Minister.

Deputy Minister: He / she is a Minister who works under a Cabinet Minister or a Minister of State with Independent charge. The work to him / her is allotted by the Minister under whom he is working.

A person who is not a member of either House may also be appointed as a Minister. He / she can continue as a Minister only for six months (Article 75-5). If he / she desires to continue as Minister he / she has to become a member of any one of the Houses of Parliament before the expiration of the period of six months.

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.

APPOINTMENT, QUALIFICATION AND TERM

APPOINTMENT, QUALIFICATION

The Attorney General (AG) is appointed by the president. He must be a person who is qualified to be appointed a judge of the Supreme Court. In other words, 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, in the opinion of the president.

TERM

The term of office of the AG is not fixed by the Constitution. Further, the Constitution does not contain the procedure and grounds for his removal. He holds office during the pleasure of the president. This means that he may be removed by the president at any time. He may also quit his office by submitting his resignation to the president. Conventionally, he resigns when the government (council of ministers) resigns or is replaced, as he is appointed on its advice.

The remuneration of the AG is not fixed by the Constitution. He receives such remuneration as the president may determine.

DUTIES AND FUNCTIONS

As the chief law officer of the Government of India, the duties of the AG include the following:

1. To give advice to the Government of India upon such legal matters, which are referred to him by the president.
2. To perform such other duties of a legal character that are assigned to him by the president.
3. To discharge the functions conferred on him by the Constitution or any other law.

The president has assigned the following duties to the AG² :

1. To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
2. To represent the Government of India in any reference made by the president to the Supreme Court under Article 143 of the Constitution.
3. To appear (when required by the Government of India) in any high court in any case in which the Government of India is concerned.

THE UNION / CENTRAL GOVERNMENT

It has THREE organs. They are:

Legislature: This organ makes the laws

Executive: The laws made by the Legislature are implemented by this organ

Judiciary: This organ decides cases according to the laws

UNION LEGISLATURE OR 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

The Parliament of India consists of the President of India and the two Houses, namely, Rajya Sabha (Upper House / House of States / RS) and Lok Sabha (Lower House / House of People / LS). The sessions of the Parliament are held in the Parliament House at New Delhi. Here, the Members of the Parliament make laws which are applicable to the whole of India. Though the President of the Republic is not a Member of the Parliament, he is an indivisible part of the Parliament. Both the Houses of Parliament must meet at least twice a year. The Members of the Rajya Sabha and Lok Sabha are called Members of the Parliament. They enjoy freedom of speech and expression in the Parliament and the opinions expressed by them cannot be questioned in a Court of Law.

Powers and Functions of the Parliament

Legislative: The main function of the Parliament is to make laws. It can also amend or revoke (withdraw) existing laws.

Financial: The Finance Bill must be presented and discussed first in the Lok Sabha. After being passed by the Lok Sabha, the Bill goes to the Rajya Sabha for approval. Thereafter, it is sent to the President of India for assent. Also, the Union Government cannot collect taxes and money without the approval of the Parliament. Hence, the Parliament has full control over the financial matters of the country.

Administrative: The questions put by the Members must be answered by the concerned Ministers. The Members are expected to keep a watch over the functioning of various Departments. They can point out the lapses and misuse of powers on the part of the Ministers

Constitutional: The Parliament has power to amend or change some Articles of the Constitution.

Other Powers: The Members of the Parliament and the Members of the Legislative Assemblies of all States elect the President of India. However, the Vice President of India is elected by the Members of the Parliament

Sessions of Parliament

Under the Article 85, the President has the power to summon and prorogue either House of Parliament from time to time and to dissolve the Lok Sabha. The interval between the two sessions must not exceed six months. There are generally three sessions in a year.

The Budget Session: It commences in the 3rd week of February. This being the first

session of the year it commences with the address by the president on the first day to both the Houses assembled together. A few days later, the Railway Budget is presented. On the last day of the month, the General Budget is presented. The time for the presentation used to be 5 p.m. but from the year 2001, it has been changed to 11 a.m. after the presentation of the Budget, the Houses pass a motion of thank to the President for his / her address. After that the Railway Budget and then the demand for grants are taken. The Finance Bill which gives effect to the Budget proposals and the relevant Appropriation Bills are passed. As most of the time, an attention is devoted to the Budget; this session is called the Budget Session.

The Monsoon Session: It begins usually in the 3rd week of July. It is the rainy season for us connected with the arrival of the monsoon, which gives the session its name. The session is mostly devoted to legislative business.

The Winter Session: It starts in early November and ends in the 3rd week of December. Apart from the usual questions, calling attention and other motions, the major portion of time is set aside for legislative work.\

RAJYA SABHA

Composition of Rajya Sabha

The maximum strength of the Rajya Sabha 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.

At present, the Rajya Sabha has 245 members. Of these, 229 members represent the states, 4 members represent the union territories and 12 members are nominated by the president.

The Fourth Schedule of the Constitution deals with the allocation of seats in the Rajya Sabha to the states and union territories².

1. Representation of States

The representatives of states in the Rajya Sabha are elected by the elected members of state legislative assemblies. The election is held in accordance with the system of proportional representation by means of the single transferable vote. The seats are allotted to the states in the Rajya Sabha on the basis of population.

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. This election is also held in accordance with the system of proportional representation by

means of the single transferable vote. Out of the nine union territories, only three (Delhi, Puducherry and Jammu & Kashmir) have representation in Rajya Sabha. The populations of other six union territories are too small to have any representative in the Rajya Sabha.

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 rationale behind this principle of nomination is to provide eminent persons a place in the Rajya Sabha without going through the process of election. It should be noted here that the American Senate has no nominated members.

QUALIFICATION OF MEMBERS

Article 84 prescribes the qualification of members of Rajya Sabha. To be a member of Rajya Sabha any

person should:

- (a) Be a citizen of India;
- (b) Have completed the age of 30 years;
- (c) Possess other qualification as prescribed by the law of the Parliament. Section 3 of the Representation of People's Act, 1951, prescribes that to be a member of Rajya Sabha any person should be a registered voter in any parliamentary constituency in India.
- (d) Article 84 also provides that a person contesting in the election to Rajya Sabha has to 'subscribe an oath or affirmation according to the form set out for the purpose in the Third Schedule'.

DURATION OF THE HOUSE

Rajya Sabha is a standing (permanent) House and therefore, is not subjected to dissolution. However,

one third of the members of the House retire every two years. Hence, the election to Rajya Sabha is

conducted once in every two years i.e., at the beginning of every third year. Every member of the House

has a term of six years and those who have completed the six-year term will retire

CHAIRMAN AND DEPUTY CHAIRMAN OF RAJYA SABHA

Article 89 provides that the Vice-President[6] of India shall be *ex officio* Chairman of the Council of

States. One of the members of Rajya Sabha is chosen as the Deputy Chairman of Rajya Sabha. In case

a vacancy in the office of Deputy Chairman occurred due to resignation, removal, or death or any other

reason, then the Council shall choose another member to be Deputy Chairman.

The Deputy Chairman of Rajya Sabha will hold office until he is the member of the House and if he

ceases to be a member of the House, then the office falls vacant. The Deputy Chairman may resign by

writing under his hand addressed to the Chairman.

The Deputy Chairman is removed from office by a resolution of the Council passed by a 'majority of

all the then members of the House'. However, when a resolution for his removal of the Deputy Chairman

is being considered, he shall not preside over the meeting.

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 Anglo-Indian community

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. The election is based on the principle of universal adult franchise.

Every Indian citizen who is above 18 years of age and who is not disqualified under the provisions of the Constitution or any law is eligible to vote at such election.

2. Representation of Union Territories

The Constitution has empowered the Parliament to prescribe the manner of choosing the representatives of the union territories in the Lok Sabha.

3. Nominated Members

The president can nominate two members from the Anglo-Indian community if the community is not adequately represented in the Lok Sabha.

SYSTEM OF ELECTIONS TO LOK SABHA

For the purpose of holding direct elections to the Lok Sabha, each state is divided into territorial constituencies.

Reservation of Seats for SCs and STs

Though the Constitution has abandoned the system of communal representation, it provides for the reservation of seats for scheduled castes and scheduled tribes in the Lok Sabha on the basis of population ratios .

QUALIFICATION OF MEMBERS

Article 84 prescribes the qualification of members of Lok Sabha. To be a member of Lok Sabha any person should:

- (a) Be a citizen of India;
- (b) Have completed the age of 25 years;
- (c) Possess other qualification as prescribed by the law of the Parliament. Section 3 of the Representation of People's Act, 1951, prescribes that to be a member of Rajya Sabha any person should be a registered voter in any parliamentary constituency in India.

SPEAKER AND DEPUTY SPEAKER OF LOK SABHA

Article 93 provides for the office of the Speaker and Deputy Speaker of Lok Sabha. The Speaker and

Deputy Speaker of Lok Sabha are elected by the members of Lok Sabha. In case of any vacancy occurring in the office of Speaker and Deputy Speaker, then the House will elect two more members of the House as Speaker and Deputy Speaker

DURATION OF THE HOUSE

The Lok Sabha shall have a term of five years from the date appointed for its first meeting and no longer.

However, the term of the Lok Sabha may be extended by one year when a proclamation of national emergency is in operation. Similarly, the House may be dissolved before the expiry of the term by the President.

MEMBERSHIP OF PARLIAMENT

Qualifications

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

1. He must be a citizen of India.
2. He must make and subscribe to an oath or affirmation before the person authorised by the election commission for this purpose. In his oath or affirmation, he swears
 - (a) To bear true faith and allegiance to the Constitution of India
 - (b) To uphold the sovereignty and integrity of India
3. 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.
4. He must possess other qualifications prescribed by Parliament.

The Parliament has laid down the following additional

qualifications in the Representation of People Act (1951).

1. He must be registered as an elector for a parliamentary constituency. This is same in the case of both, the Rajya Sabha and the Lok Sabha. The requirement that a candidate contesting an election to the Rajya Sabha from a particular state should be an elector in that particular state was dispensed with in 2003. In 2006, the Supreme Court upheld the constitutional validity of this change.

2. 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. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

Disqualifications

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

1. if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by Parliament).⁸
2. if he is of unsound mind and stands so declared by a court.
3. if he is an undischarged insolvent.
4. if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state; and
5. if he is so disqualified under any law made by Parliament.

The Parliament has laid down the following additional disqualifications in the Representation of People Act (1951):

1. He must not have been found guilty of certain election offences or corrupt practices in the elections.
2. He must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.
3. He must not have failed to lodge an account of his election expenses within the time.
4. He must not have any interest in government contracts, works or services.
5. He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
6. He must not have been dismissed from government service for corruption or disloyalty to the State.
7. He must not have been convicted for promoting enmity

between different groups or for the offence of bribery.

8. He must not have been punished for preaching and practising social crimes such as untouchability, dowry and sati.

On the question whether a member is subject to any of the above disqualifications, the president's decision is final. However, he should obtain the opinion of the election commission and act accordingly.

Vacating of Seats

In the following cases, a member of Parliament vacates his seat.

1. Double Membership

A person cannot be a member of both Houses of Parliament at the same time. Thus, the Representation of People Act (1951) provides for the following:

- (a) If a person is elected to both the Houses of Parliament, he must intimate within 10 days in which House he desires to serve. In default of such intimation, his seat in the Rajya Sabha becomes vacant.
- (b) If a sitting member of one House is also elected to the other House, his seat in the first House becomes vacant.
- (c) If a person is elected to two seats in a House, he should exercise his option for one. Otherwise, both seats become vacant.

Similarly, a person cannot be a member of both the Parliament and the state legislature at the same time. If a person is so elected, his seat in Parliament becomes vacant if he does not resign his seat in the state legislature within 14 days⁹.

2. Disqualification

If a member of Parliament becomes subject to any of the disqualifications specified in the Constitution, his seat becomes vacant. Here, the list of disqualifications also include the disqualification on the grounds of defection under the provisions of the Tenth Schedule of the Constitution.

3. Resignation

A member may resign his seat by writing to the Chairman of Rajya Sabha or Speaker of Lok Sabha, as the case may be. The seat falls vacant when the resignation is accepted. However, the Chairman/ Speaker may not accept the resignation if he is satisfied that it is not voluntary or genuine.

4. Absence

A House can declare the seat of a member vacant if he is absent from all its meetings for a period of sixty days without its permission. In computing the period of sixty days, no account

shall be taken of any period during which the House is prorogued or adjourned for more than four consecutive days.

5. Other cases

A member has to vacate his seat in the Parliament:

- (a) if his election is declared void by the court;
- (b) if he is expelled by the House;
- (c) if he is elected to the office of President or Vice-President;
- and
- (d) if he is appointed to the office of governor of a state.

If a disqualified person is elected to the Parliament, the Constitution lays down no procedure to declare the election void.

This matter is dealt by the Representation of the People Act (1951), which enables the high court to declare an election void if a disqualified candidate is elected. The aggrieved party can appeal to the Supreme Court against the order of the high court in this regard.

TABLE 14.3 Lok Sabha and Rajya Sabha: A Comparison

Base	Lok Sabha	Rajya Sabha
Passage of Constitution Amendment Bills	Equal powers	Equal powers
Passage of Ordinary Bills	Equal powers	Equal powers
Joint sitting	Can dominate Rajya Sabha due to numerical strength. Speaker of Lok Sabha presides.	Enjoys equal powers with Lok Sabha, but the decision of Lok Sabha prevails due to its numerical strength. Deputy Chairman may preside in case of absence of Speaker and Deputy Speaker.
Financial Bills	Class I financial bills can be introduced only in Lok Sabha. In the passage of these bills both Houses enjoy equal powers. Class II Financial Bills are like Ordinary Bills so both Houses enjoy equal powers.	In respect of passage, enjoys equal powers with Lok Sabha. But Class I Financial Bills cannot be introduced in the Rajya Sabha.
Money Bill	Have exclusive powers to pass the Money Bills. Speaker certifies a bill as Money Bill and his decision is final.	Can retain the bill for a maximum period of 14 days. Have no further powers.
Council of Ministers	Collectively responsible (Article 75)	No such powers
Demands for grants	Has power to grant the demands and cut motions can be moved	No such powers
Power to make law on State matters	No power to authorize	Can authorize the Parliament to make law on State subject
All India Services	No powers	Can authorize the Parliament to create new All India Service

Salaries and Allowances

Members of either House of Parliament are entitled to receive such salaries and allowances as may be determined by Parliament, and there is no provision of pension in the Constitution. However, Parliament has provided pension to the members.

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.,

UNION JUDICIARY

The Constitution of India provides for a unified judiciary. Unlike the American Federation, the Indian Constitution provides for a single judiciary common to the union and the States. The Supreme Court remains at the apex of the judicial hierarchy in India.. The judicial system of a country takes up disputes and gives judgment based on the laws.

- 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.

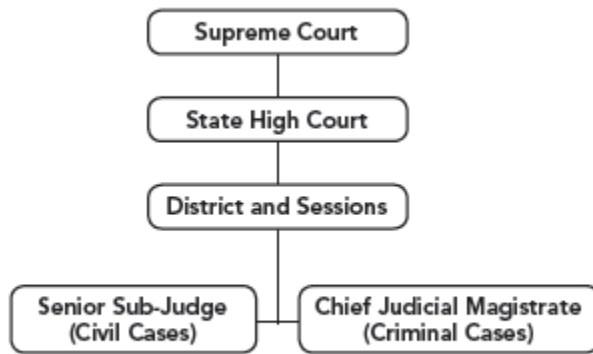


FIGURE 17.1: Indian Judiciary

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. The Parliament is also authorised to regulate them.

FUNCTIONS:

Resolving the disputes between the Union and the States, and between the States

Issuing Writs to safe guard the Fundamental Rights of the citizens

Interpreting the Provisions of the Constitution

Giving advice to the President of India

POWERS:

It has two types of cases to be tackled:

Original Jurisdiction: Refers to direct cases that come to them from the parties of Dispute

Appellate Jurisdiction: Refer to those which on decided at lower courts and referred for review

APPOINTMENT AND QUALIFICATION OF JUDGES

According to Article 124 (2), the power to appoint the judges of Supreme Court is vested in the President.

A judge of Supreme Court is appointed by the President by a warrant under his hand and seal.

The

President, in appointing the judges has to consult 'such of the judges of the Supreme Court and of the

high courts in the States as the President may deem necessary'.[3] At present, the Supreme Court consists of thirty-four judges (one

chief justice and thirty three other judges).

There are two important issues in relation to the appointment of the judges of Supreme Court namely:

1. Appointment of Chief Justice of India
2. Appointment of other judges

The Chief Justice and Judges of the Supreme Court are appointed by the President. He / she should be a citizen of India.

He / she should have been a High Court Judge for at least five years or an Advocate of the High Court for at least ten years, or a distinguished Jurist. The age of retirement of Judge is 65. After his / her retirement, he / she cannot practice as an Advocate in any Court. If the Judges are found guilty while discharging their duties, they can be removed from their Office by the President. The Acting Chief Justice can be appointed by the President, if the Office of the Chief Justice of India falls vacant or he / she is unable to perform his / her duties due to absence or otherwise.

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 (or high courts in succession) for five years; or (b) He should have been an advocate of a High Court (or High Courts in succession) for ten years; or (c) He should be a distinguished jurist in the opinion of the president.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court

SALARIES AND ALLOWANCES

The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency. In 2018, the salary of the chief justice was increased from ₹1 lakh to ₹2.80 lakh per month and that of a judge from ₹90,000 to ₹2.50 lakh per month⁶. They are also paid sumptuary allowance and provided with free accommodation and other facilities like medical, car, telephone, etc.

The retired chief justice and judges are entitled to 50 per cent of their last drawn salary as monthly pension.

JURISDICTION AND POWERS OF SUPREME COURT

The Constitution has conferred a very extensive jurisdiction and

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

1. Original Jurisdiction.
2. Writ Jurisdiction.
3. Appellate Jurisdiction.
4. Advisory Jurisdiction.
5. A Court of Record.
6. Power of Judicial Review.
7. Constitutional Interpretation
8. Other Powers

1. Original Jurisdiction

As a federal court, the Supreme Court decides the disputes between different units of the Indian Federation. More elaborately, any dispute:

- (a) Between the Centre and one or more states; or
- (b) Between the Centre and any state or states on one side and one or more other states on the other side; or
- (c) Between two or more states.

In the above federal disputes, the Supreme Court has exclusive original jurisdiction. Exclusive means, no other court can decide such disputes and original means, the power to hear such disputes in the first instance, not by way of appeal.

2. Writ Jurisdiction

The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens.

The Supreme Court is empowered to issue writs including *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* for the enforcement of the fundamental rights of an aggrieved citizen. In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. However, the writ jurisdiction of the Supreme Court is not exclusive. The high courts are also empowered to issue writs for the enforcement of the

Fundamental Rights. It means, when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

There is also a difference between the writ jurisdiction of the Supreme Court and that of the high court. The Supreme Court can issue writs only for the enforcement of the Fundamental Rights and not for other purposes. The high court, on the other hand, can issue writs not only for the enforcement of the fundamental rights but also for other purposes.

3. Appellate Jurisdiction

As mentioned earlier, the Supreme Court has not only succeeded the Federal Court of India but also replaced the British Privy Council as the highest court of appeal. The Supreme Court is primarily a court of appeal and hears appeals against the judgements of the lower courts. It enjoys a wide appellate jurisdiction which can be classified under four heads:

- (a) Appeals in constitutional matters.
- (b) Appeals in civil matters.
- (c) Appeals in criminal matters.
- (d) Appeals by special leave.

4. Advisory Jurisdiction

The Constitution (Article 143) authorises the president to seek the opinion of the Supreme Court in the two categories of matters:

- (a) On any question of law or fact of public importance which has arisen or which is likely to arise.
- (b) On any dispute arising out of any pre-constitution treaty, agreement, covenant, engagement, sanad or other similar instruments.

5. A Court of Record

As a Court of Record, the Supreme Court has two powers:

- (a) The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court. They are recognised as legal precedents and legal references.
- (b) It has power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine up to ₹2,000 or with both. In 1991, the Supreme Court has ruled that it has power to punish for contempt not only of itself but also of high courts, subordinate courts and tribunals functioning in the entire country.

6. Power of Judicial Review

Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution (*ultra-vires*), they can be declared as illegal, unconstitutional and invalid (null and void) by the Supreme Court. Consequently, they cannot be enforced by the Government

7. Constitutional Interpretation

The Supreme Court is the ultimate interpreter of the Constitution. It can give final version to the spirit and content of the provisions of the constitution and the verbiage used in the constitution.

8. Other Powers

Besides the above, the Supreme Court has numerous other powers:

- (a) It decides the disputes regarding the election of the president and the vicepresident. In this regard, it has the original, exclusive and final authority.
- (b) 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. If it finds them guilty of misbehaviour, it can recommend to the president for their removal. The advice tendered by the Supreme Court in this regard is binding on the President
- (c) It has power to review its own judgement or order. Thus, it is not bound by its previous decision and can depart from it in the interest of justice or community welfare. In brief, the Supreme Court is a self-correcting agency. For example, in the *Kesavananda Bharati* case (1973), the Supreme Court departed from its previous judgement in the *Golak Nath* case (1967).
- (d) It is authorised to withdraw the cases pending before the high courts and dispose them by itself. It can also transfer a case or appeal pending before one high court to another high court.
- (e) Its law is binding on all courts in India. Its decree or order is enforceable throughout the country. All authorities (civil and judicial) in the country should act in aid of the Supreme Court.
- (f) It has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country

APPEAL BY SPECIAL LEAVE

Article 136 provides for the appeal by special leave granted by the Supreme Court. It is a discretionary

power of the Supreme Court. The jurisdiction is of the widest amplitude as regards:[13]

- The court from whose decision the appeal may be entertained. The appeal will lie from any court including Administrative Tribunals except courts martial.

- The nature of the decision that may be appealed from. The appeal will lie in any kind of decision—interim orders, final order, decree or judgment. Even in cases where no order has been passed by any tribunal, the appeal will lie if the case merits.
 - The nature of the proceeding in which appeal may be entertained, it is irrespective of whether the proceeding is constitutional, civil, and criminal or other proceedings.
 - The grounds that may be allowed to be raised for seeking such special leave.
- From the above, it can be inferred that it is a ‘plenary jurisdiction’ vesting very wide powers and involves much of discretion to the Supreme Court. Thus, the Supreme Court ruled that the power must be ‘exercised sparingly’.[14]

Supreme Court Guidelines on the Exercise of the Power: In various cases the Supreme Court has evolved the guidelines for the exercise of the power to grant appeal by special leave.

TABLE 17.1 Difference between Ordinary Appeal and Appeal by Special Leave

Ordinary Appeal	Appeal Special Leave
(i) Available only against final order	Available against any order like an interim order. In certain cases, it is available even if there is no order passed by any tribunal
(ii) Available only against the final order of the high court	Available against any tribunal except military tribunals
(iii) Appeal depends on the nature of the proceedings—constitutional, civil or criminal	Nature of proceedings not a bar
(iv) Appeal lies only on the basis of high court certificate under Article 134A	Certificate of appeal from high court not essential
(v) Follows the due course as provided by law	If the appeal is granted the Supreme Court takes up the matter for immediate consideration. The appeal gets primacy over the courts regular agenda.
(vi) No conditions imposed	Available only when the case involved matters of urgent public importance.

Firstly, the power must not be exercised in circumstances when the high court has taken the reasonably possible view.

Secondly, the appeal may be granted in cases where there has been a violation of the Principle of Natural Justice.

Thirdly, in civil cases, the appeal shall be granted only if the case involves a ‘substantial question of law of general importance.

Fourthly, in criminal cases, the appeal shall be granted only when it is shown that ‘exceptional circumstances exist that substantial and grave injustice has been done’.

Fifthly, with respect to the quasi-judicial tribunals, the appeal shall be granted only when they exceeded their jurisdiction.

Lastly, in general terms the appeal shall be granted only when ordinary course of appeal by other means is not applicable