

UNIT-2

(Union Executive and State Executive)

Power and Functions of Indian Parliament:

All the legislative powers of the federal Government are vested in the Parliament. The laws framed by the Indian Parliament are enforced in the whole of the country. The Parliament of India is a bi-cameral legislature. It consists of two houses- Rajya Sabha Lok Sabha and President of India. Rajyasabha is the upper chamber of the Parliament while Lok Sabha is the lower chamber of the Parliament.

The Parliament of India is a bi-cameral legislature. It consists of two houses- Rajyasabha & Lok Sabha and President of India. Parliament makes law with the help of its both the chambers. Laws passed by the parliament and approved by the president are enforced in the whole country.

Its powers and functions can be classified in to following heads:

- (1). Legislative powers
- (2). Executive powers
- (3). Financial powers
- (4). Constituent powers
- (5). Judicial powers
- (6). Electoral powers
- (7). Other powers

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. Constitution also have powers to make law with respect to state legislature in following circumstances:

- (i). When Rajya Sabha passes a resolution to that effect
- (ii). When national emergency is under operation
- (iii). When two or more states request parliament to do so
- (iv). When necessary to give effect to international agreements, treaties and conventions
- (v). When President's rule is in operation.

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. ministers are collectively responsible to the Parliament.

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- Example - To amend the constitution, to pass any laws required

5) Judicial Powers- 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 elects speaker and deputy speaker from among its members. Similarly members of Rajya Sabha elects deputy chairman.

7). Other Powers-

- (i). To discuss various issues of national and international importance
- (ii). Imposing emergency
- (iii). Increase or decrease area, change names, alter the boundary of the states
- (iv). Create or abolish state legislature etc any powers can be added from time to time.

Functions of Rajya Sabha:

The functions of Rajya Sabha may broadly be categorised as:

- **Legislative**
- **Financial**
- **Deliberative** and

Legislation is by far the most important business of Rajya Sabha, as indeed of Parliament and in this sphere, **Rajya Sabha enjoys almost equal powers with Lok Sabha.**

Legislative Functions-

- The **Constitution has classified the subjects for legislation into three Lists**, namely
 - The Union List,
 - The State List and
 - The Concurrent List.
- The **Union List includes** those subjects over which Parliament has **exclusive authority to make laws, while the Concurrent List enumerates those subjects over which it has authority along with the States.**
- Even in regard to the **State List**, over which the **States have exclusive jurisdiction, Parliament can assume authority**, if
 - Rajya Sabha declares by a resolution supported by **not less than two-thirds of the members present and voting that such legislation is in national interest**, or
 - **two or more States mutually agree that Parliament may do so**, or
 - **It is necessary to implement treaties or international conventions.**

Financial Functions-

- Under the Constitution, financial legislation has been divided into two categories – **Money Bills and Financial Bills.**
- **The former contains only and exclusively money clauses and the latter, apart from money clauses also contain other matters.**

- A Bill which, if enacted and brought into operation would involve expenditure from the **Consolidated Fund of India** is also called a **Financial Bill**.
- With respect to Money Bills, **Rajya Sabha is empowered to make only recommendations**.
- If a **Money Bill** which is transmitted to **Rajya Sabha** for its recommendations is not returned to **Lok Sabha within fourteen days**, it is deemed to have been passed by both Houses at the expiration of the said period in the form it was passed by Lok Sabha.
- However, in case of Financial Bills, **Rajya Sabha has full powers like an ordinary piece of legislation**.

Deliberative Functions-

- One of the important functions of Rajya Sabha is **to focus public attention on major problems affecting policies of the Government and administration and to provide a forum for ventilation of public grievances**.
- This responsibility is discharged through **deliberations on General Budget, Railway Budget, and Motion of Thanks on the President's Address, Five-Year Plans and working of various Ministries/Departments and on various policy statements made by the Government**.

Federal Functions

- Rajya Sabha may pass a resolution, by a **majority of not less than two-thirds of the members present and voting, to the effect that it is necessary or expedient in the national interest that Parliament should make a law with respect to any matter enumerated in the State List**.
- Such a resolution remains in force for a **maximum period of one year** but **this period can be extended by one year at a time by passing a further resolution**.
- If Rajya Sabha passes a resolution **by a majority of not less than two-thirds of the members present and voting declaring** that it is necessary or expedient in the national interest to create **one or more All India Services common to the Union and the States**, Parliament may then **by law provide for the creation of such service or services**.
- Under the Constitution, the **President is empowered to issue Proclamations in the event of national emergency**, in the event of failure of constitutional machinery in a State, or in the case of financial emergency.
- Normally, every such Proclamation has **to be approved by both Houses of Parliament within a stipulated period**. Under certain **circumstances**, however, **Rajya Sabha enjoys special powers in this regard**.

- If a Proclamation is issued at a time when Lok Sabha has been dissolved or the dissolution of Lok Sabha takes place within the period allowed for its approval, then **the Proclamation can remain effective if, a resolution approving it is passed by Rajya Sabha.**

Functions of the Lok Sabha:

The Parliament consists of two houses i.e. Lok Sabha and Rajya Sabha. The Lok Sabha is the lower house with a maximum strength of 552 members, out of which 530 members represent the State, 20 members represent the Union Territories and 2 members from the Anglo-Indian community.

The important functions of the Lok Sabha are:

1) Legislative Function: The primary function of Parliament is a law making function. Lok Sabha plays an important part. It can pass bills concerning to all those subject which have been included in Union and Concurrent list. No bill can become law unless it has been passed by Lok Sabha. In case of any disagreement between the two Houses, the will of Lok Sabha will prevail in joint sitting with the Rajya Sabha because Lok Sabha has more members than Rajya Sabha.

2) Financial Power: The power of control over the finances by the Lok Sabha is powerful. The money bill has to be introduced in the Lok Sabha first, and when passed by the Lok Sabha it is to be transmitted to Rajya Sabha for the recommendation. It is upon the Lok Sabha to accept or not to accept the recommendations. The Lok Sabha alone has the exclusive power of sanctioning all government expenditures.

3) Executive Control: Article 75(3) of the Constitution provides that 'Council of Ministers are collectively responsible to the Lok Sabha.' Thus, the Government is accountable to the Lok Sabha for its acts. It is only the Lok Sabha which can pass a no-confidence vote against the Council of Ministers and force them to resign.

4) Electoral Function: The Lok Sabha members are part of the electoral college for the election of President. The members of Lok Sabha also elect the Vice-President. It elects the Speaker and Deputy Speaker.

There are more other functions of the Lok Sabha like redressal of grievances, judicial functions, and miscellaneous functions.

President of India:

The President of India is the executive head of India. He is the supreme command of the defense forces of India and the ceremonial head of the country and also called the first citizen of India.

The President is elected indirectly by Electoral College in both houses of Parliament and the legislative assembly of each State and territory of India, who themselves are directly chosen by the people of India. It means we choose the President indirectly.

In article 53 of the constitution of India, it is provided that all the executed powers of the Unions are vested to the President. He can use these powers directly and indirectly. Here, indirectly means that he can use these powers through the officers subordinate to him.

According to Article 53 of the Constitution of India, the President of India can exercise his powers directly or by his subordinate authority. But in practice, all the powers are exercised by the PM of India, the subordinate authority, with the help of the Council of Ministers.

This article will give the information about the procedure to elect the President, his qualifications, term of office, impeachment process, and various power of the President of India.

Currently, Mr. Ram Nath Kovind is the President of India or “Bharat Ke Rashtrapati”, (25 July 2017).

A president is the head of the country. He is known as the first citizen of India. After taking the oath, he becomes the union executive along with the vice-president of India, attorney general, and PM of India. He is the supreme command of India.

The process to elects the President-

The President of India is not elected directly as other ministers are elected. There is an electoral college that elects him. This college is responsible for the election of the president with consisting of the members (who are already elected) of parliament and legislative assembly of all states and UT of Delhi, Puducherry, and Jammu and Kashmir. The values of the votes are based on the population in 1971 rather than the current population of each state and UTs. It is a secret ballot system of voting.

Composition of Electoral College:

The composition is made up of the elected members of

- The upper house (Rajya Sabha) of parliament of India.
- Lower of House (Lok Sabha) of Parliament of India.
- Each states legislative assembly (the lower house of the state assembly of each state)

- Union territory possessing its legislative assembly.

Now there are two types of voters for the voting of Electoral College which are MP and MLA.

As mentioned above the vote value is counting on the bases of the population in 1971. So we have given 2 formulas to calculate the value of votes:

These are the formulas used in the Electoral College to count the votes-

There are also the following persons in the assemblies and state councils who cannot take part in the president elects, such as:

- The nominates members of Lok Sabha and Rajya Sabha
- Nominated members of the legislative assembly of each state
- Member of legislative councils in bicameral legislatures
- Nominated members of UTs of Delhi and Puducherry

It should be noted that if there is any dispute arise related to the election of the president, the decision given by the Supreme Court of India will be the final.

Oath by the president of India-

Article 60 of the constitution of India provides the oath to the President that “every person who is acting as President of India shall make an oath to his office. It includes the oath to preserve, defend, and protect the constitution of India”. It means, the president takes the oath as the guardian of the constitution.

The Chief Justice of India administers the oath to the President in Parliament’s Central Hall. And if the Chief Justice of India is not present at that time, the senior-most judge of the Supreme Court administers the same.

Qualification of the President-

Every person cannot become the President of India. There are some qualifications given under the constitution of India for the president:

- The person should be the citizen of India
- The minimum age required is 35 years.
- He should qualify all the conditions to be elected as a member of the lower house (Lok Sabha).
- He should not hold any office of profit under any Indian government of public authority.

Impeachment:

There are not so many conditions that are given under the constitution for the impeachment of the president. The only one condition when the president can be impeached is the “violation of the constitution”.

Process of Impeachment-

When the parliament found that there is a violation of the constitution has been by the president, either of the houses can take the initiative against the impeachment process. Lets us consider that the Rajya Sabha takes the initiative first for the impeachment process. Now, the resolution will be put in the Rajya Sabha and the debate will be done on that resolution in Rajya Sabha. If the 2/3 majority agrees to it, the resolution will be considered as the passed by Rajya Sabha. After that, it will go to the Lok Sabha for the same proceedings. If the resolution for impeachment is also passed in the Lok Sabha by majority the President will be removed from his seat. Note: The president can sit in the session during his impeachment process.

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When the office of the president can vacant?

The President's office can be vacant on some circumstances, which are:

- After the completion of the term of office.
- By giving the resign of the president by forwarding his resignation letter to the VicePresident of India.
- When the impeachment resolution has been passed by both the Houses of Parliament.
- If the SC declares the elections invalid done by Electoral College.

Powers and Functions of President-

The major duty of the President of India is to protect the Constitution of India. This is the part of his oath under article 60 of the Constitution of India.

Executive Functions of President of India-

Head of Union

He is the head of the union executives. It means, all the executive powers are vested in him and he can use these powers directly or through the officers subordinate to him. He has the power to make laws

and to conclude treaties and agreements.

Appointments

The president appoints the governors of the states, judges of the Supreme Court, and high court. He appoints the Auditor General of India and also many other officials like election commissions, finance commissions, etc.

Appointment of PM and ministers

The president appoints the Prime Minister of India and after that other council of ministers with the advice of the PM. This council is headed by the prime minister to aid and to give the advice to the president.

Can ask to prove majority

The term of the union of a council of minister remains in power for five years after the appointment unless it dissolved earlier due to any reasons. During this period of time, the president must be satisfied that this council enjoys its confidence of the majority of the lower House. The President can ask the council to prove its majority in case of any doubt.

Supreme Commander

He has the power to declare the war as he is the supreme commander of the Indian armed forces. He can also conclude the treaties related to any situation of war.

Legislative powers-

The legislative power is vested in the Parliament. The President of India is the head of the Parliament. He facilitates the Law making process. He has the power to dissolve the Lok Sabha. A bill passed by both the houses can only become Act after receiving the assent of the President of India.

Part of the Parliament of India

The Parliament of India consists of the Upper house and lower house followed by the President of India. He is an integral part of the parliament. He summons time to time for the sessions of the houses either jointly or separately. He can prorogue the houses of parliament or can also dissolve the Lok Sabha or lower house of parliament of India.

Summons for Joint Session

He can summons both the Houses of Parliament for joint sessions in the case of conflict between both the houses to pass any Bill.

Power in respect of Bill

When both the houses pass the Bill by the majority and send the Bill to the President of India for his assent, he can give his assent or withhold his assent and sent back the bill to houses. But if both the houses pass the bill without any change, it will become obligatory to the President of India to give his assent.

Nomination

The President of India nominates the members of the member in both Houses of Parliament. The main purpose of the nomination is to ensure adequate representation in Parliament of all sections of the population which may not always be achieved through elections.

Power to pass Ordinances

When both the houses of Parliament are not in session, the President of India can pass the Ordinances under article 123 of the Constitution of India. Such an ordinance has the same power as the Act of Parliament. After the opening of the session, the ordinance may be passed by both the houses to make it as Law.

Financial powers-

No money Bill can be introduced without the prior permission of the President of India. As indicated by the Constitution of India, the Annual Financial Statement is set by the President before both the Houses of Parliament. This announcement shows the evaluations of income and use of the focal Government for the following year. It might be called attention to that the proposition for tax collection and use can't be made without the endorsement of the President. No proposition for going through cash or raising incomes for reasons for government can be presented in Parliament without the past consent of the President.

Emergency Powers-

There are three types of emergency given in the Constitution of India.

- National Emergency (Art. 352)
- State emergency (President Rule) (Art. 356)
- Financial Emergency (Art. 360)

The Constitution of India empowers The President of India to proclaim the emergency.

National Emergency

He has the power to declare a national emergency when there is a threat to the security of the nation. The threat can be from anything like external aggression, war, or any armed rebellion. The proclamation given by the President may remain in force for an indefinite time. During the National emergency, all the executive powers of the State will be exercised or supervised by the Central government. There are three lists given in the constitution where the state and central government can make laws. But during the national emergency, the central government can also make the laws in the state list. Article 19 of the constitution of India shall remain suspended during the national emergency.

State Emergency

State emergency is also known as the failure of the Constitution Machinery in a State. The president has the authority to make the proclamation of State emergency. The duration of the state emergency is up to 3 years. During the period of a state emergency, the executive powers of the state shall be executed by the parliament of India.

Financial Emergency

Whenever the financial stability of the country is threatened the president can proclaim the financial emergency. There is an indefinite period for the financial emergency. The money bills passed by the state legislature will be passed by the consent of the president.

Military Powers-

The President of India is the supreme command of the Defense forces of India. But he is required to exercise his supreme power under the law. The president may take action to declare war or peace, but the Parliament has exclusive power to regulate or control the exercise of such power.

The power relating to foreign and diplomatic affairs is exercised by the Union Government. All diplomatic business is conducted in the name of the President.

All the International treaties and agreements are negotiated and concluded in the name of the President.

Diplomatic Powers-

- He receives the ambassadors, High Commissioners, and diplomatic envoys from foreign nations.
- Represents India in International Conferences.
- He has the powers of appointing Indian Ambassadors to other countries.

Discretionary Powers of the President-

The President of India has certain discretionary powers which he can use at the time of need to use such powers:

Appointing the New Prime Minister

He has the power to appoint the New Prime Minister in the case of death of the Prime Minister during his period of office or in the case of when Parliament hanged.

No-Confidence Motion

The President of India has the power to dissolve the lower house or to look for the alternative when the Prime Minister or any other Minister loses the „No Confidence Motion“.

Power to dismiss the Ministers

The President has the power to dismiss the Ministers if the council of Ministers losses the house“s confidence and the Minister is refusing to regine.

Judicial Powers-

The President has the power to grant pardon reprieves, respites, and remission of punishment. He also appoints the judges of SC and HC and Chief Justice of India. He can suspend remit or commute the sentence of any person convicted of any offense. Article 72 of the Constitution of India gives the right to the President to grant the pardon in different cases.

The power includes:

- [Commutation](#)
- **Pardon**
- **Remission**
- **Respite**
- **Reprive**

He is empowered to grant the pardon in the following circumstances:

- when the punishment is for the offense which is against the Union laws
- in the matter of punishment given by Military Court
- In the matter of death sentence in any case

All these powers which are given to the president are independent of the opinion of the PM or the majority of the Upper house of the parliament. Most of the powers of the president are being executed with the advice of the council of ministers and Prime Minister of India.

Veto Power of President-

After passing the Bill from both the houses of the Parliament, the bill comes for the assent of the President. Now, it is his choice to pass or reject the bill. This choice to reject or pass the bill is known as the veto power of the President.

Limitations on President of India-

The constitution of India also gave the limitations on the executive powers of the [President]. He has the limitation on the powers due to the council of the Ministers. Though no bill can be pass without the assent of President, if the same bill is passed again by both the houses of the Parliament, the President is bound to give his assent for that bill.

Also, the approval of proclamations passed by the [President] of India has to be passed by the parliament. They become null and void if does not approve by the Parliament.

List of all the 13 Presidents of India:

S.N.	Name	Tenure	Remark
1.	Dr. Rajendra Prasad	26 January 1950 to 12 May 1962	First president, longest tenure (12 years)
2.	S. Radhakrishnan	13 May 1962 to 13 May 1967	He was the first President from South India. Teacher's day is celebrated on 5 Sept. to honour his birthday.
3.	Dr. Zakir Hussain	13 May 1967 to 3 May 1969	President with the shortest tenure, first Muslim president to die in harness
4.	Varahagiri Venkata Giri	3 May 1969 to 20 July 1969	First acting president of India
	Mohammad Hidayatullah	20 July 1969 to 24 August 1969	Served as the Chief Justice of India, and was a recipient of the Order of the British Empire.
	Varahagiri Venkata Giri	24 August 1969 to 24 August 1974	Giri is the only person to have served as both an acting president and president of India.
5.	Fakhruddin Ali Ahmed	24 August 1974 to 11 February 1977	second Indian president to die in office.
	Basappa Danappa Jatti	11 February 1977 to 25 July 1977	Served as acting President of India upon Ahmed's death

6.	Neelam Sanjiva Reddy	25 July 1977 to 25 July 1982	Youngest to become president @ 64 yr , the first president who did not become vice - president
7.	Giani Zail Singh	25 July 1982 to 25 July 1987	First Sikh President
8.	Ramaswamy Venkataraman	25 July to 25 July 1987 25 July 1992	Oldest to become President @ 76 yr
9.	Shankar Dayal Sharma	25 July 1992 to 25 July 1997	Sharma was Chief Minister of Madhya Pradesh
10.	Kocheril Raman Narayanan	25 July 1997 to 25 July 2002	He was the first President from Kerala, and also the first Dalit President.
11.	A. P. J. Abdul Kalam	25 July 2002 to 25 July 2007	He was the first bachelor/Scientist president of India and the first Muslim President who completed his term.
12.	Pratibha Patil	25 July 2007 to 25 July 2012	The first woman to become the President of India.
13.	Pranab Mukherjee	From 5 July 2012, Incumbent	Served as the Foreign Minister, Defence Minister and Deputy Chairman of the Planning Commission.
14.	Ram Nath Kovind	25 July 2017— Incumbent	14th President of India

Seven Presidents have been members of a political party before being elected. Six of these were active party members of the Congress Party. Dr. Rajendra Prasad (first President of India) is the only person to have held office for two terms.

Incumbent President Ram Nath Kovind was the Governor of Bihar before becoming the President of India.

Functions of the Prime Minister:

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.

Note: If the Prime Minister resigns from his post or dies, then other ministers can't do any work, which means the Council of Ministers dissolves itself with the death/resignation of the Prime Minister.

The Prime Minister has the right to give advice to the President in relation to the appointment of the following officers-

1. The Comptroller and Auditor General of India
2. Attorney-General of India
3. Solicitor General of India
4. President of the Union Public Service Commission and its members

5. Election Commissioners

6. Chairman and Members of the **Finance Commission**.

Other powers of the Prime Minister-

1. He plays an important role in shaping the foreign policy of the nation.

2. He is the chief spokesman of the Central Government.

3. He is the leader of the ruling party.

4. He is ex-officio Chairman of the Planning Commission (now NITI Aayog), National Development Council, National Integration Council, Inter-State Council and National Water Resources Council.



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

6. He is the political head of the armies.

List of all the Prime Ministers is given below-

S.N.	Name	Born- Dead	Term of office	Remark
1.	Jawahar Lal Nehru	(1889– 1964)	5 August 1947-27 May 1964 16 years, 286 days	The first prime minister of India and the longest-serving PM of India, first to die in office.
2.	Gulzarilal Nanda	(1898– 1998)	27 May, 1964 to 9 June 1964, 13 days	First acting PM of India

3.	Lal Bahadur Shastri	(1904–1966)	9 June, 1964 to 11 January 1966 1 year, 216 days	He has given the slogan of 'Jai Jawan Jai Kisan' during Indo-Pak war of 1965
4.	Indira Gandhi	(1917–1984)	24 January 1966 to 24 March 1977 11 years, 59 days	First lady Prime Minister of India
5.	Morarji Desai	(1896–1995)	24 March 1977 – 28 July 1979 2 year, 116 days	Oldest to become PM @ 81 and first to resign from office
6.	Charan Singh	(1902–1987)	28 July, 1979 to 14 Jan. 1980 170 days	Only PM who did not face the Parliament
7.	Indira Gandhi	(1917–1984)	14 Jan. 1980 to 31 Oct. 1984 4 years, 291 days	The first lady who served as PM for the second term
8.	Rajiv Gandhi	(1944–1991)	31 Oct, 1984 to 2 Dec. 1989 5 years, 32 days	Youngest to become PM @ 40 year
9.	V. P. Singh	(1931–2008)	2 Dec. 1989 to 10 Nov. 1990 343 days	First PM to step down after a vote of no confidence
10.	Chandra Shekhar	(1927–2007)	10 November, 1990 to 21 June 1991 223 days	He belongs to Samajwadi Janata Party
11.	P. V. Narasimha Rao	(1921–2004)	21 June 1991 to 16 May 1996 4 years, 330 days	First PM from south India
12.	Atal Bihari Vajpayee	(born 1924)	16 May, 1996 to 1 June 1996 16 days	PM for shortest tenure

13.	H. D. Deve Gowda	(born 1933)	1 June, 1996 to 21 April 1997 324 days	He belongs to Janata Dal
14.	Inder Kumar Gujral	(1919–2012)	21 April 1997 to 19 March, 1998 332 days	-----
15.	Atal Bihari Vajpayee	(born 1924)	19 March, 1998 to 22 May 2004 6 years, 64 days	The first non-congress PM who completed a full term as PM
16.	Manmohan Singh	(born 1932)	22 May 2004 to 26 May 2014 10 years, 4 May 2 days	First Sikh PM
17.	Narendra Modi	(born 1950)	26 May 2014, Incumbent	4th Prime Minister of India who served two consecutive tenures

The results of the 17th Lok Sabha elections have been declared on the 23 May, 2019. [Narendra Modi](#) will be the 15th Prime Minister (in person) of India. He is the 4th Prime Minister of India who would serve two consecutive terms as Prime Minister of India and the first Non-Congress Party Prime Minister of India who would complete two consecutive terms.

Judicial Review in India:

Judicial Review refers to the power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void, if it finds them in conflict the Constitution of India.

Judicial Review is the power of the Judiciary by which-

- (i) The court reviews the laws and rules of the legislature and executive in cases that come before them; in litigation cases.
- (ii) The court determines the constitutional validity of the laws and rules of the government; and
- (iii) The court rejects that law or any of its part which is found to be unconstitutional or against the Constitution.

Features of Judicial Review in India-

1. Judicial Review Power is used by both the Supreme Court and High Courts:

Both the Supreme Court and High Courts exercise the power of Judicial Review. But the final power to determine the constitutional validity of any law is in the hands of the Supreme Court of India.

2. Judicial Review of both Central and State Laws:

Judicial Review can be conducted in respect of all Central and State laws, the orders and ordinances of the executives and constitutional amendments.

3. A Limitations:

Judicial Review cannot be conducted in respect of the laws incorporated in the 9th Schedule of the Constitution.

4. It covers laws and not political issues:

Judicial Review applies only to the questions of law. It cannot be exercised in respect of political issues.

5. Judicial Review is not automatic:

The Supreme Court does not use the power of judicial review of its own. It can use it only when any law or rule is specifically challenged before it or when during the course of hearing a case the validity of any law is challenged before it.

6. Decisions in Judicial Review Cases-

The Supreme Court can decide-

- (i) The law is constitutionally valid. In this case the law continues to operate as before, or
- (ii) The law is constitutionally invalid. In this case the law ceases to operate with effect from the date of the judgment.
- (iii) Only some parts or a part of the law is invalid.

In this case only invalid parts or part becomes non-operative and other parts continue to remain in operation. However, if the invalidated parts/part is so vital to the law that other parts cannot operate without it, then the whole of the law gets rejected.

7. Judicial Review Decision gets implemented from the date of Judgement-

When a law gets rejected as unconstitutional it ceases to operate from the date of the judgment. All activities performed on the basis of the law before the date of the judgment declaring it invalid, continue to remain valid.

8. Principle of Procedure established by Law-

Judicial Review in India is governed by the principle: 'Procedure Established by Law'. Under it the court conducts one test, i.e., whether the law has been made in accordance with the powers granted by the Constitution to the law-making body and follows the prescribed procedure or not. It gets rejected when it is held to be violative of procedure established by law.

9. Clarification of Provisions which a rejected law violates-

While declaring a law unconstitutional, the Supreme Court has to cite the provisions of the constitution which it violates. The court has to clearly establish the invalidity of the concerned law or any of its part.

Public Interest Litigation (PIL):

Introduction-

Public interest litigation is the power given to the **public** by courts through judicial activism. However, the person filing the **petition** must prove to the satisfaction of the court that the **petition** is being filed for a **public interest** and not just as a frivolous **litigation** by a busy body.

OR

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. 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.

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.

- Public interest litigation is the power given to the public by courts through judicial activism. However, the person filing the petition must prove to the satisfaction of the court that the petition is being filed for a public interest and not just as a frivolous litigation by a busy body.
- The court can itself take cognizance of the matter and proceed suo motu or cases can commence on the petition of any public spirited individual.

Some of the matters which are entertained under PIL are:

- Bonded Labour matters
- Neglected Children
- Non-payment of minimum wages to workers and exploitation of casual workers
- Atrocities on women
- Environmental pollution and disturbance of ecological balance
- Food adulteration
- Maintenance of heritage and culture

Evolution of PIL in India:

Some Landmark Judgements-

- The seeds of the concept of public interest litigation were initially sown in India by **Justice Krishna Iyer**, in 1976 in **Mumbai Kamagar Sabha vs. Abdul Thai**.
- The first reported case of PIL was **Hussainara Khatoon vs. State of Bihar** (1979) that focused on the inhuman conditions of prisons and under trial prisoners that led to the release of more than 40,000 under trial prisoners.

- **Right to speedy justice emerged as a basic fundamental right** which had been denied to these prisoners. The same set pattern was adopted in subsequent cases.

Factors Responsible for the Growth of PIL in India

- 1. The character of the Indian Constitution.**
2. India has some of the most **progressive social legislations**
3. The **liberal interpretation of locus standi** where any person can apply to the court on behalf of those who are economically or physically unable to come before it has helped.
- 4. Judicial innovations to help the poor and marginalised.**

Who Can File a PIL and Against Whom?

Any citizen can file a public case by filing a petition:

- Under Art 32 of the Indian Constitution, in the Supreme Court.
- Under Art 226 of the Indian Constitution, in the High Court.
- Under sec. 133 of the Criminal Procedure Code, in the Court of Magistrate.
- A Public Interest Litigation can be filed **against a State/ Central Govt., Municipal Authorities, and not any private party.**

Significance of PIL-

- The aim of PIL is to give to the common people access to the courts to obtain legal redress.
- PIL is an important **instrument of social change** and for maintaining the Rule of law and accelerating the balance between law and justice.
- The original purpose of PILs have been **to make justice accessible to the poor and the marginalised.**
- It is an important tool to make human rights reach those who have been denied rights.
- 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.
- It helps in judicial monitoring of state institutions like prisons, asylums, protective homes, etc.
- It is an important tool for implementing the concept of judicial review.
- Enhanced public participation in judicial review of administrative action is assured by the inception of PILs.

Weaknesses of PIL-

- PIL actions may sometimes give rise to the **problem of competing rights**. For instance, when a court orders the closure of a polluting industry, the interests of the workmen and their families who are deprived of their livelihood may not be taken into account by the court.
- It could lead to overburdening of courts with **frivolous PILs by parties with vested interests**. PILs today has been appropriated for corporate, political and personal gains. Today the PIL is no more limited to problems of the poor and the oppressed.
- Cases of **Judicial Overreach** by the Judiciary in the process of solving socio-economic or environmental problems can take place through the PILs.
- PIL matters concerning the exploited and disadvantaged groups are pending for many years. **Inordinate delays in the disposal of PIL cases** may render many leading judgments merely of academic value.

Conclusion:

- Public Interest Litigation has produced astonishing results which were unthinkable three decades ago. Degraded bonded labourers, tortured under trials and women prisoners, humiliated inmates of protective women's home, blinded prisoners, exploited children, beggars, and many others have been given relief through judicial intervention.
- The greatest contribution of PIL has been to enhance the accountability of the governments towards the human rights of the poor.

JUDICIAL ACTIVISM:

Know What It Means-

The judiciary plays an important role in upholding and promoting the rights of citizens in a country. The 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. This entails, sometimes overstepping into the territories of the executive. Candidates should know the judicial overreach is an aggravated version of judicial activism.

Judicial activism is seen as a success in liberalizing access to justice and giving relief to disadvantaged groups, because of the efforts of justices V R Krishna Ayer and P N Bhagwati.

The Black's Law Dictionary defines judicial activism as "judicial philosophy which motivates judges to depart from the traditional precedents in favour of progressive and new social policies."

The concept of Public Interest Litigation (PIL) is always talked of when judicial activism is discussed.

Judicial Activism Methods

There are various methods of judicial activism which are followed in India. They are:

1. Judicial review (power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void, if it finds them in conflict with the Constitution)
2. PIL (The person filing the petition must not have any personal interest in the litigation, this petition is accepted by the court only if there is an interest of large public involved; the aggrieved party does not file the petition).
3. Constitutional interpretation
4. Access of international statute for ensuring constitutional rights
5. Supervisory power of the higher courts on the lower courts

Significance of Judicial Activism

- It is an effective tool for upholding citizens' rights and implementing constitutional principles when the executive and legislature fails to do so.
- Citizens have the judiciary as the last hope for protecting their rights when all other doors are closed. The Indian judiciary has been considered as the guardian and protector of the Indian Constitution.
- There are provisions in the constitution itself for the judiciary to adopt a proactive role. **Article 13 read with Articles 32 and 226 of the Constitution** provides the power of

judicial review to the higher judiciary to declare any executive, legislative or administrative action void if it is in contravention with the Constitution.

- According to experts, the shift from locus standi to public interest litigation made the judicial process more participatory and democratic.
- Judicial activism counters the opinion that the judiciary is a mere spectator.

Judicial Activism Examples:

It all started when the Allahabad High Court rejected the candidature of Indira Gandhi in 1973.

- In 1979, the [Supreme Court of India](#) ruled that undertrials in Bihar had already served time for more period than they would have, had they been convicted.
- Golaknath case:
- Kesavananda Bharati case
- In the 2G scam, the SC cancelled 122 telecom licenses and spectrum allocated to 8 telecom companies on the grounds that the process of allocation was flawed.
- The Supreme Court rolled out a blanket ban on firecrackers in the Delhi – NCR area with certain exceptions in 2018.
- The SC invoked terror laws against alleged money launderer Hasan Ali Khan.

LOKPAL AND LOKAYUKTA:

What are Lokpal and Lokayukta?

- The **Lokpal and Lokayukta Act, 2013** provided for the establishment of Lokpal for the Union and Lokayukta for States.
- These institutions are **statutory bodies** without any constitutional status.
- They perform the function of an "ombudsman" and inquire into allegations of corruption against certain public functionaries and for related matters.

Why do we need such institutions?

- Maladministration is like a termite which slowly erodes the foundation of a nation and hinders administration from completing its task. Corruption is the root cause of this problem.
- Most of the anti-corruption agencies are hardly independent. Even Supreme Court has been termed CBI as a "caged parrot" and "its master's voice".
- Many of these agencies are advisory bodies without any effective powers and their advice is rarely followed.
- There is also the problem of internal transparency and accountability. Moreover, there is not any separate and effective mechanism to put checks on these agencies.
- In this context, an independent institution of Lokpal has been a landmark move in the history of Indian polity which offered a solution to the never-ending menace of corruption.

Background-

- In India, the concept of constitutional ombudsman was **first proposed by the then law minister Ashok Kumar Sen in parliament in the early 1960s.**
- The term Lokpal and Lokayukta were **coined by Dr. L. M. Singhvi.**
- **In 1966, the First Administrative Reforms Commission recommended the setting up of two independent authorities-** at the central and state level, to look into complaints against public functionaries, including MPs.
- In 1968, Lokpal bill was passed in Lok Sabha but lapsed with the dissolution of Lok Sabha and since then it has lapsed in the Lok Sabha many times.
- Till 2011 eight attempts were made to pass the Bill, but all met with failure.

Structure of Lokpal-

- Lokpal is a multi-member body, that consists of one chairperson and a maximum of 8 members.

- 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.
- 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.
- The judicial member of the Lokpal either a former Judge of the Supreme Court or a former Chief Justice of a High Court.
- 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.
- **The term of office for Lokpal Chairman and Members is 5 years or till the age of 70 years.**
- **The members are appointed by the president** on the recommendation of a Selection Committee.
- The selection committee is composed of the Prime Minister who is the Chairperson; Speaker of Lok Sabha, Leader of Opposition in Lok Sabha, Chief Justice of India or a Judge nominated by him/her and One eminent jurist.
- For selecting the chairperson and the members, the selection committee constitutes a search panel of at least eight persons.

Lokpal Search Committee-

- Under the Lokpal Act of 2013, the DoPT is supposed to put together a list of candidates interested to be the chairperson or members of the Lokpal.
- This list would then go to the proposed eight-member search committee, which would shortlist names and place them before the selection panel headed by the Prime Minister.
- The selection panel may or may not pick names suggested by the search committee.
- In September 2018, the government had constituted a search committee headed by former Supreme Court judge Justice Ranjana Prakash Desai.
- The 2013 Act also provides that all states should set up the office of the Lokayukta within one year from the commencement of the Act.

Lokpal Jurisdiction and Powers-

- Jurisdiction of Lokpal **includes Prime Minister, Ministers, members of Parliament, Groups A, B, C and D officers and officials of Central Government.**
- Jurisdiction of the Lokpal included the Prime Minister except on allegations of corruption relating to international relations, security, the public order, atomic energy and space.
- The Lokpal does not have jurisdiction over Ministers and MPs in the matter of anything said in Parliament or a vote given there.
- Its jurisdiction also includes any person who is or has been in charge (director/ manager/ secretary) of anybody/ 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.
- The Lokpal Act mandates that all public officials should furnish the assets and liabilities of themselves as well as their respective dependents.
- **It has the powers to superintendence over, and to give direction to CBI.**
 - If Lokpal has referred a case to CBI, the investigating officer in such case cannot be transferred without the approval of Lokpal.
- The Inquiry Wing of the Lokpal has been **vested with the powers of a civil court.**
- Lokpal has **powers of confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption** in special circumstances.
- Lokpal has the **power to recommend transfer or suspension of public servant** connected with allegation of corruption.
- Lokpal has the **power to give directions to prevent the destruction of records** during the preliminary inquiry.

Limitations-

- The institution of lokpal has tried to bring a much needed change in the battle against corruption in the administrative structure of India but at the same time, there are loopholes and lacunae which need to be corrected.
- Five years have passed since the Lokpal and Lokayuktas Act 2013 was passed by parliament, but not a single Lokpal has been appointed till date indicating the **lack of political will.**
 - The Lokpal act also called upon states to appoint a Lokayukta within a year of its coming to force. But only 16 states have established the Lokayukta.
- Lokpal is **not free from political influence** as the appointing committee itself consist of members from political parties.

- 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.'
- 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.
- The biggest lacuna is the **exclusion of judiciary from the ambit of the Lokpal**.
- The Lokpal is **not given any constitutional backing** and there is no adequate provision for appeal against the Lokpal.
- The specific details in relation to the appointment of Lokayukta have been left completely on the States.
- To some extent, the need for functional independence of the CBI has been catered to by a change brought forth in the selection process of its Director, by this Act.
- The complaint against corruption cannot be registered after a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.

Lokpal and Lokayukta Act 2013:

- Recently, Justice Ghose was selected by the committee headed by the Prime Minister.
- **Composition-** Under the 2013 Act, the Lokpal should consist of a chairperson and the such number of members, not exceeding eight, of whom 50% should be judicial members.
- The Act states that not less than 50% of the members of the Lokpal should be from among persons belonging to the SCs, the STs, OBCs, minorities and women.
- **Selection Procedure-** A search committee will prepare a panel of candidates, a selection committee will recommend names from among this panel and the President will appoint these as members.
- **Salaries and allowances-**Salaries, allowances and service conditions of the Lokpal chairperson will be the same as those for the Chief Justice of India; those for other members will be the same as those for a judge of the Supreme Court.

STATE EXECUTIVES:

Powers and Functions of Governor:

At the state level, there is a Governor in whom the executive power of the State is vested by the Constitution. But the Governor acts as a nominal head, and the real executive powers are exercised by the Council of Ministers headed by the Chief Minister.

Appointment-

The Governor of a State is appointed by the President of India. In order to become a Governor, a person must have the following qualifications. He/She:

1. must be a citizen of India,
2. must be at least 35 years old, and should not hold any office of profit during his/her tenure.

If a person is a member of either the House of the Parliament or the Legislature of a State, or a member of the Council of Ministers at the national or the state level and is appointed as Governor, he/she resigns that post.

The Governor is appointed for a term of five years but normally holds office during the pleasure of the President.

The pleasure of the President means that the Governor may be removed by the President even before the expiry of his/her term. He/She may also resign earlier. However, in reality, while appointing or removing the Governor, the President goes by the advice of the Prime Minister.

Powers of Governor-

The powers of the Governor can be categorized as

- (i) Executive powers,
- (ii) Legislative powers,
- (iii) Financial powers,
- (iv) Judicial powers, and
- (v) Discretionary powers.

Chief Minister in India: (Appointment, Powers and Functions)

Chief Minister is the real executive of the Government. Article 164 of the Constitution says that the Chief Minister shall be appointed by the governor.

Appointment of Chief Minister-

Our constitution does not specifically mention about the qualification to be appointed as Chief Minister (CM). Article 164 of the Constitution envisages that the Chief Minister shall be appointed by the governor. However, this does not imply that the governor is free to appoint anyone as the Chief Minister of the state or UT.

Powers and functions of the Chief Minister-

The powers and functions of CM can be classified under following heads-

A. With respect to council of ministers-

- 1). He advises the Governor to appoint any person as a minister. It is only according to the advice of CM the Governor appoints ministers.
- 2). Allocation and reshuffling of portfolios among ministers.
- 3). In case of difference of opinion; he can ask minister to resign.
- 4). Directs, guides and controls activities of all the ministers.
- 5). If the Chief Minister resign then full cabinet has to resign.

B. With Respect to Governor -

Under Article 167 of our constitution, The Chief Minister acts as a link between Governor and state council of ministers.

The functions with respect to the Governor are as follows:

- 1). CM has to communicate to the Governor all the decisions of the council of ministers relating to the administration of the states.
- 2). Whenever the Governor calls for any information relating to the decisions taken or regarding the administration, the CM has to provide him the same
- 3). The Governor can ask for consideration of council of ministers when a decision has been taken without the consideration of the cabinet.
- 4). CM advises Governor regarding the appointment of important officials like Attorney General, State Public Service Commission (Chairman and Members), State Election Commission etc.

C. With Respect to State Legislature –

- 1) All the policies are announced by him on the floor of the house.
- 2) He recommends dissolution of legislative assembly to the Governor.
- 3) He advises the Governor regarding summoning, proroguing the sessions of State Legislative Assembly from time to time.

Other Functions:

- 1) At the ground level he is the authority to be in contact with the people regularly and know about their problems so as to bring about policies on the floor of the assembly.
- 2) He acts as the chairman of State Planning Commission.
- 3) He is the vice chairman of concerned zonal council in rotation for a period of one year.
- 4) During emergencies he acts as the crisis manager in the state.

Powers and Functions of the High Court:

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

For instance, Haryana, Punjab and the Union Territory of Chandigarh have a common High Court. The northeastern states also have one common High Court. In addition, Tamil Nadu shares a High Court with Puducherry.

Currently, there are 25 High Courts in India. The High Courts of Calcutta, Madras and Bombay were established by the Indian High Courts Act 1861.

What are the functions of the High Court?

The functions of the High Court are described in the below section under subsections such as its jurisdiction, powers, role, etc.

High Court Jurisdiction-

The various kinds of the jurisdiction of the High Court are briefly given below:

Original Jurisdiction-

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

Appellate Jurisdiction

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

- If the sessions judge has awarded capital punishment.
- The jurisdiction of the High Court extends to all cases under the State or federal laws.
- **In constitutional cases:** if the High Court certifies that a case involves a substantial question of law.

High Court Powers

Apart from the above, the High Courts have several functions and powers which are described below.

As a Court of Record

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

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.

Power of Judicial Review

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

Power of Certification

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

High Court Autonomy

The independence of the High Courts can be corroborated by the points given below:

1. **Appointment of Judges:** The appointment of judges of the High Courts lies within the judiciary itself and is not connected to the legislature or the executive.

2. **Tenure of the Judges:** High Court judges enjoy the security of tenure till the age of retirement, which is 62 years. A High Court cannot be removed except by an address of the President.
3. **Salaries and allowances:** The High Court judges enjoy good salaries, perks and allowances and these cannot be changed to their disadvantage except in case of a financial emergency. The expenses of the High Court are charged on the Consolidated Fund of the State, which is not subject to vote in the state legislature.
4. **Powers:** The Parliament and the state legislature cannot cut the powers and jurisdiction of the High Court as guaranteed by the Constitution.
5. **Conduct of judges:** Unless a motion of impeachment has been moved, the conduct of the High Court judges cannot be discussed in the Parliament.
6. **Retirement:** After retirement, High Court judges cannot hold an office of emolument under the Government of India or that of a state. There is an exception to this clause, however, when, with the consent of the Chief Justice of India, retired judges can be nominated to a temporary office, and in the situation of emergencies.

Subordinate Courts in India:

The District Courts of India are the district courts of the State governments in India for every district or for one or more districts together taking into account the number of cases, population distribution in the district.

They administer justice in India at a district level. These courts are under administrative control of the High Court of the State to which the district concerned belongs. The decisions of District court are subject to the appellate jurisdiction of the High court.

The provisions related to subordinate courts are provided in the 6th part of the Indian Constitution. Articles 233-237 deal with the subordinate courts.

Appointment of the District Judges as per Article 233:

1). Appointments and promotion of district judges in any state shall be made by the Governor of the state in consultation with the high court exercising jurisdiction in relation to such state

2). A person not already in the service of the Union or of the state shall only be eligible to be appoint a district judge if he has been for not less than 7 years an advocate or a pleader and is recommended by the high court for appointment.

Control over subordinate courts is the collective and individual responsibility of the High Court as it is the head of the judiciary in the state and has got administrative control over the subordinate courts in respect of certain matters.

