

## Contents

<b>Introduction to Part V</b>	<b>Legislative Procedure</b>
<b>President of India</b>	54. Basics of Ordinary and Money Bills: Article 107
1. President and Vice President: Summary of Articles	55. Legislative Procedure: Ordinary Bill
2. Article 53: Executive Power: Meaning and Implications	56. Legislative Procedure for Money Bills and Other Finance Bills
3. Theory of separation of powers	57. Procedure of Budget
4. Eligibility to become a President	58. Non-Votable Charges
5. Presidential Elections	59. Why these charges cannot be voted?
6. Limitations on Powers of the President	60. Cut Motions
7. Executive Powers of President	61. What is Vote on Account?
8. Military Powers of President	62. Important Terms-1
9. Diplomatic Powers of President	63. Finance Bills of First Class and Second Class:
10. Legislative Powers of President	64. Question Hour
11. How a Bill becomes an Act?	65. Types of Majority
12. What are Ordinances?	<b>Parliamentary Committees</b>
13. Judicial & Other Powers of President	66. Committee on Public Accounts
14. Veto Powers of President	67. Estimates Committee
15. Emergency Powers of President	68. Committee on Public Undertakings
<b>Vice President of India</b>	69. Business Advisory Committee
16. Various Articles Related to Vice President of India	70. Committee on Petitions
17. Who can be a Vice President of India?	71. Committee of Privileges
18. What are the functions of Vice President of India?	72. Committee on Subordinate Legislation
19. Vice President : Election, term of office, removal, Oath	73. Committee on Government Assurances
<b>Council of Ministers</b>	74. Committee on Absence of Members from the Sittings of the House
20. Important Questions on Council of Ministers	75. Rules Committee
21. Attorney General of India	76. General Purposes Committee
22. Important Questions on AGI	77. House Committee
<b>Conduct of Government Business</b>	78. Library Committee
23. Conduct of Government Business & Duties of the Prime Minister	79. Joint Committee on Salaries and Allowances of Members of Parliament
<b>Union Legislature</b>	80. Joint Committee on Offices of Profit
24. Understanding Bicameralism	81. Committee on the Welfare of Scheduled Castes and Scheduled Tribes
25. Summary of the articles related to Union legislature	82. Committee on Papers Laid on the Table
26. Article 80: Composition of Rajya Sabha	83. Committee on Empowerment of Women
27. Election of the Rajya Sabha Members	84. Departmentally Related Standing Committees (DRSCs)
28. How Rajya Sabha shows Federal Character?	<b>Union Judiciary- Supreme Court of India</b>
29. Allocation of Seats in Rajya Sabha	85. Introduction to Union Judiciary
30. Article 81: Composition of Lok Sabha	86. Comparing Supreme Courts of Independent India and British India
31. Article 82: Delimitation	87. Comparing Supreme Courts of India and England
32. Article 83: Duration of Houses	88. Comparing Supreme Courts of India and United States
33. Article 84 : Qualifications to Become an MP	89. Constitutional Provisions
34. Article 101: Vacation of Seats	90. Strength of the Supreme Court
35. Article 102: Disqualifications from being an MP	91. Appointment of Judges of the Supreme Court
36. Article 85: Sessions of Parliament, prorogation and dissolution	92. How much relevant is the advice of CJI?
37. Article 88: Right of Ministers and AG to take part in proceedings	93. Qualifications of the Judges of the Supreme Court
38. Article 89 To 98: Officers of	94. Tenure of the Judges
39. Article 105, 106: Power, Privileges, Immunities of parliament and MPs	95. Impeachment of Justice V Ramaswami
40. Article 100: Conduct of the Business Parliament-Casting Vote and Quorum	96. Impeachment of Justice Soumitra Sen
41. What is Government Business and Private members Business?	97. Salary of the Judges
42. What is Closure?	98. Ad Hoc Judges
43. What is Contempt of House?	99. Court of Record
44. What is crossing the Floor?	100. Seat of Supreme Court
45. What is Bulletin?	101. Original Jurisdiction
46. What is Expunction?	102. Appellate Jurisdiction
47. What is Guillotine?	103. Advisory Jurisdiction
48. Who is leader of the House (Lok Sabha) ?	104. Review of Supreme Court's own verdicts
49. Who is Leader of the Council?	105. Judicial review
50. Who is Leader of Opposition?	106. Judicial Activism
51. Who decides that leader of opposition is from which party?	
52. Who delivers Maiden Speech?	
53. Who is Member in charge of the Bill?	

## Introduction to Part V

Part V of the Constitution of India deals with the Union Executive, Parliament, Union Judiciary and Comptroller and Auditor General of India. The following Table summarizes the articles of Part V of our constitution.

Articles	Deal with
Article 52-73	President & Vice President
Article 74-75	Council of Ministers
Article 76	Attorney General of India
Article 77-78	Conduct of Government Business
Article 79-122	Parliament
Article 123	Legislative powers of President
Article 124-147	Union Judiciary
Article 148 - 151	Comptroller and auditor General of India

## President of India

**Article 52 to Article 73**, deal with the President and Vice President of India.

👉 President is the head of state in India and is the first Citizen.

👉 In our country the position of President is mainly adopted by the British Model of “Cabinet System of Responsible Government. The first question we should ask ourselves is that **-Why there is a Cabinet System in India, why not Presidential system like USA?**

The reason is twofold. The first reason is that India, for one hundred years was drawn upon the British constitutional law. In the last 30-40 years of the British Rule in India, some responsibility was introduced in the administration of the country and the provinces working at the time of our independence were more or less based upon the **British Model**. The country when became independent was a parliamentary government, so shifting to another model **would have been against the tradition** of a century.

The second reason is that there was a need to create a **strongest executive** which should be consistent with the democratic constitutional structure of the newly independent country.

The next basic question is **-What are differences between Presidential and Parliamentary forms of government?**

In the Presidential system the president is the head of the state and also head of the government. He is the **real executive** and not only a notional executive. The powers vested in the president in Presidential form of government are exercised by him actually. The function of the **cabinet** appointed by him is **merely to advise** him and the president is not bound by their advice and may act on his own judgment. The president is **directly elected** by the people and legislature cannot seek to remove him from the office.

👉 United States of America is a Presidential form of Government.

✍ Please note that though the Constitution of India creates an office of the President but the form of the government in India is NOT presidential.

India adopted the parliamentary form of democracy which is also known as "**Westminster Model**". In parliamentary form of government, the real power is vested in the parliament and not in the president. The cabinet is a part of the government and it assumed the financial control powers and law making functions.

India's parliamentary democracy has 3 basic characteristics:

1. Parliament is represented by elected representatives.
2. There is a responsible government.
3. The minister of council is accountable to the legislature.<sup>1</sup>

### The next basic question is what is Parliament of India and what does make it?

The Indian parliament consists of three components 1. President 2. Lok Sabha 3. Rajya Sabha.

☞ So President is a part of the parliament.

☞ However, despite being a part of the parliament, **President is not a member of any house.** 😊

### President and Vice President: Summary of Articles

The Articles related to President & Vice President of India are summarized in the following table.

Article	Core Provisions
<b>Article 52</b>	This article says that there shall be a president of India.
<b>Article 53</b>	This article vests the executive power of the Union in the President. This article also makes the President of India as Supreme commander of India Defense Forces.
<b>Article 54</b>	This Article says that president shall be elected by the members of an electoral college consisting of elected members of both the houses of the parliament and legislative Assemblies. (means NOT legislative Councils)
<b>Article 55</b>	This article describes the manner of election of president.
<b>Article 56</b>	This article deals with the term of President of India (5 years) and method of resignation.
<b>Article 57</b>	This article says that same person <b>is eligible to be re-elected</b> as president after his / her term is over.
<b>Article 58</b>	This article provides details about qualifications of a candidate for Presidential elections.
<b>Article 59</b>	This articles lays down certain conditions for president's office
<b>Article 60</b>	This article mentions the "oath" to be taken by the president.
<b>Article 61</b>	This article makes provision for impeachment of the President
<b>Article 62</b>	This article provides Time Limit to fill the vacancy of the Office of the President
<b>Article 63</b>	Article 63 says that there shall be a vice president of India.
<b>Article 64</b>	This article says that Vice President is the ex officio Chairman of the Council of States (Rajya Sabha)
<b>Article 65</b>	This article says that Vice President will discharge the function of the President when he is not available.
<b>Article 66</b>	This article mentions the elections and eligibility of Vice President of India
<b>Article 67</b>	This article mentions the term of office of Vice president (5 years)
<b>Article 68</b>	This article mentions , how the vacancy in the office of Vice President has to be filled
<b>Article 69</b>	This article provides oath of affirmation to the vice President
<b>Article 70</b>	This article gives power to the "parliament" for making provisions to discharge functions of president in any contingency not provided in the constitution.
<b>Article 71</b>	This article mentions some matters related to elections of the president & vice president.
<b>Article 72</b>	This article gives president power to Grant pardons
<b>Article 73</b>	This article extends the power of the executive to parliament.

<sup>1</sup> This is discussed in this module.

## Article 53: Executive Power: Meaning and Implications

**Our question is that -What is the meaning of article 53 (Executive Power vested in President)?** Article 52 mentions that there shall be a president of India. Article 53 says that **executive power of the union shall be vested in the president.**

There are three types of powers in all modern constitutions. They are **Executive, Legislature and Judiciary.** Our constitution vests the executive power expressly in the president but it does not make any provision of legislative and judicial powers.

👉 The Judicial power is vested in the courts and tribunals in the states and legislative powers of the union are vested in the parliament, and state in the state legislatures.

### Theory of separation of powers

This is the division of power feature of a democracy and this is called "Theory of separation of powers". The core philosophy of the theory of separation of powers is that it conveys liberty. According to **Montesquieu**, -the renowned world social & political thinker of France:  
"When the legislative and executive powers are vested in same person or same body, there can be no liberty, because the person / body may behave with violence and oppression. When judicial power is not separated from the legislative / executive powers, again there is no liberty.

## Eligibility to become a President

**Article 58** of the constitution lay down the qualifications of a president in India. These qualifications are:

1. He/ she should be a citizen of India,
2. He / she must have completed the age of **35 years**
3. He / she must be qualified for election as a member of the House of the People.
4. He/ she should not hold any office of profit under Union or state government.

## Presidential Elections



### How President is elected?

- ✍ The president is elected for a term of 5 years (article 56).
- ✍ He/ she may terminate his / her own term by writing a resignation **addressed to Vice president.**
- ✍ He / she can be removed from the office by impeachment. (Article 61)
- ✍ He / she is eligible to re-elected for the same office for **unlimited times<sup>2</sup>.** (Article 57).

The president is not elected by the people directly. A president is elected by an electoral college. This Electoral College consists of the following: (Article 55):

1. Elected members of parliament (MPs from Lok Sabha as well as Rajya Sabha).
  2. Elected members of State legislative members
- ✍ Please note that members of legislative councils in the states where there are bicameral legislatures can NOT participate in election of President. ←
- ✍ Please also note that MLAs include the National Capital Territory of Delhi and the Union Territory of Puducherry vide the Constitution (Seventieth Amendment) Act, 1992 (Article 54). ←

### What is Proportional Representation?

<sup>2</sup> Constitution provides that the same person is eligible for re-election. In some exams questions is put as --for how many times a person can become president of India? So the answer is - there is no restriction on such election.

With a view to ensure uniformity of the representation of different states and parity between the Union and the states, the constitution in article 56 provides an ingenious method. The formula for value of vote for an MLA is as follows:

$$\text{Value of Vote} = \frac{\text{Population of the state}}{\text{Elected members of the legislative assembly}} \times \frac{1}{1000}$$

The formula for value of the vote for an MP is as follows:

$$\text{Value of Vote} = \frac{\text{Total Number of the Votes assigned to all elected MLAs}}{\text{Total Number of elected MPs}}$$

- ✍ MPs and MLAs do not have one vote each but their votes are equal to the average number of people they represent
- ✍ Since MPs represent the whole country they have more votes, and **MLAs have fewer votes than MPs** as they represent only the people in their states. This is called **“proportional representation”**.
- ✍ MPs in the Lok Sabha and Rajya Sabha have 708 votes each<sup>3</sup>. Compared to this, MLAs have about 100 or 200 votes, depending on the size of their state.
- ✍ MLAs from Uttar Pradesh have largest number of votes. The value of vote of each Member of the Legislative Assembly of Uttar Pradesh is 208 and that of **Sikkim is 7**.
- ✍ In the election of the President of India, top 10 states with maximum votes of MLAs are as follows:

State	Votes
Uttar Pradesh	208
Jharkhand	176
Tamil Nadu	176
Maharashtra	175
Bihar	173
Kerala	152
West Bengal	151
Orissa	149
Andhra Pradesh	148
Gujarat	147

#### Regulation of President & Vice president's Election

Please note that Election of the President of India is regulated by constitution as well as **Presidential and Vice-Presidential Elections Act, 1952\***. The Election commission of India issues notification of the election of President and Vice President as per these provisions on or after the **60th day before the expiry** of the term of office of outgoing President.

\* replaced later by “The Presidential and Vice-Presidential Elections Rules, 1974”

#### Which census is used for computing the votes?

The original intention was that "population" would be as ascertained by the last preceding census of which the relevant figures have been published.

<sup>3</sup> As per census 1971

However, the 42nd amendment act 1976, froze the "last preceding census" to that of 1971 census, till the first census after 2000". However, in 2000, the union Cabinet made a decision to extend that freeze until the relevant figures for the first census taken after 2026.

This was later made possible by the **Constitution (Eighty-fourth) Amendment Act, 2001**, which provides that until the relevant population figures for the first census to be taken after the year 2026 have been published.

✍ **So, the population of the States for the purposes of calculation of value of votes for the Presidential Election shall mean the population as ascertained at the 1971-census.**

## What is the Process of Election?

1. The value of vote of each elector is pre-determined as per the formulae given above.
2. The MPs and MLA give vote on the ballot paper by marking their preference to the candidates.
3. These ballot papers are later separated in trays which are meant for the candidate to whom the first preference was marked.
4. After distributing the ballot papers of each state separately, the returning officer counts the valid votes.
5. These totals valid votes are multiplied by the value of each vote and that total is credited to the candidate as the total value of votes secured.
6. After this value of valid votes secured by each candidate is totaled.
7. After calculating the total value of votes polled by each candidate, the Returning Officer totals up the value of all valid votes polled. The quota for declaring a candidate as elected is determined by dividing the total value of valid votes by 2 and adding one to the quotient, ignoring the remainder, if any.
8. For example, assuming the total value of valid votes polled by all candidates is 1,00,001. The quota required for getting elected is:

$$\frac{100,001}{2} + 1 = 50,000.50 + 1 \text{ (ignore .50)}$$
$$= 50001$$

9. If any candidate has secured the above quota of votes, he/ she is declared elected.
10. If none of them secures the above data then following process is followed:
  - a. Returning Officer proceeds further to second round of counting during which the candidate having lowest value of votes of first preference is excluded and his votes are distributed among the remaining candidates according to the second preference marked on these ballot papers.
  - b. The other continuing candidates receive the votes of excluded candidate at the same value at which he/she received them in the first round of counting.
  - c. The Returning Officer will go on excluding the candidates with lowest number of votes in subsequent rounds of counting till either one of the continuing candidates gets the required quota or till only one candidate remains in the field as the continuing candidate and shall declare him/her as elected.

## What is the Number of Electors?



The last Presidential elections in India were held in 2007. The total number of members in the Electoral College for the Presidential election in 2007 was 4896, as follows:

1. Rajya Sabha = 233
2. Lok Sabha = 543
3. State Assemblies = 4120
4. **Total = 4896**

**What is the Value of Each State elector Votes?**

The following table shows the value of each state elector (MLAs) from state assemblies.

SL. No.	NAME OF STATE	NUMBER OF ASSEMBLY SEATS (ELECTIVE)	POPULATION (1971 CENSUS)	VALUE OF VOTE OF EACH M.L.A.	TOTAL VALUE OF VOTES FOR THE STATE
(1)	(2)	(3)	(4)	(5)	(6)
1.	ANDHRA PRADESH	294	43502708	148	148×294=43512
2.	ARUNACHAL PRADESH	60	467511	8	008×060=480
3.	ASSAM	126	14625152	116	116×126=14616
4.	BIHAR	243	42126236	173	173×243=42039
5.	CHHATTISGARH	90	11637494	129	129×090=11610
6.	GOA	40	795120	20	020×040=800
7.	GUJARAT	182	26697475	147	147×182=26754
8.	HARYANA	90	10036808	112	112×090=10080
9.	HIMACHAL PRADESH	68	3460434	51	051×068=3468
10.	JAMMU & KASHMIR*	87	6300000	72	072×087=6264
11.	JHARKHAND	81	14227133	176	176×081=14256
12.	KARNATAKA	224	29299014	131	131×224=29344
13.	KERALA	140	21347375	152	152×140=21280
14.	MADHYA PRADESH	230	30016625	131	131×230=30130
15.	MAHARASHTRA	288	50412235	175	175×288=50400
16.	MANIPUR	60	1072753	18	018×060=1080
17.	MEGHALAYA	60	1011699	17	017×060=1020
18.	MIZORAM	40	332390	8	008×040=320
19.	NAGALAND	60	516449	9	009×060=540
20.	ORISSA	147	21944615	149	149×147=21903
21.	PUNJAB	117	13551060	116	116×117=13572
22.	RAJASTHAN	200	25765806	129	129×200=25800
23.	SIKKIM	32	209843	7	007×032=224
24.	TAMIL NADU	234	41199168	176	176×234=41184
25.	TRIPURA	60	1556342	26	026×060=1560
26.	UTTARAKHAND	70	4491239	64	064×070=4480
27.	UTTAR PRADESH	403	83849905	208	208×403=83824
28.	WEST BENGAL	294	44312011	151	151×294=44394
29.	NCT OF DELHI	70	4065698	58	058×070=4060
30.	PUDUCHERRY	30	471707	16	016×030=480
	<b>TOTAL</b>	<b>4120</b>	<b>549302005</b>		<b>= 549474</b>

\* Constitution (Application to the Jammu & Kashmir) Order

1. Total Value of Votes Of 776 Members Of Parliament = 708 X 776 = 549408
  2. Total Electors For The Presidential Election = MLAs (4120) + M.Ps (776) = 4896
  3. Total Value Of 4896 Electors For The Presidential Election 2007 = 549474 + 549408 = **1098882**.
- (Please remember this figure).

**What about any dispute in the election?**

Article 71 stipulates that all doubts arising out of election of the president will be decided by the “Supreme Court”. There can be no dispute on vacancy in an electoral college

Please note that Constitution 39<sup>th</sup> Amendment Act had taken away the power of the Supreme Court to settle such disputes. However, this power was restored by Constitution 42<sup>nd</sup> amendment act.

So, if there is any dispute, an election petition is filed with Supreme Court of India which is the only authority to try an election petition regarding President’s election.

- ✍ A petition can be filed by any of the presidential candidate.
- ✍ A petition can be filed by any 20 or more electors as joint petitioners.
- ✍ Petition should be filed within 30 days of declaration of the result.

**What are the Conditions of the office of the President?**

**Article 59** lays down certain conditions of the office of the president. These are summarized as below:

1. President is not a member of any house of the parliament or any state legislature
2. If he/ she is a member of any house, he / she shall have to vacate the seat in those house.
3. He / she should not hold any office of profit.

### Salary and Emoluments:

The president of India is entitled to rent free accommodation, allowances and privileges as determined by the **parliament by law**.

✍ **Article 59** talks about the salary of president.

✍ **Parliament** decides the salary and allowances of the president.

✍ The salary and allowances of the president are charged from Consolidated Fund of India.

✍ The original constitution provided ₹ 10,000 per month for president. In 1998 it was raised to ₹ 50,000. In 2008 the salary was raised to ₹ 1.5 Lakh per month. ←

### How a President can be impeached?

**Article 61** outlines the impeachment of the president of India.

✍ The charge of violation can be preferred by **any house** of the parliament before other house.

✍ To start the proceedings 14 days notice is given

✍ This notice must be signed by minimum 25% (1/4<sup>th</sup>) of the total number of members.

✍ The resolution must be passed by **2/3<sup>rd</sup>** of both the houses.

✍ After resolution is passed president is removed.

✍ During the process president has **right to defend** himself / herself.

✍ **No President of India has been impeached so far.**

### Vacancy in Office of the President:

**Article 62** outlines the things which should be done on arising a vacancy in the office of the president.

✍ The election to fill a vacancy arising out of expiration of the term of president must be completed before expiration of his / her term.

✍ If there is a delay, the president continues to hold the office, until his / her successor takes charge.

✍ If any vacancy arises out of death/ resignation / removal, it must be filed **within 6 months**.

✍ During the vacancy in the office of president , Vice president would be discharging the duties of a president.

✍ **If Vice President is also NOT available, Chief Justice of India will discharge the function of the president.**

✍ **If Chief Justice of India is also unavailable, then senior most judge of the Supreme Court will discharge this function.**

✍ Any person (vice president / chief justice of India/ senior most Judge of Supreme Court) while discharging the duties of the president shall be entitled to all powers and privileges of the president.

### Limitations on Powers of the President

President of India is a Constitutional ruler and his / her powers are subject to constitutional limitations.



✍ The executive powers vested in the president have to be exercised in accordance with the advice of the Council of Ministers. (Article 74(1)).

✍ This provision was implicit but was made explicit and obligatory for the president via Constitution 42<sup>nd</sup> amendment act 1976

✍ Later the 44<sup>th</sup> amendment act gave him the power to send back advice received from council of Ministers to reconsider.

### Real Executive Power: Current Situation

The president exercises the executive powers as per the advice of the Council of the Ministers. However, he / she have power to send back the advice to council of Ministers for reconsideration. If the council of Ministers adheres to the previous advice, the president has to act as per this advice. So, Council of Ministers exercises the real executive power in the name of the president. All executive decisions are taken in the name of the President (Article 77)

### Executive Powers of President

President appoints the important members of the union government. They are as follows:

1. Prime Minister and Council of Ministers on advice of Prime Minister.
2. Chief Justice of India and Other Judges of Supreme Court on advice of the Chief Justice.
3. Chief Justice of High courts after consulting with Chief Justice of India and other Judges of the High Court's on advice of Chief Justice of High Court.
4. Chairman of the Union Public Service Commission.
5. Other members of the Union Public Service Commission. ←
6. Attorney General of India.
7. Comptroller and Auditor General of India
8. Chief Election Commissioner.
9. Other members of the Election Commission.
10. Governors of states (Please note that advice of chief Ministers is not sought for appointment of Governors)
11. Ambassadors and High Commissioners.
12. Finance Commission members.
13. National Commission for SC/ ST members & Chairmen.
14. Administrator of the Union territories<sup>4</sup>. ←
15. All Contracts and assurances of the property are made by the Government of India in President's name. ←

### Advisory Jurisdiction of the Supreme Court

Article 143 deals with the President's power to consult the Supreme Court. This comes under the advisory jurisdiction of the Supreme Court of India. As per this provision, at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of National Importance, President may ask Supreme Court for Opinion.

✍ The Opinion is given by the Supreme Court only when President asks for it.

Administrators of Andaman and Nicobar Islands, Delhi and Puducherry are designated as Lieutenant Governors. The Governor of Punjab is concurrently the Administrator of Chandigarh. The Administrator of Dadra and Nagar Haveli is concurrently the Administrator of Daman and Diu. Lakshadweep has a separate Administrator.

## Military Powers of President

Article 53 vests the supreme command of the Armed Forces of India in the President. President of India can declare war or conclude peace, under the regulation by the parliament.

### Who heads India's Nuclear Command authority?

Cabinet Committee on Security (CCS) constituted the Political Council and the Executive Council of the NCA on January 4, 2003. The Executive Council, chaired by National Security Advisor (NSA) gives the inputs to the Political Council, which authorizes a nuclear attack when deemed necessary. The Political Council is chaired by the Prime Minister, and advised by the Executive Council, chaired by the NSA.

## Diplomatic Powers of President

India is represented on International forum by President of India. He sends and received ambassadors.

✍ All international treaties and agreements are concluded on behalf of the President subject to ratification by the parliament.

## Legislative Powers of President

The parliament is composed of president, Lok Sabha and Rajya Sabha so, president of India is a inseparable part of Indian Parliament.

✍ President has power to summon or prorogue<sup>5</sup> the two houses of parliament. After a prorogation, the house must be summoned within 6 months.

✍ The President may dissolve the Lok Sabha. (Rajya Sabha is never dissolved)

✍ After the general Elections, president addresses both the houses of the parliament. He may address either house or even a joint sitting.

✍ The President may nominate two members of Anglo Indian Community in the Lok Sabha if he feels that the community is not represented adequately. (article 331)

✍ President has power to nominate 12 members of Rajya Sabha if they excelled in Art, Literature, Science, Social Science, Culture etc. (Article 80)

✍ A Bill passed by the parliament becomes an act only after president has given assent to it.

<sup>5</sup> Prorogue means discontinuing without dissolving. It refers to end of a session of parliament.

**Reports and Statements get by President to be laid before parliament:**

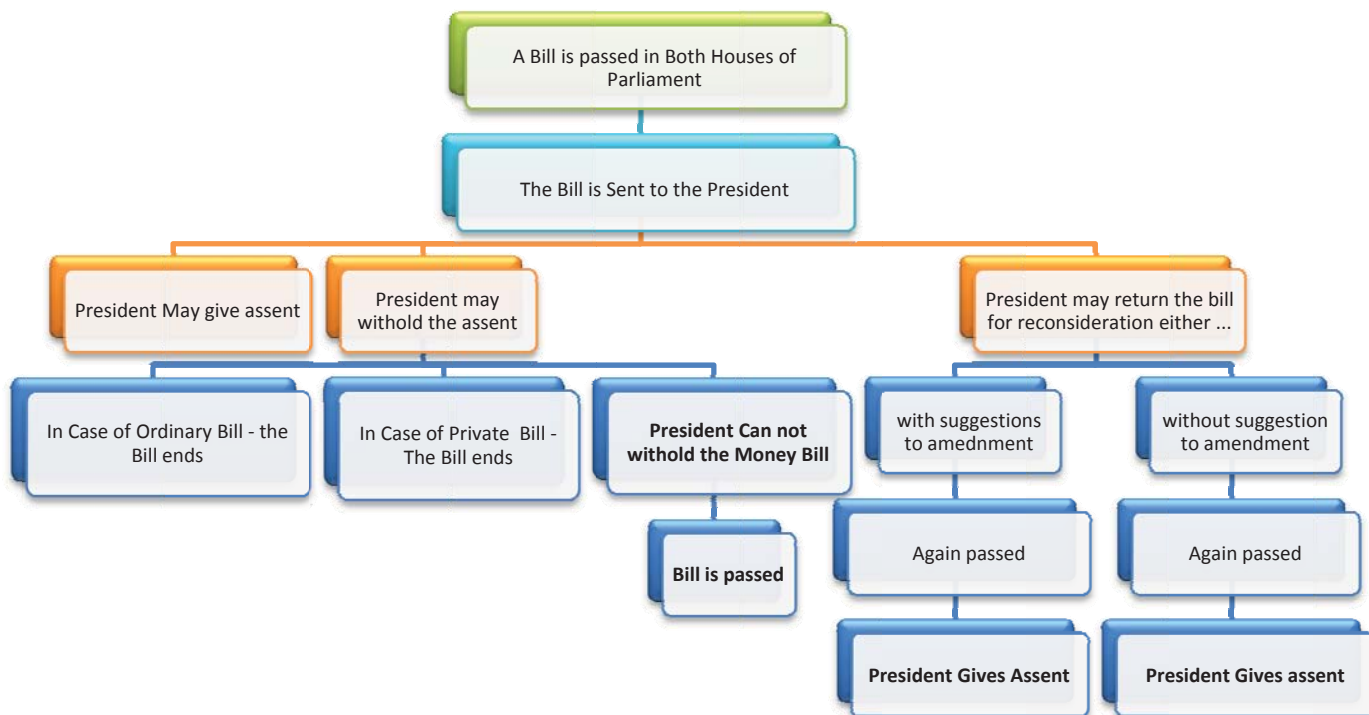
1. Annual Financial Statement,
2. Reports of Auditor General
3. Annual report of UPSC
4. Reports of Finance Commission
5. Reports of Special officers of SC & ST
6. Report of the Special officers of Linguistic Minorities and Backward Classes.

✍ There are some bills which require **prior recommendation** of the President. This means these bills need to be introduced in the parliament only on the recommendation of the President. This bills are:

- 👉 Bill that seek to alter the boundaries of the states and names of the states. (Article 3, we have already discussed this in our Union and Its territory Module)
- 👉 Money Bill (Article 110) & Finance Bill.
- 👉 Any bill which affects the taxation in which the states are interested (Article 274)
- 👉 State Bills which impose restriction upon freedom of trade (Article 304).

**How a Bill becomes an Act?**

The following graphic makes it clear.



**What are Ordinances?**

An ordinance is promulgated by the president of India as per provisions of **Article 123** of the constitution of India. The question is what an ordinance is.

We all know that Parliament is not always in session and when it becomes necessary to have a law on some urgent public matter, the constitution via article 123 provides the power to the president to issue ordinances if he is satisfied with the circumstances of issuing such ordinance.

- 👉 Ordinances are promulgated when parliament is not in session.

The ordinance has similar effect to an act of parliament. However, every ordinance must be laid before both houses of the parliament **within 6 weeks** from the **reassembling of the parliament**.

- 👉 If it is not placed in parliament before 6 weeks, it becomes invalid.
- 👉 If it does not get approval of parliament, it becomes invalid.
- 👉 It may be **withdrawn by the president**.

### What is the maximum life of an Ordinance?

An ordinance is in force as long as parliament does not meet. But, **there cannot be a gap of more than 6 months between meetings of parliament**. Further, a time of 6 weeks is given after the parliament reassembles. So, 6 months + 6 weeks =  $7\frac{1}{2}$  months is the maximum life of an ordinance. 😊

## Judicial & Other Powers of President

### Judicial Powers:

Article 72 says that the President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence. The meaning of these terms is as follows:

- 👉 Pardon: Complete pardon
- 👉 Reprieve: Temporary suspension of sentence
- 👉 Respite: awarding less sentence
- 👉 Remission: Reducing amount of sentence
- 👉 Commutation: Changing one punishment to another.

### Discretionary Powers:

Following are some circumstances when president acts on his / her own discretion.

- 👉 When there is a fractured mandate in the election and no party is in position to claim government, then president upon his / her own discretion appoints the PM.
- 👉 When the council of ministers loses confidence of the house and it resigns, president may choose to act on his / her own **discretion to avoid midterm polls**.
- 👉 In case of an **ordinary bill or constitutional** amendment bill, president can withhold his / her assent to an indefinite time and this is called **"Pocket Veto"**.
- 👉 Returning advice of the council of ministers and ordinary bills for reconsideration.

### Veto Powers of President

Veto is to 'forbid'. It means that the chief executive can prevent haste and ill considered action. In India the President has 3 kinds of circumstances in which he / she can use Veto Powers:

#### Private Members Bills:

Absolute veto means that if president does not give assent to a bill, it cannot become a law. India's president can use this veto power only in case of an ordinary bill (usually private member bills). When president neither gives assent nor returns in such case, it is also called "Pocket Veto".

#### A Bill passed but government fails:

A bill passed but during the time it gets assent from the president, the council of ministers resigns.

✍ Please note that veto is subject to cabinet's advice, so president cannot use this Veto against government bills. So when next cabinet recommends the president to use this veto he/ may she use it.

### Constitutional Amendment Bill:

The President of India enjoyed absolute veto on Constitutional amendment till 1971 only. The article 368 (2) before 1971 stated:

....it, shall be presented to the President for his assent and upon such assent being given to the bill , the constitution shall stand amended.

However, the situation changed in 1971. The above clause was changed as follows by Constituion 24<sup>th</sup> Amendment Act, 1971:

.....it, shall be presented to the President who shall give his assent to the Bill and thereupon

**This means that now, Constitutional amendments cannot be questioned by the president or any court of law.**

However, the Basic Structure of the Constitution still remains under the Judicial Review, in case of such amendment violates the basic structure<sup>6</sup>.

### Emergency Powers of President

President of India can declare 3 types of Emergencies.

1. National Emergency as per provisions of Article 352
2. State Emergency as per provisions of Article 356
3. Financial Emergency as per article 360.

### National Emergency:

The National Emergency can be declared due to a war, external aggression, armed rebellion in whole of India. **This has been declared in India since independence for 3 times.**

1. Between 26 October 1962 to 10 January 1968 during the India-China war on account of "the security of India" having been declared "threatened by external aggression".
2. On 3 December 1971 originally proclaimed during the Indo Pakistan war, and later extended on account of "the security of India" having been declared "threatened by external aggression".
3. Between 26 June 1975 to 21 March 1977 under controversial circumstances of political instability under the Indira Gandhi's primeministership on account of "the security of India" having been declared "threatened by internal disturbances".

How president declares emergency?

✍ The president can declare such emergency only on the basis of a written request by the council of Ministers headed by Prime Minister.

✍ It must be approved by the parliament within 1 month.

✍ It can be imposed for 6 months and subject to extensions by repeated parliament approvals.

✍ In the event of National Emergency 6 freedoms gets suspended, however, Right to Life and personal liberty don't suspend.

<sup>6</sup> The basic features of constitution were laid down by Supreme Court in Kesavanand Bharti case as well as Minerva Mills Case.

## State Emergency:

State Emergency is called **President's Rule**. In India almost all states have tasted this emergency.

☞ This is declared on account of " **failure of Constitutional Machinery** in the state' and is declared on the basis of report of Governor or other sources.

☞ It must be approved by parliament within **2 months**.

☞ It is imposed for 6 months subject to maximum extension of 3 years. Beyond three years, the constitution would be required to amend for the extension<sup>7</sup>!

☞ During such emergency **Governor administers the state** in the name of the president.

☞ During the state emergency, all **money bills** of the state are referred to **parliament** for approval.

☞ During the state emergency, **parliament makes laws on "subjects of state list"** for particular state.

## Financial Emergency:

If the President of India is satisfied that there are circumstances in which the financial stability or credit of the country is threatened he / she may declare financial emergency as per article 360.

☞ It has not been declared in India ever,

In the financial emergency, almost all financial powers are assumed by the president.

## VICE PRESIDENT OF INDIA

### Various Articles Related to Vice President of India

☞ Article 63 to Article 69 exclusively deals with Vice President of India.

☞ Article 63 says that there shall be a Vice President of India.

☞ Article 64 says that Vice President is the **ex officio Chairman** of the Council of States (Rajya Sabha)

☞ Article 65 says that Vice President will discharge the function of the President when he is not available.

☞ Article 66 lays down the elections and eligibility of Vice President of India

☞ Article 67 mentions the term of office of Vice president (5 years)

☞ Article 68 mentions, how the vacancy in the office of Vice President has to be filled.

☞ Article 69 provides oath of affirmation to the Vice President

### Who can be a Vice President of India?

The eligibility criteria to become a Vice President of India are laid down by article 66 (Election of Vice President). The article says that the candidate to become Vice President of India should:

1. Be a Citizen of India
2. Completed the age of 35 years
3. Qualified for election as member of **Council of State**.

☞ Here is the first difference between the President and Vice President Candidature. **The Presidential candidate must be qualified for election as a member of the House of the People (Lok Sabha)** while the **Vice President should be qualified for election as a member of the Council of States (Rajya Sabha)**. Please note this.

4. Not hold an office for profit.

<sup>7</sup> Constitution was amended for extension of President's rule in Punjab and Jammu & Kashmir.



**What are the functions of Vice President of India?**

Article 64 says that Vice President of India shall be the executive Chairman of the Rajya Sabha and shall not hold any other office of the profit.

✍ However, during the period when he/ she acts as the officiating President of India, he / she **shall not act as chairman of the Rajya Sabha** and shall not be entitled to the salary or allowances payable to the chairman of the Rajya Sabha.

✍ Article 65 says that in case the President is unable to discharge his/ her duties for reasons such as illness, resignation, removal, death or otherwise, the Vice President shall carry out functions of the President. In such case, he/ she **shall be entitled for the salary, allowance and all privileges of the President.**

**Vice President : Election, term of office, removal, Oath**

The Vice President of India is elected by both the houses of the parliament i.e. Lok Sabha and Rajya Sabha.

✍ **MLAs have no role to play in election of the Vice President.**

The original constitution laid down the method of election of Vice President of India by members of both Houses of Parliament **assembled at a joint meeting**. However, later it was felt that the requirement that both houses should assemble at a joint sitting for the election of the Vice-President, is **unnecessary and has practical difficulties**. So, this difficulty was done away with Constitution 11th Amendment Act 1961.

Now the election of the Vice President takes place on the basis of a electoral college consisting of the members of both Houses of Parliament in accordance with the system of **proportional representation** by means of the single transferable vote.

✍ **The doubt and dispute arising out of election of President and / or Vice President can be challenged in the Supreme Court.**

**Term of Office:**

The term of office of the Vice President is 5 years. The term may terminate earlier by resignation which should be addressed to the President. The term may also terminate earlier by removal.

**Removal:**

The Vice President can be **removed by a resolution by the members of the Rajya Sabha.**

✍ To move such resolution, a 14 days' notice is to be given.

✍ Such a **resolution**, though passed by the **Rajya Sabha only**, but **must be agreeable to the Lok Sabha.**

**Oath or affirmation:**

Article 60 mentions the "oath" to be taken by the president, article 69 provides oath of affirmation to the Vice President . The following table shows both of them in comparisons.

President	Vice President
Article 60	Article 69
I, A.B., do swear in the name of God/solemnly affirm that I will faithfully execute the office of President (or discharge the functions of the President) of India and will to the best of my ability <b>preserve, protect and defend the Constitution and the law</b> and that I will devote myself to the service and well-being of the people of India."	"I, A.B., do swear in the name of God/solemnly affirm that I will bear true <b>faith and allegiance to the Constitution</b> of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

The above distinguishes the oaths of President and Vice President. The President takes the oath to “**Preserve, protect and defend**” the constitution while the Vice President takes oath to “**Faith and allegiance**” to the constitution.

**Anomalies in the Vice President’s Election:**

No constitution can be perfect and so applies to our constitution. The Vice President functions a President of the whole country, when the president is not available, but in his election, State electors have no role to play and this is a big anomaly in the constitution.

**COUNCIL OF MINISTERS**

Article 74 & 75 of the constitution of India deal with the Council of Ministers and Prime Minister. The following table summarizes these articles.

Article	Summary
74(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. The president may require the council of ministers to reconsider such advice and president shall act in accordance with such advice reconsidered.
74(2)	What advice was tendered to the president cannot be inquired into any court.
75(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.
75(2)	The Ministers shall hold office during the pleasure of the President.
75(3)	The Council of Ministers shall be collectively responsible to the House of the People.
75(4)	Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule
75(5)	A Minister must be a member of any of the houses within 6 months.
75(6)	Parliament will decide the salary and allowances of the Ministers and until parliament decides, so shall be as specified in the Second Schedule.

**Important Questions on Council of Ministers**

Let’s discuss some important questions for our exams point of view:

**1. What makes The Council of Ministers Real Executive?**

The article 74(1) makes the Council of Ministers real executive in our country. This article mentions that the President shall act in accordance with the advice tendered by the council of Ministers. The president may ask the Council of Ministers to reconsider the advice, but if the Council of Ministers decides to stick to the previous advice, the president acts as per this reconsidered advice.

**2. Can an advice tendered to the president by the Council of Ministers be inquired by anybody?**

No. This has been made clear by the article 74(2) of the constitution.

**3. Ministers shall hold office during the pleasure of the president, what does it mean?**

All the ministers are appointed by the president on the advice of the Prime Minister. It is the Prime Minister who allocates the portfolio to other ministers. The prime Minister may call for the resignation of any

minister at any time. In case the minister refuses, the **prime minister may advise the President to dismiss the minister**. This is also called the **"Rule of Individual Responsibility"**.

#### 4. A Minister must be a member of any of the houses within 6 months. What does this mean?

This means that Prime Minister may choose Ministers from Lok Sabha or Rajya Sabha.

✍ A person who is a member of one house is **eligible to speak and take part in the proceedings** of the **other house** but **NOT eligible to take part in voting**.

✍ A person who is not a member of either house may be appointed as a minister.

✍ But maximum duration, a person can remain a minister without being a member of either house is 6 months.

✍ He / she must be able to secure a seat in either house within this time period as per Article 75(5).

#### 5. Council of Minister will be collectively responsible to the house of people, what does it mean?

Article 75(3) of our constitution incorporates the **Principle of Collective Responsibility**. This article says that Council of Ministers shall be collectively responsible to **"Lok Sabha"**. This means that if the Ministry loses the confidence of the "Lok Sabha", all ministers **including those who are from Rajya Sabha** have to go. The entire ministry is obliged to resign. This means that ministers fall and stand together. This is called **"Rule of Collective Responsibility"**.

#### 6. What is the implication of Rule of Individual Responsibility?

As mentioned above, Individual responsibility means that Individual minister holds the office during the pleasure of the president. It means that this is a **"powerful weapon" of the President in the hands of the prime Minister**. Losing **confidence of the Prime Minister** leads to **dismissal by the President**.

## ATTORNEY GENERAL OF INDIA

**Article 76** Provides for an Attorney General of India.

### Important Questions on AGI

#### Who is Attorney General of India?

Attorney General is Indian government's **chief legal advisor** and its **primary lawyer in the Supreme Court** of India.

Not a Chief Justice

#### Who can be an attorney General?

The person must be a person qualified to be appointed as a **Judge** of the Supreme Court.

#### Who appoints Attorney General?

As per article 76(1) President of India appoints chief justice and the attorney general holds the office during the **pleasure of the President**.

#### Who determines the salary/ remuneration of Attorney General?

President of India.

#### What are functions of Attorney General?

Attorney General acts as an **advocate of the Union Government**. He/ she is responsible for giving advice to the Government of India upon such legal matters and to perform such other duties of legal character which are assigned to him by the President.

## What is the difference between Attorney General and Advocate General?

Attorney General is the highest law officer of the country, while the Advocate General is the highest law officer of a State in India. Attorney general is appointed by President, Advocate general is appointed by the Governor of the state (article 165). The advocate general holds the office during the pleasure of the Governor and his/ her salary/ remuneration is decided by Governor of the state in question.

## What is the difference between Attorney General and Solicitor General?

While the Attorney General is highest law officer of the country, solicitor general is the second highest law officer. A Solicitor General assists the Attorney General of India. The Solicitor General is himself/ herself is assisted by four Additional Solicitors Generals. Attorney General can tender the legal advice to government of India but Solicitor General cannot. The job of Solicitor General of India is confined to appearing in the courts on behalf of Union of India.

## What is role of Attorney General in the advisory Jurisdiction of Supreme Court?

Whenever any reference is made by the President to the Supreme Court under Article 143 of the Constitution (advisory jurisdiction) Attorney General represents the Government of India.

## Is Attorney General eligible to take part in parliament's Proceedings?

**Yes**, Attorney General has the right to participate in the proceedings of the Parliament, but he/ she is NOT eligible to vote. Apart from this, Attorney General of India has right of audience in all Courts in India.

## Who is the Current Attorney General of India?



Goolam Essaji Vahanvati was appointed the new Attorney General in June 2009. He is the first Muslim to hold the top law officer's post. He was brought in as Solicitor General in 2004 . Prior to this he was Advocate General of Maharashtra.

## Is there any time fixed for tenure of the Attorney General?

**No**. The period is fixed by the President via notification.

## What is the difference between India's Attorney General and UK's Attorney General?

In Britain the Attorney General is a member of the Cabinet. In India Attorney General is not a member of the cabinet and in cabinet, there is a Minister of law. Though the Attorney General has privilege to address both the houses of the parliament and enjoys same immunities and privileges as other MPs in India.

If there is a need to seek advice on legal matters, who comes first Attorney General or Law Minister?

**Law Ministry**. In fact all references are made by the law ministry to the Attorney General

## CONDUCT OF GOVERNMENT BUSINESS

### Conduct of Government Business & Duties of the Prime Minister

Article 77 expressly mentions that all executive actions of the Government of India shall be expressed to be taken in the name of the president. This article provides that the orders and other instruments shall be authenticated in such a manner as may be **specified in rules by the president**. But the rules made by the

President **do NOT** require the president to act **ONLY through** the Ministers. It expressly mentions that the President is not a Rubber stamp.

**Article 78 deals with the duties of the Prime Minister towards the President of India.** The duties of the Prime Minister towards President are:

1. To communicate to the President **all decisions** of the Council of Ministers Regarding the **administration and legislation** of India.
2. To **furnish such information** as the President may call for.
3. To submit for the Consideration of the Council of Ministers as desired by the President.

## UNION LEGISLATURE

Before we start, please go through this question:

Consider the following:

1. President
2. Parliament
3. Supreme Court

Which among the above come under the Union Legislature?

Please note the following important points:

- ✍ The **Union Legislature** is **Only Parliament**
- ✍ The **Union Executive** is **only President, Vice President & Council of Ministers.**
- ✍ The **Union Judiciary** is **Only Supreme Court.**

## Understanding Bicameralism

India's parliament is constituted on the basis of Principle of principle of "Bicameralism", so it has two chambers. The two houses are Lok Sabha and Rajya Sabha. As the name suggests, Lok Sabha is the House of the People and Rajya Sabha is the council of States. This means that :

- ✍ The members of Lok Sabha are directly elected by the people.
- ✍ The members of Rajya Sabha are elected by the "**Members of State Assemblies**".

Please note that: In India, the **Parliament** comprises **President, Lok Sabha and Rajya Sabha** but the **President is NOT a Part of the legislature.**

This is in trend with the British parliamentary system where the Parliament is comprised of :

1. King (Queen)
2. House of Lords
3. House of Commons

Though, this is in contrast with the Parliament of the United States (Congress).

- ✍ The President of United States is **NOT a part of the American Congress.**



**Q.** If President is NOT a part of the legislature, how his/ her participation in legislature is ensured? This has been done by making the President a **Part of the Parliament**. President is the Chief Executive Authority and Executive power is co-extensive with the legislative power.

## Summary of the articles related to Union legislature

✍ **Article 79 says that there shall be a parliament** which shall be **consisting of President & two Houses**.

✍ **Article 80** deals with Composition of the Rajya Sabha.

✍ **Article 81** deals with the Composition of the House of People (Lok Sabha)

✍ **Article 82 deals with Delimitation** and leads to constitution/ enactment of **Delimitation Commissions** and related acts by the parliament.

✓ Article 83 deals with the Duration of Both the Houses of the parliament.

✓ Article 84 lays down the qualifications to become an MP (Both Lok Sabha MPs and Rajya Sabha MPs).

✓ Article 85 says that President shall summon the houses of the parliament to meet (6 months is the maximum time limit provided between two consecutive meetings) & Prorogation and Dissolution of the Houses.

✓ Article 86 discusses the Right of President to address and send messages to Both the Houses of the parliament.

✓ Article 87 discusses the special addresses by the President to Both the Houses of the parliament.

✓ Article 88 discusses the Rights of Ministers and Attorney-General as respects Houses.

✍ **Article 89 says that Vice President of India shall be Ex-officio Chairman of the Rajya Sabha** and the Rajya Sabha members will choose a "Deputy Chairman".

✍ Article 89 to article 98 Deal with the officers of the parliament such as Chairman of Rajya Sabha (89), Deputy Chairman (90,91,92), Speaker and Deputy Speaker of Lok Sabha (93, 94, 95, 96), Salaries of the Chairman, Deputy Chairman, Speaker, Deputy Speaker (97) and Secretariat of the Parliament (98).

✍ Article 99 & 100 deal with the Conduct of parliament Business such as Oath by the MPs, Voting in Houses etc.

✍ Article 101, 102, 103, 104 deal with the Disqualification of the members.

✍ Article 105, 106, deal with the Powers, Privileges, salaries, Allowances etc. of the MPs.

✍ Article 107, 108, 109, 110, 111 have laid down the procedure of introduction and passing of the Bills, Joint sittings in some cases, Money Bill, Assent to Bills etc.

✍ **Article 112, 113, 114, 115, 116, 117 Deal with the Financial matters such as Budget, Appropriation Bills, Grants etc.**

✍ Article 118 to 122 deal with some General procedures of the Parliament.

✍ **Article 123 gives the president the power to promulgate the Ordinance.**

If you can remember all the articles and their topics, it is good. Otherwise, most important are again written here again

79: Parliament

89: Vice President as Ex Officio Chairman of Rajya Sabha.



80: Composition of Rajya Sabha

112-117 : Budget

81 : Composition of Lok Sabha

123: Ordinance.

82 : Delimitation

### Article 80: Composition of Rajya Sabha

Rajya Sabha or Council of States is the Upper House of our parliament. The other term is used is “House of Elders”.

- ✍ Article 80 gives the details of the composition of the Rajya Sabha.
- ✍ The **maximum** membership to Rajya Sabha is limited to **250**.
- ✍ The 250 members are as follows:
  - A maximum of 12 Members nominated by the President of India who excel in Literature, Science, Art and Social Service.
  - A maximum of 238 Members elected by representatives of the **States & Union Territories**.
  - Representatives of the states are elected by the elected members of the **Legislative Assembly** of the **state** in accordance with the **System of Proportional Representation** by means of Single Transferable Vote.
- ✍ **The present strength of the Rajya Sabha is 245, of whom 233 are representatives of the States/Union Territories and 12 are nominated by the President.**

### Election of the Rajya Sabha Members

233 members of the Present Rajya Sabha are elected by the various state Legislative assemblies so the Council of States is an “Indirectly Elected Body”. For this election, **Each State is allotted a certain number** of seats in the council.

As per article 80(5), the representatives of the Union Territories **are chosen as Parliament prescribes by law**. As prescribed by the parliament, the **representatives of the Union Territories** are **indirectly elected** by the members of the **electoral college** for that territory.

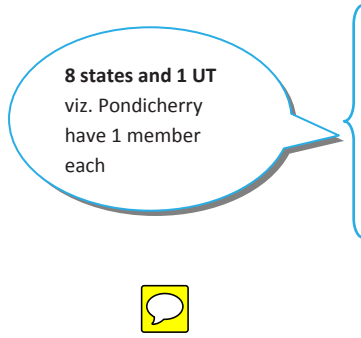
### How Rajya Sabha shows Federal Character?

Rajya Sabha shows the federal character by representing the Units of the Federation. However, it does not follow the Equality of States representation Principle of United States. In India, the Rajya Sabha is **represented unequally** by the states mainly depending upon the population and varies from 1 to 31.

### Allocation of Seats in Rajya Sabha

This allocation is **mainly** on the basis of Population but this is **NOT** the sole consideration. Some **smaller states have been given due weightage** in representation in Rajya Sabha. Following table shows the composition of Present Rajya Sabha.

8 states and 1 UT viz. Pondicherry have 1 member each



State	Members	State	Members
Arunachal Pradesh	1	Jharkhand	6
Goa	1	Assam	7
Manipur	1	Punjab	7
Meghalaya	1	Kerala	9
Mizoram	1	Orissa	10
Nagaland	1	Rajasthan	10
Sikkim	1	Gujarat	11
Tripura	1	Madhya Pradesh	11
Puducherry	1	Karnataka	12
Himachal Pradesh	3	Bihar	16
Uttarakhand	3	West Bengal	16
NCT of Delhi	3	Andhra Pradesh	18
Jammu and Kashmir	4	Tamil Nadu	18
Chhattisgarh	5	Maharashtra	19
Haryana	5	Uttar Pradesh	31
Total	233		
Nominated	12		
<b>Total Rajya Sabha</b>	<b>245</b>		

#### Quick Facts

- 1 member: 8 states
- 1 member : 1 UT
- More than 10 members: **9 states**
- UP has maximum members in Both Lok Sabha and

### Article 81: Composition of Lok Sabha

Article 81 deals with the Composition of the Lok Sabha. This article provides that the maximum number should be as follows:

- Not more than 530 representatives of the states.
- Not more than 20 representatives from the Union Territories
- Not more than 2 members of the Anglo Indian Community as nominated by the President, only if he / she is of opinion that the Anglo Indian Community is not adequately represented in the parliament.
- This makes the total strength of the Lok Sabha i.e.  $530+20+2= 552$ .

#### Which article provides representation to Anglo-Indian Community?

✍ Please note that representation of the Anglo-Indian Community is provided by the Constitution as per article 331 and NOT by article 81. Article 331 says that:

Notwithstanding anything in article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.

#### Can the Number of Members of Lok Sabha Increase or Decrease?

**Yes.** The limit on the maximum number of members chosen directly from territorial constituencies in States may be exceeded if such an increase is incidental to the reorganization of States by an Act of Parliament.

## Can the Strength of Lok Sabha may change now or in near Future?

**NO.** There shall be NO change in the seats in Lok Sabha until the relevant figures are published of first census taken after **the year 2026.**

## How the seats of Lok Sabha allocated to the States?

The seats of Lok Sabha are allocated to the states in such manner that the **ratio between that number and the population of the State** is, so far as practicable, **the same for all States.** Further, **each State** is divided into **territorial constituencies** in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the **same throughout the State.**

## But population means which Census Figures?

**1971 census for determination allocation of seats among states** and **Census 1991 for allocation of Seats within states** (Article 81, Explanation i & ii)

## What is the Present Strength of Lok Sabha?

The Present Strength of Lok Sabha is **545.** This Includes:

1. Representatives of States = 530
2. Representatives of Union Territories: 13
3. Representatives of Anglo Indian Community= 2
4. Total =545

The electors of the Constituencies elect the members directly on the basis of Adult Suffrage as per **Article 326 Constitution of India.**

✍ The age for being eligible to voting , prior to 61st amendment act was 21 years. The Constitution 61st Amendment Act 1988 reduced the age to be eligible to vote to 18 years.

Please note that Constitution provides that the **members of the Union territories** are to be chosen in such a manner as **Parliament by law may decide, and using this power the parliament made the law** that members from the Union Territories should be **chosen by direct election.**

✍ **The first General elections were held in 1951-52. The strength of the Lok Sabha at that time was 489.**

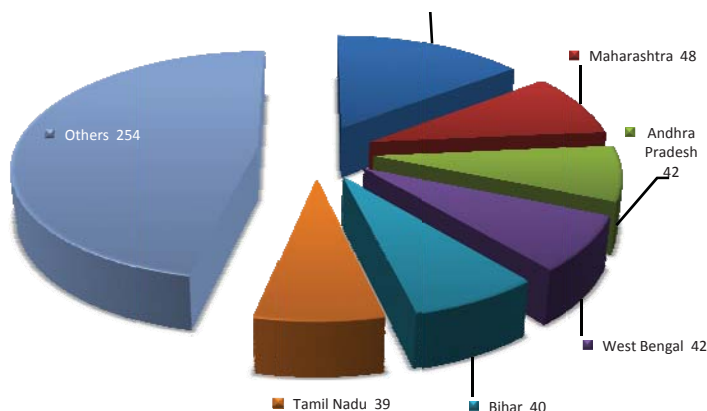
✍ Each Constituency chooses 1 member. But this was not as it since beginning. Prior to 1962, there were both single - member and multi member constituencies. These **multi - member constituencies** used to elect **more than one member.** The multimember constituencies were abolished in 1962.

## Members of Lok Sabha: State wise

The table on the following page shows the members of the **present 15<sup>th</sup> Lok Sabha** with number of members from states and UTs.

States	No.	Union Territories	No.
Uttar Pradesh	80	Andaman and Nicobar Islands	1
Maharashtra	48	Chandigarh	1
Andhra Pradesh	42	Dadra and Nagar Haveli	1
West Bengal	42	Daman and Diu	1
Bihar	40	Delhi	7
Tamil Nadu	39	Lakshadweep	1
Madhya Pradesh	29	Puducherry	1
Karnataka	28	Total States	530
Gujarat	26	Total UTs	13
Rajasthan	25	Anglo Indian Community	3
Orissa	21	<b>Total Lok Sabha</b>	<b>545</b>
Kerala	20	<b>Memorable Points:</b>	
Assam	14	✍ Maximum members: Uttar Pradesh (80).	
Jharkhand	14	✍ Three States viz. Mizoram, Nagaland, Sikkim have one member each.	
Punjab	13	✍ 5 states have two members each.	
Chhattisgarh	11	✍ Except NCT, all UTs have 1 member each.	
Haryana	10	✍ Top 6 state viz. Uttar Pradesh (80), Maharashtra (48), Andhra Pradesh (42), West Bengal (42), Bihar 40 & Tamil Nadu (39) account for more than half of the MPs from Lok Sabha.	
Jammu and Kashmir	6		
Uttarakhand	5		
Himachal Pradesh	4		
Arunachal Pradesh	2		
Goa	2		
Manipur	2		
Meghalaya	2		
Tripura	2		
Mizoram	1		
Nagaland	1		
Sikkim	1		

Lok Sabha Seats by States



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**Lok Sabha Members: Political Party Wise:**

After the Indian general election, 2009, the 15th Lok Sabha was formed. The 2009 elections adopted re-drawn electoral constituencies based on the census, following the 2002 Delimitation Commission of India, whose recommendations were approved in February 2008. Out of the 543 parliamentary Constituencies, 499 were newly delimited constituencies. Congress (I) was the largest party, followed by Bharatiya Janta Party.

S.No.	Name of Party	Member
1	Indian National Congress(INC)	207
2	Bharatiya Janata Party(BJP)	115
3	Samajwadi Party(SP)	22
4	Bahujan Samaj Party(BSP)	21

5	Janata Dal (United) (JD(U))	20
6	All India Trinamool Congress(AITC)	18
7	Dravida Munnetra Kazhagam(DMK)	18
8	Communist Party of India (Marxist)(CPI(M))	16
9	Biju Janata Dal(BJD)	14
10	Shiv Sena(SS)	11
11	All India Anna Dravida Munnetra Kazhagam(AIADMK)	9
12	Independent(Ind.)	9
13	Nationalist Congress Party(NCP)	9
14	Telugu Desam Party(TDP)	6
15	Rashtriya Lok Dal(RLD)	5
16	Communist Party of India(CPI)	4
17	Rashtriya Janata Dal(RJD)	4
18	Shiromani Akali Dal(SAD)	4
19	Jammu and Kashmir National Conference(J&KNC)	3
20	Janata Dal (Secular)(JD(S))	3
21	All India Forward Bloc(AIFB)	2
22	Jharkhand Mukti Morcha(JMM)	2
23	Jharkhand Vikas Morcha (Prajantrik)(JVM (P))	2
24	Muslim League Kerala State Committee(MLKSC)	2
25	Revolutionary Socialist Party(RSP)	2
26	Telangana Rashtra Samithi(TRS)	2
27	All India Majlis-E-Ittehadul Muslimeen(AIMIM)	1
28	All India United Democratic Front(AIUDF)	1
29	Asom Gana Parishad(AGP)	1
30	Bahujan Vikas Aaghadi(BVA)	1
31	Bodoland Peoples Front(BPF)	1
32	Haryana Janhit Congress (BL) (HJC)	1
33	Kerala Congress (M) (KC(M))	1
34	Marumalarchi Dravida Munnetra Kazhagam(MDMK)	1
35	Nagaland Peoples Front(NPF)	1
36	Sikkim Democratic Front(SDF)	1
37	Swabhimani Paksha(SWP)	1
38	Viduthalai Chiruthaigal Katchi(VCK)	1
39	Yuva Jana Sramika Rythu Congress Party(YSR Congress Party)	1

## Article 82: Delimitation

### What is Delimitation?

Delimitation means the drawing of boundaries. The boundaries may be domestic, national and International, but the most general use of this term is in context with **electoral boundaries**. Article 82 (Readjustment after each census) makes provision for delimitation of the electoral boundaries. It is the process of **allocation of number of Seats and their demarcation into territories**.

### What is Delimitation Commission?

Under this article, the Parliament by law enacts a **Delimitation Act after every census**. After coming into force commencement of the Act, the Central Government constitutes a **Delimitation Commission**. This Delimitation Commission demarcates the boundaries of the Parliamentary Constituencies as per provisions of the Delimitation Act.

✍ **Delimitation commissions** have been set up **four times** in the past viz. 1952, 1963, 1973 and 2002 under Delimitation Commission acts of 1952, 1962, 1972 and 2002.

## What is the Purpose of Delimitation?

In India, the main basis for allocation of seats to various States in the **Lok Sabha** is **Population** of the state. The division of each state into the territorial constituencies is to be readjusted after the completion of a census so that the **Population-Seat ratio is maintained within the state and throughout the Union**. So the **purpose** is the Rationalization of the structure and composition of the electoral constituencies, on the principle of "**One vote and one value**".

## Was Delimitation Commission formed at the time of First General Elections?

**No.** When the constitution came in existence, it had fixed the number of Seats to Lok Sabha as **not more than 500**. For the First General Elections for Lok Sabha as well as legislative Assemblies for 1951-52, the Election Commission had divided the entire country into viable territorial divisions of parliamentary / assembly Constituencies. However, after that this task was given to the Independent Delimitation Commission.

Accordingly, separate delimitation commissions were set up in 1952 (basis of 1951 census), 1962 (basis of 1961 census), 1972 (basis of 1971 census).

## When was a ban put on Delimitation?

The **42nd Amendment Act 1976** had put **a ban on any further delimitation** of the Constituencies till the **year 2000**. So after the 42nd amendment act 1976, the total number of seats in Lok Sabha and Rajya Sabha has remained the same.

## Why this ban was imposed?

This ban was imposed mostly on the account of the fear that a few states to get more seats in the Lok Sabha on the basis of a **large population may not take much interest in the family planning**. So, indirectly this was done so that states may not be biased towards the family planning measures.

## What was done in 84<sup>th</sup> Amendment Act 2002?

The **84<sup>th</sup> Amendment Act 2002** extended this freeze till **the year 2026**. This was based upon the calculations of the population planners that by 2026 India will be able to **stabilize the population**. So next allocation of seats would be carried out on the basis of the Census after 2026 and the number of seats will not change by then.

## But, last delimitation was done recently?



Yes. By enacting the 84th amendment Act, 2002, it was also decided to undertake **readjustment and rationalization of territorial constituencies in the States, without altering the number of seats allotted to each State in the House of the People and Legislative Assemblies of the States**, including the **Scheduled Castes and the Scheduled Tribes constituencies**, on the basis of the population ascertained at the census for the year 1991, so as to remove the imbalance caused due to uneven growth of population/electorate in different constituencies. So 84th amendment Act did two things:

1. Freeze the fresh delimitation till 2026
2. Allowed to readjust the seats.

The year 1991 was later altered to 2001 by 87<sup>th</sup> amendment act 2003.

### What was Delimitation Act 2002?

In pursuant with the 84<sup>th</sup> Amendment Act 2002, the **Delimitation Act 2002** was passed. Under this act **Delimitation Commission was constituted** in July 2002.

✍ The Chairman of this commission was **Justice Kuldeep Singh**.

**Justice Kuldeep Singh** was a retired Judge of the Supreme Court of India. The Ex-officio members of this Commission were an election commissioner of India and state election commissioners. So this commission started working on the basis of 1991 census data. But later in 2003, the word "1991" in the article 82 of the constitution was removed and replaced by 2001. This means that the work done till then by the commission became obsolete. The commission later restarted the work as it was now entrusted with the task of readjusting all parliamentary and assembly constituencies in the country in **all the states of India, except the state of Jammu and Kashmir**, on the basis of population ascertained in **2001 Census**.

Later, The Guwahati High court stayed the delimitation exercise in respect of the Arunachal Pradesh, Assam, Nagaland, Manipur (5 states) on the basis of the **disputes in the census Figures**. In Manipur the work of delimitation was later resumed after Supreme Court stayed on the order of the Guwahati High Court.

### What about the Current Position?

In the 2009 general elections, 499 out of the total 543 Parliamentary constituencies were newly delimited constituencies. This affected the National Capital Region of Delhi, the Union Territory of Puducherry and all the states except **Arunachal Pradesh, Assam, Jammu & Kashmir, Jharkhand, Manipur and Nagaland**. Many instances, a constituency with the same name may reflect a significantly different population demographic as well as a slightly altered geographical region.

### What about Reserved Seats for SC & ST in Lok Sabha?

The 84<sup>th</sup> amendment Act 2002 also provided to **refix the number of seats reserved** for the Scheduled Castes and the Scheduled Tribes in the **House of the People** and the **Legislative Assemblies** of the States on the basis

of the population ascertained at the census for the year 1991. 1991 was replaced by 87th amendment Act 2003 by 2001. So, following was impact on the Number of Seats Reserved:

- ✍ Total 11 seats were affected.
- ✍ The seats reserved for SC went up from 79 to 84.
- ✍ The seats reserved for ST went up from 41 to 47.
- ✍ The total Reserved Seats went up from 120 to 131.
- ✍ The unreserved seats came down from 423 to 412.
- ✍ Total seats remained unaffected.

Important

## Article 83: Duration of Houses

- ✍ Lok Sabha has a fixed term of 5 years and can be dissolved by the President at any time.

The original Constitution had a term of Lok Sabha as 6 years. It was changed to 5 years by Constitution 44<sup>th</sup> Amendment Act 1978.

- ✍ Rajya Sabha has an indefinite term and not subject to dissolution (Article 83.1).
- ✍ The term of an Individual Rajya Sabha member is 6 years and **one third** of its members retire every two years, in accordance with the rules as prescribed by the parliament of India.
- ✍ While a Proclamation of Emergency is in operation, 5 year period for Lok Sabha may be extended by Parliament by law for a period not exceeding one year at a time and not exceeding in any case beyond a period of six months after the Proclamation has ceased to operate.

## Article 84 : Qualifications to Become an MP

Article 84 of the Constitution lays down the qualifications for membership of Parliament. A person to be qualified to be an MP is required that he / she:

1. Must be a citizen of India
2. Must be not less than **30 years of age in case of Rajya Sabha and 25 years in Case of Lok Sabha.**
3. Must possess such **other qualifications as may be prescribed** in that behalf by or under any law made by Parliament.

## Article 101: Vacation of Seats

Article 101 lays down the conditions in which a member of parliament shall vacate his / her seat. The conditions are as follows:

1. If a person be chosen to be member of both the houses of parliament, he/ she must vacate his / her seat in one of the two houses.
2. If a person is elected both as MLA and MP, then he / she must vacate the seat of MLA, otherwise seat of MP shall fall vacant.

3. If the person is disqualified as per article 102, he / she shall vacate the seat.
4. **Resignation:** To **speaker** in case of Lok Sabha and to **Chairman** in case of Rajya Sabha.
5. **Absence without permission:** A seat can be declared vacant if a member absents himself from all meetings of the house for a period of **60 days**.

## Article 102: Disqualifications from being an MP

There are situations prescribed by the Constitution for Disqualification of the MPs. **Article 102** of the Constitution lays down that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament –

1. if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
2. if he is of unsound mind and stands so declared by a competent 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 or adherence to a foreign State;
5. if he is so disqualified by or under any law made by Parliament.

### But a Minister holds an office of Profit?

Yes, however, for the purpose of this clause a person **shall not be deemed to hold an office of profit** under the Government of India or the Government of any State by reason **only that he/ she is a Minister** either for the Union or for such State.

### Tenth Schedule & Disqualification:

**Apart from article 102, the Tenth Schedule to Constitution provides for disqualification of the members on ground of defection.** As per the provisions of the Tenth Schedule, a member may be disqualified as a member, if he/ she

1. Voluntarily gives up the membership of his political party
2. Votes or abstains from voting in the House contrary to any direction issued by the political party to which he belongs, unless such voting or abstention has been condoned by the political party within fifteen days.
3. A member elected as an independent candidate shall be disqualified if he joins any political party after his election.

## Article 85: Sessions of Parliament, prorogation and dissolution

The constitution of India has imposed the **duty upon the President** that he / she must summon each house at such intervals that the maximum time gap between two sessions of the parliament is 6 months. So

✍ The parliament must meet twice a year.

**Prorogation is end of a session.** The time between the Prorogation and reassembly is called **"Recess"**.

### Prorogation:

The **termination** of a session of **Rajya Sabha** by an **order made by the President** under article 85(2) (a) of the Constitution is called Prorogation.

✍ A prorogation puts an end to a session and **not the Lok Sabha itself.**

**Dissolution:** Dissolution may take place either by end of 5 year term of Lok Sabha or the end of term as extended by emergency or by an order of President as mentioned in article 85 (2).

✍ A **dissolution** puts an **end to the Lok Sabha** and **Fresh elections must be held.**

### Adjournment:

Adjournment refers to postpones the further transaction of the business for specified time. Adjournment terminates the sitting of the House which meets again at the time appointed for the next sitting.

### Adjournment of Debate

Adjournment of Debate refers to the **adjournment on a motion** adopted by the House, of the debate on a Motion or Resolution or Bill on which the House is then engaged until a future day or sine die as specified in the motion.

### Adjournment *sine die*:

Adjournment *sine die* refers to termination of a sitting of the House without any definite date being fixed for the next sitting.

### President's Address:

President's address is the speech delivered by the President of India to both Houses of Parliament assembled together at the

1. Commencement of the first session after each general election to Lok Sabha
2. At the commencement of the first session of each year.

### Please note this fact:

✍ The original constitution provided for a president's speech at the beginning of every session. This was made first session after an election, and first session of a new year by Constitution 1<sup>st</sup> Amendment Act 1951.

## Article 88: Right of Ministers and AG to take part in proceedings

Article 88 says that every **Minister and the Attorney-General** of India shall have the right to speak in, and otherwise to 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 shall not by virtue of this article be entitled to vote.

## Article 89 To 98: Officers of Parliament

Article 89 to 98 deal with the officers of the parliament. A summary of these articles is here:

- ✍ Vice President of India shall be ex officio chairman of Rajya Sabha.
- ✍ Rajya Sabha to **choose a Member of the Rajya Sabha** as **Deputy Chairman**
- ✍ The Deputy Chairman will vacate office if he/ she cease to be member of Rajya Sabha.
- ✍ The Deputy Chairman of Rajya Sabha will resign by writing a resignation to Chairman
- ✍ The **deputy chairman can be removed by majority of the Rajya Sabha members.** A 14 days notice is required to be given.
- ✍ If Vice President is not available, Deputy Chairman will discharge functions as Chairman of the Rajya Sabha.
- ✍ If Chairman is also not available, **a member appointed by the President** will discharge the function.
- ✍ The Chairman or Deputy Chairman **will not preside** while a resolution for his/ her removal from office is under consideration.
- ✍ While a resolution for his/ her removal is under consideration, he / she shall be **able to speak** but **not eligible to cast the "Casting Vote"**.
- ✍ Two members of Lok Sabha will be chosen as Speaker and Deputy Speaker.
- ✍ The Speaker shall vacate the office if he/ she cease to be a member of Lok Sabha.
- ✍ **The Speaker will write resignation to Deputy Speaker and Deputy Speaker will resign to speaker.**
- ✍ **Can be removed by the Lok Sabha members by majority.**
- ✍ **After the Lok Sabha gets dissolved, the Speaker will not immediately vacate the office but will continue till the first meeting after the next elections.**
- ✍ If the Speaker is NOT present, his duty will be functioned by Deputy Speaker.
- ✍ If Deputy speaker is also not present, **a person appointed by President** will discharge the duties.
- ✍ The speaker or Deputy speaker will not preside the house, while a resolution for his/ her removal from the office is under consideration.
- ✍ While a resolution for his/ her removal is under consideration, he / she shall be able to speak but **not eligible to cast the "Casting Vote"**.

- ✍ The salaries and allowances of the Chairman/ Deputy Chairman of the Rajya Sabha and Speaker / Deputy Speaker will be decided as per the **law by parliament**.
- ✍ Each house of the parliament shall have a separate secretariat staff.

### Please note these important facts about the Speaker:

1. The speaker has duty to adjourn the house if there is NO quorum.
2. **The Speaker decides whether a bill is Money bill or NOT.**
3. The **speaker presides over the joint sitting** of the parliament summoned by the president to settle a disagreement between the two houses on a bill.
4. **If the chairmen of the parliamentary are not Elected, the Speaker** appoints the chairmen.
5. The **Secretary General** of the Lok Sabha is appointed by the Speaker.

### **Secretary General of Lok Sabha:**

- ✍ Secretary General is **appointed by the Speaker** of Lok Sabha.
- ✍ He is answerable to **ONLY Speaker** and his action **cannot be criticized** in or out of Lok Sabha.
- ✍ He remains in the office till age of 60 years (retirement).
- ✍ His functions are **to provide a link between changing members and keeping the records**.
- ✍ He summons the members to attend the session of parliament on behalf of President.
- ✍ He authenticates the bill in absence of Speaker.

### **Article 105, 106: Power, Privileges, Immunities of parliament and MPs**

1. There is a freedom of speech in the parliament.
2. Anything said by a member and any vote casted by a members cannot be questioned in court.
3. Other aspects, power privileges etc. are defined by the parliament.
4. Salaries and allowances are defined by the parliament by Law.

### **Article 100: Conduct of the Business**

#### **Article 100 (1): Casting Vote:**

**Casting Voted** is cast by a Chairman of Rajya Sabha or Speaker of Lok Sabha in the case of an equality of **votes on a matter**. The Speaker in giving his casting vote in Lok Sabha **may state his / her reasons** for taking the side in whose favor he / she votes but he is **not bound** to give such reasons. Speaker almost always votes in such a way as to **maintain the status quo** or to **postpone** the settlement of the question. The Speaker or Chairman cast the casting Vote as Powers given by Constitution Article 100 (1).

#### **Article 100 (3): Quorum:**



The minimum number of members required to be present at a sitting of the House or a Committee or valid transaction of its business. The quorum to constitute a sitting of the House is **one-tenth of the total number of members** of the House, for **both** Lok Sabha as well as Rajya Sabha.

If there is no quorum, it shall be the duty of the chairman or speaker to adjourn the house or suspend the meeting.

## Compendium of Important terms

### What is Government Business and Private members Business?

The business of the parliament is divided into Government Business and Private Members' Business.

Government Business is arranged in such order as determined by the Chairman in consultation with the Leader of the House. The Government Business for a whole week is announced in advance in the House by the **Minister for Parliamentary Affairs**. The time to be allocated for various Government and Private business is recommended by the **Business Advisory Committee**. Private Members' Business is transacted during the last two and a half hours **every Friday** or such other day as allotted. A private member means a member other than a Minister.

### What is Closure?

Closure is one of the means by which a **debate may be brought to a close** by a **majority decision** of the House, even though all Members wishing to speak have not done so.

### What is Contempt of House?

**Disobedience to the authority** of the Houses of Parliament or any **misconduct** in the presence of the House or any of its Committees by Members of

Parliament or by members of the Public admitted to the galleries of the House or to sittings of Committees as witnesses, constitutes contempt of the House. Acts like interrupting the proceedings of the House, refusal by a witness to make an oath, giving false evidence, presenting false, forged or fabricated documents to either House or its Committee, constitute contempt of the House.

### What is crossing the Floor?

Crossing the floor is the passing between the Member in possession of the House and the Chair. To cross the floor is a breach of Parliamentary etiquette.

### What is Bulletin?

Bulletin means the Bulletin of the House. It is published in two parts, Part I containing a brief record of the proceedings of the House at each of its sittings; and Part II containing information on any matter relating to

or connected with the Business of the House or Committees or other matter which in the opinion of the Speaker may be included therein.

## What is Expunction?

Deletion of words, phrases or expressions from the proceedings or records of the House by an order of the Speaker or from the proceedings or records of a Committee by an order of the Chairman of the Committee or the Speaker as being defamatory or indecent or unparliamentarily or undignified.

## What is Guillotine?

Guillotine refers to putting by the Speaker of outstanding question or questions relating to the business in hand on expiry of the time allotted for its discussion. Unlike closure, the guillotine to be applied is not preceded by any motion. On the last of the allotted days at the appointed time, the Speaker puts every question necessary to dispose of all the outstanding matters in connection with the demands for grants. The guillotine concludes the discussion on demands for grants.

## Who is leader of the House (Lok Sabha) ?

The Prime Minister, if he is a Member of the House, or a Minister who is a member of the House and is nominated by the Prime Minister to function as the Leader of the House.

## Who is Leader of the Council?

The Prime Minister, if he is a Member of the Council or a Minister who is a Member of the Council and is nominated by the Prime Minister to function as the Leader of the Council.

✍ Please note that: Prime Minister is a member of Rajya Sabha and he is Leader of the Rajya Sabha.

✍ Leader of Lok Sabha is Pranab Mukherjee.

## Who is Leader of Opposition?

A Member of the House who is for the time being the Leader in that House of the party in opposition to the Government having the greatest numerical strength.

Current leaders of Opposition:

1. Sushma Swaraj (Lok Sabha)
2. Arun Jaitley (Rajya Sabha).

## Who decides that leader of opposition is from which party?

When there are two or more parties in opposition to the Government, having the same numerical strength, the Speaker shall, having regard to the status of parties recognise any one of the leaders of such parties as the Leader of the Opposition and such recognition shall be final and conclusive.

## Who delivers Maiden Speech?

Maiden Speech is the first speech of a member elected for the first time in a new House. Such a member is, as a matter of courtesy, called upon by the Speaker to make his maiden speech in preference to others rising to speak at the same time. This privilege is, however, not extended by the Chair unless claimed within the term of the House to which the member was first returned.

## Who is Member in charge of the Bill?

A member who has introduced the Bill and any Minister in the case of a Government Bill is called Member in charge of the Bill.

## LEGISLATIVE PROCEDURE

In simple words, **Legislative Procedure** means law making. The primary function of our parliament is law making. There are other functions as well but if the parliament ceases to be a law making body, it ceases to be a parliament in real sense.

The following articles are related to the legislative procedure in the constitution:

- ☞ Article 107: Provisions as to introduction and passing of Bills.
- ☞ Article 108: Joint sitting of both Houses in certain cases.
- ☞ Article 109. Special procedure in respect of Money Bills.
- ☞ 110. Definition of "Money Bills."
- ☞ 111. Assent to Bills.

Let's understand the provisions of the Constitution first.

## Basics of Ordinary and Money Bills: Article 107

The provisions of article 107 are as follows:

- ✓ **Article 107 (1)** : Subject to the provisions of articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.
- ✓ **Article 107(2)**: Subject to the provisions of articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it **has been agreed to by both** Houses, either without amendment or with such amendments only as are agreed to by both Houses.
- ✓ **Article 107(3)**: A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.
- ✓ **Article 107(4)**: A Bill pending in the Council of States which has **not** been passed **by the House of the People** shall not lapse on dissolution of the House of the People.
- ✓ **Article 107(5)**: A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall, subject to the provisions of article 108, lapse on a dissolution of the House of the People.

The first step in the legislation procedure is the introduction of a Bill which embodies the provisions of the proposed law which is accompanied by “Statement of Objects and Reasons”.

☞ Article 107 says that an ordinary bill (which is other than a Money Bill) can be introduced in any house of the parliament.

## Legislative Procedure: Ordinary Bill

### Government v/s Private Bill

A Bill can be introduced either by a Minister or by a Private Member.

☞ If a bill is introduced by a Minister, it will be called “**Government Bill**”

☞ If a bill is introduced by a private member, it will be called a “**Private Bill**”.

Please note that if a private member desires to introduce a bill, he/ she must give notice of his intention to the speaker. **For every bill it is necessary to ask for leave of the House to introduce a Bill.** If leave is granted, the Bill may be introduced. After a Bill has been introduced, it is **published in the Gazette**.

✍ However, before introduction, a bill may be published in the Gazette with the **permission** of the Speaker of Lok Sabha, Deputy Chairman of Rajya Sabha. No leave is required to introduce bill in such as case.

### First Reading:

Generally, there is no debate on introduction of a bill. The person (Minister or MP) who is given a leave to introduce a bill may present some broad idea to introduce the bill.

✍ The motion for introduction of a **Finance Bill** or an **Appropriation Bill** is not opposed.

✍ A Money Bill **cannot be introduced in Rajya Sabha nor can it be referred to a Joint Committee of the Houses.**

If the introduction of the bill is opposed, speaker may allow one of the opposing members to cite the reasons. After that Speaker will put the question to vote. If the House is in favor of Introduction of the Bill, then the Bill is Introduced and passes for the next stage.

✍ This introduction is called “**First Reading**”.

### Second Reading:

The first reading is followed by a Second Reading. After introduction, the bill is open for 4 alternative courses of action in the second stage:

1. It may be taken into consideration.
2. It may be forwarded to a Select Committee of the House.
3. It may be referred to a Joint Committee of both the houses i.e. Rajya Sabha and Lok Sabha.

4. It may be circulated / put on website for purpose of eliciting the public opinion on it.

Please note that the last alternative is resorted only in a case when the proposed legislative measure may arouse a public controversy. However, if a bill is of emergent nature, any of the upper 3 alternatives is taken.

The Select Committee or the Joint committee is expected to give its report in a stipulated time.

- ✍ The Select Committee or Joint Committee members are selected on the basis of expert knowledge.
- ✍ The Select Committee or Joint Committee members also include the **Opposition Members**.
- ✍ If it is a Joint Committee of the Both the Houses, the **2/3 members are from Lok Sabha** and **1/3** are from the Rajya Sabha.

The report of this committee may be **unanimous or majority opinion**. If it is a Majority Opinion, the minority is allowed to give the **"Minutes of Dissent"** in the report.

The submission of the Report by the Select Committee or Joint Committee members is followed by a detailed "Clause to Clause" discussion on the bill. Each Clause is taken up by the House and amendments are moved, discussed and disposed off.

**This stage is very important** The amendments which are related and pertain to the bill are moved and the Bill goes substantial changes in this stage. This is one of the most time consuming (of the house) stage of a legislative procedure.

- ✍ A bill is considered "clause by clause" and when every clause is voted , this is called **"Second Reading"**.

**Note:** The first two readings of the Bill actually refine the subject matter of the bills. Recently we read about the nuclear liability bill and came to know through the newspapers about amendments in so many clauses of the bill moved by the opposition parties. This all was pertaining to the second reading of the bill.

### **Third Reading:**

After the second Reading, the house is given sufficient time to study the clauses of the bill. After that the MP or Minister who had moved this bill moves that "the bill is passed".

This is called **Third Reading**. Please note that most of the amendments in the third reading are just formal and normally verbal in nature. The discussion is limited and quick. The Bill is finally passed as a whole and this marks the work of one houses coming to end. The bill is sent to another house.

- ✍ This means that after the **third reading**, the ordinary bill is sent for action from Lok Sabha to Rajya Sabha or from Rajya Sabha to Lok Sabha.
- ✍ The same three reading procedure is followed in both the houses.

In the second house, there are three courses for the bill:

1. It is passed as it was passed in the originating house.

2. It is to be amended
3. It is to be rejected.

In case the course is as per the course of action 2 & 3 given above, the bill is returned to the originating house.

✍ Please note that if the second house does not return it for 6 months to the originating house it is **deemed to be rejected.**

Once it is returned to the originating house, the amendments suggested by the other house are considered. Here two options arise:

1. The amendments are accepted. In this case, the originating house sends a message to the other house that the amendments are accepted.
2. The amendments are NOT accepted. In this case again the originating house sends a message to the other house that the amendments are not accepted.

In the second option given above, means when both the houses are not in agreement, a **joint sitting** of the two houses is called by the president.

### Joint Sitzings:

**Joint Sitting of the houses is mentioned by Article 108.** As per this article, a **Joint sitting** is **notified by the President** as his/ her intention to summon the both the houses for the purpose of voting and deliberating on the bill in the following situations:

1. Bill has been passed by one House and transmitted to the other House and it is rejected by the other House
2. Both houses have finally disagreed as to the amendments to be made in the Bill
3. More than 6 months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it.

Here please note that

☞ A bill pending in other house for more than 6 months is deemed to be rejected but **does not mean** that a bill gets lapsed.

☞ The bill which gets lapses due to dissolution of the Lok Sabha, gets Lapses and in such case no joint sitting is called.

Further course of action is as follows:

✍ In the joint sitting, the disputed provisions are **either fully accepted or fully rejected.**



✍ For this, a **simple majority is required**. This means that if more than half of the members of the both the houses present at floor at that time if accept the disputed provisions, the provisions are accepted fully or if reject, the provisions are rejected fully.

A bill that is passed by both the houses of the **parliament goes to the speaker**. The speaker signs it and now the bill is sent to the president of assent. This is the last stage of a bill.

✍ If the president gives assent to the bill, it becomes a Law. Once it is a law, it gets entered into the statue book.

However, as we studied, the President may take the following more courses of actions:

1. The president returns the bill to the house. If the president returns the bill, **the whole procedure is opened again** and it will take the same steps as mentioned above.
2. The president withholds assent, this would mark the end of the bill.

The above mentioned procedure is for the ordinary bills.

The article 108 is related to the **Joint sittings**. Once again we look at the content of article 107 and 108 and note down our important points:

✍ Except **money bill and other financial bills**, all ordinary bills can originate in either house of the parliament. (Article 107 (1))

✍ This means that Money Bill and other financial bills can originate only in Lok Sabha.

✍ The bill and amendments if any must be agreed by both the houses of the parliament to deem it to be a passed bill. (108(2))

✍ If the house of prorogued (adjourned for a later time), the bill will not Lapse. 107(3)

✍ If the Bill is pending in Rajya Sabha and has **NOT been passed by the Lok Sabha** yet, shall NOT lapse if the Lok Sabha gets dissolved. 107(4)

✍ If the bill is pending in Lok Sabha, or passed by Lok Sabha but pending in Rajya Sabha , shall lapse if the Lok Sabha gets dissolved.

✍ A bill pending in other house for more than 6 months is deemed to be rejected but does not mean that a bill gets lapsed. (108)

✍ The bill which gets lapses due to dissolution of the Lok Sabha, gets Lapses and in such case no joint sitting is called. (108)

✍ Rajya Sabha **can NOT reject the provisions** of Money Bill or other finance bills.

## Legislative Procedure for Money Bills and Other Finance Bills

### Money Bill v/s Finance Bill:

Before we proceed lets understand the difference between the Money Bill, Finance Bill and appropriation Bill.

Article 109, 110, 111, 112, 113, 114, 115, 116, 117 deal with the Money Bill, Finance Bill and Appropriation Bills.

**A Money Bill is defined by the Article 110 of the Constitution.** A bill is considered as a Money bill if it contains only provisions dealing with all or any of the following matters: (sub headings of Article 110)

- 110(a) Imposition, abolition, remission, alteration, regulation of any tax
- 110(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
- 110(c) The custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;
- 110(d) The appropriation of moneys out of the Consolidated Fund of India;
- 110(e) The declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
- 110(f) The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
- 110(g) Any matter incidental to any of the matters specified in sub-clauses (a) to (f).

In simple words, any bill that deals in Money Matters is a Money bill. But when a bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or penalties or for the demand or payment of fees for licenses or fees for service rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

- So bill related to Local matters are NOT Money Bills.

A finance bill is also a Money Bill. The Finance bill is one of the documents presented with the budget or annual Financial Statement as mandated in Article 110 (a). The main Budget documents are presented to the parliament accordingly various articles of our constitution as follows:

- Annual Financial Statement (AFS) : As per Article 112
- Demand for Grants (DG) : As per Article 113
- Appropriation Bill: as per Article 114 (3)
- Finance Bill: As per article 110 (a)

While presenting the Budget, the following are presented as mandated in Fiscal Responsibility and Budget Management Act 2003.

- Memorandum Explaining the Provisions in the Finance Bill,
- Macro-economic framework for the relevant financial year
- Fiscal Policy Strategy Statement for the financial year
- Medium Term Fiscal Policy Statement

## Appropriation Bill

Appropriation bill is defined as per the Article 114 of the Constitution of India. An appropriation bill or running bill is a bill that is introduced in the parliament together with the budget seeking the approval and authorization to the government spends money. It is a bill that sets money aside for specific spending. In

most democracies, approval of the legislature is necessary for the government to spend money. This is a permission to spend the amount from the consolidated fund of India.

When the Budget is passed in the house, the appropriation becomes Appropriation Act. No money can be withdrawn from the Consolidated Fund of India except under the charged money except supplementary, additional or excess grants, Votes on account, votes of credit and exceptional grants.

### Constitutional Provisions regarding Money Bills and Finance Bills

- ✍ Article 109 says that a Money Bill shall not be introduced in Rajya Sabha.
- ✍ As per Article 109(2), after a Money Bill has been passed by the Lok Sabha, it shall be transmitted to the Rajya Sabha for its recommendations. The Rajya Sabha within a period of 14 days will return the bill to the Lok Sabha with its recommendations. The Lok Sabha **may or may not accept** the recommendations of the Rajya Sabha. So
  - Rajya Sabha generally cannot hold a money bill for more than 14 days. However, if the Rajya Sabha holds the bill for more than 14 days, on the expiry of this period, the **Bill is deemed Passed in Both Houses**.
  - Lok Sabha is NOT obliged to accept the recommendations of the Rajya Sabha as far as Money Bill is concerned.
- ✍ If the recommendations of Rajya Sabha are accepted, then the bill is deemed **passed in both the houses** the amended form inculcating the recommendations of Rajya Sabha.
- ✍ If the recommendations of the Rajya Sabha are NOT accepted, then also the bill is deemed passed in the Lok Sabha and will be sent to Rajya Sabha. If still Rajya Sabha does not pass it for **14 days**, it will be automatically deemed passed in **Both the Houses of the Parliament**.
- ✍ If there is a question, whether a Money Bill is Money Bill or not, the decision of the **Speaker of Lok Sabha** shall be Final.
- ✍ Please note that when a Money Bill is sent to Rajya Sabha or President for assent, it has to have the **certificate or endorsement signed by the Speaker of the Lok Sabha** that it is a **Money Bill**.

### Procedure of Budget

Under Article 112 of the Indian Constitution, every year “the **President** of India shall cause to be laid before **both the houses** of the parliament” the **Annual Financial Statement**. This is popularly called Budget.

✍ “cause to be laid” here means that the person through whom President acts is **Finance Minister** of the country, who is **custodian of the nation’s Finances**.

The budget shows the estimated receipts and expenditure of the coming Financial Year.

### Budget Presentation:

By convention, the Railway Budget is presented sometime in the third week of February at 1200 hours after the Question Hour. The General Budget was presented by convention till 1998, on the last working day of February at 5 P.M. This convention was however, changed in 1999 when the General Budget was presented

at 11 A.M. Since then the General Budget is presented at 11 A.M. on the last working day of February (except in 2000 when it was presented at 2 P.M.

## Why Budget is presented in February?

The Budget is presented in February, so that Parliament would have sufficient time to discuss the proposals in general and authorize them before the beginning of the new Financial Year on April 1.

The day, on which Budget is presented, there are no discussions. The Members are given copy of the Budget in English as well as Hindi so that they can study the proposals before discussion starts on the Budget.

The expenditure embodied in the Budget Documents are of **two types**:

1. The sums required for charged expenditures. These are non-votable.
2. The sums required for other expenditures as mentioned in the Budget Documents. These are votable.

The sums are taken out from the **Consolidated Fund of India**.



## Non-Votable Charges

Please note that the following include the **charged Expenditures** and are Non-votable means no voting takes place for the amount involved in these expenditures for their withdrawal from Consolidated Fund of India.

1. Salary and Allowances of the President
2. Salary and Allowances of the Presiding officers of the houses of parliament i.e. speaker / deputy speaker of the Lok Sabha and Chairman (Vice President) / Deputy Chairman of Rajya Sabha.
3. **Debt charges** of Government of India.
4. Salaries and allowances of the Judges of Supreme Court and **High Courts**.
5. Pension of the retired Judges of the Supreme Court.

Please note that **Pension of the Retired judges of the High Court** is NOT charged from the Consolidated Fund of India, but it is charged from the **Consolidated Fund of States** in question.

6. Salaries and allowances of the Comptroller and Auditor General of India.
7. Any other expenditure as required by the Constitution or parliament.

## Why these charges cannot be voted?

The above expenditures cannot be voted because; these payments are “**Guaranteed by the Constitution of India**”. Though, the **discussion on these expenditures can take place** in any house of the parliament. The **demand for grant is made on recommendation of the president**. (Article 113)

**The Votable part is actual Budget.** The expenditures in the Budget are in the forms of **Demand for Grants**.

There Budget also presents ways and means – how the government would be recovering the expenditures.

Generally, the demands for Grants of each and every ministry are made separately in the Budget documents and each demand for grant has the provisions under its different heads.

### General Discussion:

On a day subsequent to the presentation of the Budget, the House takes up the General Discussion of the Budget which is called the first stage followed by second stage i.e. discussion and voting on Demands for Grants.

During the General Discussion on the Budget, the House is at liberty to discuss the Budget as a whole or any question of principle. The scope of discussion at this stage is confined to the general examination of the Budget i.e. the proper distribution of the items of expenditure according to the importance of a particular subject or service, the policy of taxation as is expressed in the Budget and the speech of the Finance Minister.

### Standing Committee Reports:

After the General Discussion on Budget in both the Houses is over and Vote on Account is passed, the House is adjourned for a specified period. The Demands for Grants of each Ministry/Department will be examined by the concerned Standing Committee having jurisdiction over it during the said recess period. The Committee gives separate report for each Ministry. The Demands for Grants are discussed / considered in the House in the light of the reports of the Standing Committee. The reports of the Standing Committees which are of persuasive value are nevertheless treated as considered advice given by the Committee.

### How members Prepare themselves for Discussions?

Before the discussion on the Demands for Grants is taken up copies of the Annual Reports on the working of the Ministries and Outcome Budgets if any, as and when received from the Ministries are placed at the Publications Counter for supply to members. Members can obtain the same from the Publications Counter of Lok Sabha. Copies of the reports of the Standing Committees pertaining to Demands for Grants are also made available to members from the Publications Counter after these are presented/laid on the Table of the House. These materials help the members to study and get ready for the discussions.

### Guillotine

The detailed discussions are followed by Guillotine. Guillotine refers to closure imposed on the debate. On the last of the allotted days at the appointed time, the Speaker puts every question necessary to dispose of all the outstanding matters in connection with the Demands for Grants.

👉 The Guillotine concludes the discussion on Demands for Grants.

## CUT MOTIONS

Before we proceed please read this news cutting:

**Deccan Herald: March 17, 2010:** After the Left, the BJP on Wednesday stepped up pressure on the government on its economic policies declaring it will bring cut-motion on the Union Budget that may put to test UPA coalition in the Lok Sabha. Addressing a press conference, Leader of the Opposition in the Lok Sabha Sushma Swaraj spoke of floor coordination among opposition during the first phase and referred to the unprecedented walkout by it during the budget presentation in protest against inflationary policies. BJP will bring **our own cut-motion**. Various opposition parties are also **giving their own cut motions** (on the Demand for Grants),"

So, after the discussions are over, the members get an opportunity to move cut motions **to reduce the amount of demand**. The members from particular parties or coalitions may bring their own cut motions as the above news clipping says.

The members generally give notice of the **Cut Motions for the reduction of the votable heads of expenditure** of the Demands for Grants immediately after the Finance Minister or the Railway Minister as the case may be, has presented the Budget in the House.

Every Cut Motion to a demand for Grant represents disapproval of some aspect or other of the Budget or the economic policy of the Government.

Accordingly Cut Motion is of three kinds:

1. If the cut motion aims that the **amount of the demand be reduced to Re. 1** it represents the complete disapproval of policy underlying the Demand. How? Because the motion aims to reduce the demand for grant which is worth Crores of Rupees to Re. 1 only, which almost finishes the demand for grant of a ministry. This is called "**policy**" cut.
2. If the cut motion aims that the amount of **demand be reduced to certain other amount**, it represents that the demand for grants should be altered. This is called "**Economy Cut**".
3. If the Cut Motion aims that the amount of the Demand be **reduced by ₹ 100**" in order to **ventilate a specific grievance**, which is within the sphere of responsibility of the Government of India. This is called "**Token Cut**".

Actually, **Token cut represents not many changes** in the Demand for Grants **but is humiliating** for the Government. To be precise, all cut motions are humiliating for the ruling party or coalition. The Cut motions provide the members **maximum opportunity to examine every part of the budget** and criticize the Government.

### Mechanism and Fate of the Cut Motions:

As soon as the Demands of a particular Ministry are taken up in the House, the Chair calls upon the members present in the House to hand over at the Table within fifteen minutes slips indicating the serial numbers of



cut motions under the respective Demands which they would like to move and states that only those cut motions will be treated as moved.

When the debate concludes the Speaker puts the question to the house. Those in favor of the Motion say "Aye" and those who are against the motion say "No". This is followed by the then the Chair says 'I think the Ayes (or the Noes, as the case may be) have it'. If the opinion of the Chair as to the decision goes unchallenged, he says twice 'The Ayes (or the Noes, as the case may be) have it'; and the question before the House is determined accordingly.

The above process as we read in the newspapers as "Voice Vote". The opinion of the Chair should not be challenged. But if any member challenges the opinion by exclaiming "The Noes (or Ayes) have it", the chair directs that Lobbies be cleared. The division bell is rung and it means that a division (of votes) is to take place in Lok Sabha.

👉 The Bells may ring **continuously** which means that Division is to take place in Lok Sabha

👉 The Bells may ring **intermittently** which means that Division is to take place in Rajya Sabha.

Once the bells stop ringing, the outer doors are closed and staff are posted at the doors to prevent any entry or exit of the members till the division is concluded.

This is followed by a Division of votes. One procedure is Push Button Voting. The push-button-set containing Light Emitting Diode (LED) and four push buttons—a **green button** for 'AYES', a **red button** for 'NOES', a **yellow button** for 'ABSTAIN' and an **amber button** for 'PRESENT'. The division takes place and votes are recorded. There are Results Display Boards installed in the house which show the result.

👉 If, in a Division the number of Ayes and Noes is equal, the question is decided by the casting vote of the Chair.

👉 Casting Vote is cast by the Speaker of Lok Sabha and Deputy Chairman of the Rajya Sabha as the case may be.

### **What is opposition wins a Cut Motion?**

The Cut Motions are mostly defeated because of the Number strength of the ruling party or coalition. As the **cut motion is a veto power** given to the member of the Lok Sabha to oppose a demand in the financial bill discussed by the government, it is seen as an effective tool **to test the strength of the government**. **If a cut motion is adopted by the House and the government does not have the numbers, it is obliged to resign**. That is why, when cut motions are moved, the Government starts trembling. After the 2010 budget, we read in the newspapers that

"After rejecting the Opposition cut motions, the Lok Sabha passed the demands for grants and the Appropriation Bill authorizing payment of ₹ 46,61,038 crore from the Consolidated Fund of India for 2010-11 without any discussion."

## Finance Act and Appropriation Act:

Please note that Voting on demands does not conclude the formalities connected with provisions of funds to the Government. Next come two financial legislations. One is **Appropriation Act** and another is **Finance Act**.

👉 **Appropriation Act** fixes the amount which can be drawn out of the Consolidated Fund of India for meeting the expenditures for each grant.

👉 The **Finance Act**, deals with the legislation which authorizes the raising of Funds through taxation.

## What is Vote on Account?

The Budget is presented in the month of February, and it is not possible to vote the Demands for Grants before the 31st March when the financial year ends. So in order to keep the Government functioning pending the voting of the final supply and providing the House to have a fuller opportunity to discuss the Demands in detail, in March every year, the House is asked to vote usually two months' supply, i.e. approximately 1/6th of the total estimated expenditure under various grants. This is called **Vote on Account** and is taken separately for **Demands for Grants General** and **Railways**. **Vote on Account** is passed after general discussion on the Budget. Usually it is treated as a formal matter and is passed without discussion. **Vote on account** is as per provisions of **Article 116 of the Constitution**.

## Some Special Provisions:

1. As per article 117 of the Constitution of India, **A Finance Bill** which seeks to make provisions for matters specified in Article 110 (1) sub clause (a) to (f), can be moved only on **the recommendation of the President** and it cannot be introduced in Rajya Sabha.
2. If the bill has **provisions other than article 110 (1) sub clause (a) to (f)** can be **introduced without recommendation of the President** but can be **considered** by the house **only when President recommends** for the consideration.
3. Any bill which if enacted would involve expenditure from the Consolidated Fund of India **shall not be passed** by either House of Parliament **unless the President has recommended** to that House the consideration of the Bill.

## Compendium 2 of Important Terms

### Adjournment:

👉 **Adjournment of the debate** marks the end of the debate on a Motion/Resolution/Bill on which the House is then engaged to a future day or sine die.

👉 **Adjournment of the House** refers to termination of a particular sitting of the house which meets again at stipulated time.

👉 **Adjournment sine die** refers to the termination of a sitting of the House without any definite date being fixed for the next sitting.

## Bulletin of the House:

Bulletin of the House is published in two parts, Part I containing a brief record of the proceedings of the House at each of its sittings; and Part II containing information on any matter relating to or connected with the Business of the House or Committees or other matter which in the opinion of the Speaker may be included therein.

## Casting Vote:

Casting Vote is cast by the person acting as Chair of the House i.e. Speaker in Lok Sabha and Deputy Chairman in Rajya Sabha. The Speaker in giving his casting vote may state his reasons for taking the side in whose favor he votes but he/ she is not bound to such obligations.

## Crossing the floor:

Crossing the floor is passing between the member in possession of the House and the Chair. To cross the floor, is a breach of Parliamentary etiquette. The same term is also used for voting against the party lines.

## Dilatory motions:

Dilatory motions refer to the motions that seek adjournment / delay / retard of the debate on Bills, motions or resolutions etc.

## Expunction

Expunction refers to the deletion of words, phrases and expressions from the proceedings and records of the House by an order of speaker. Expunction is also used for deletion of words, phrases and expressions from the proceedings and records of a committee on order of its Chairman. (the words / phrases which are defamatory / indecent / undignified can be removed by expunction.

## Finance Bills of First Class and Second Class:

1. In the first category are Bills which inter alia contain provisions for any of the matters specified in sub-clauses (a) to (f) of clause (1) of Article 110 of the Constitution. Such a Bill cannot be introduced except on the recommendation of the President and a Bill making such provisions cannot be introduced in Rajya Sabha.
2. In the second category of Financial Bills are those Bills containing inter alia provisions which if enacted and brought into operation would involve expenditure from the Consolidated Fund of India, other than sub-clauses (a) to (f) of clause (1) of Article 110 of the Constitution. Such Bills cannot be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

Please note that the Finance Bill of Second Class has two features common with the Money Bill:

1. It cannot be introduced in the Council of State.
2. It cannot be introduced except on the recommendation of the President.

But the **Rajya Sabha has power to reject or amend a Finance Bill of second class** which means that they have **provisions other than the taxation matters.** ←

### Fact Box: Interpreters in the Parliament:

Please note that the entire proceedings of the House are interpreted simultaneously from Hindi into English and vice-versa by Parliamentary Interpreters. The members can be followed by using headphones and by operating the language-selector-switch installed at every seat. India's parliament also has arrangements for providing simultaneous interpretation into English and Hindi of speeches made in 14 regional languages viz. (i) Assamese, (ii) Bengali, (iii) Kannada, (iv) Malayalam, (v) Manipuri, (vi) Marathi, (vii) Maithili, (viii) Nepali, (ix) Oriya, (x) Punjabi, (xi) Sanskrit, (xii) Tamil, (xiii) Telugu and (xiv) Urdu. However, the member who is desirous of making a speech in any of these languages is required to give at least half an hour's notice to that effect to the interpreter concerned to take position in the Interpreters' Booth.

### Prorogation

Prorogation refers to the termination of a session of the House **by an order made by the President** under Article 85(2) (a) of the Constitution.

### Quorum:

The minimum number of members required to be present at a sitting of the House or the Committee for valid transaction of its business.

☞ The quorum to constitute a sitting of the **House is one-tenth** of the total number of members of the House.

☞ The quorum to constitute a sitting in respect of a **Committee** it is **one-third of the total number of members of the Committee.**

### Question Hour

Question Hour, is **usually the first hour of every sitting of the house.** Please note that for the purpose of answering questions in the House, the Ministries/Departments of the Government of India have been divided into five groups (A,B,C,D,E) and the Ministers concerned answer questions by rotation. Further, fixed days have been allotted to the various groups of Ministries for answering questions in Lok Sabha. Questions relating to groups A, B, C, D and E always come up for answer on Monday, Tuesday, Wednesday, Thursday and Friday respectively.

☞ If there is no sitting of the House on any of the above five days on account of a holiday, the questions pertaining to the group of Ministries are not put down for answer during that week and are put next week only.

The **members need to give notice** of the question to the **"Secretary General of Lok Sabha"** in case of Lok Sabha.

It includes the **text** of the question, Official **designation** of the Minister and **date** on which answer is desired. If the member asks more than 1 question, the order of preference has to be given.

## Types of Questions:

- ✍ A question relating to a **matter of public importance** of an **urgent character** asked with notice shorter than ten clear days is called a "**Short Notice Question**"
- ✍ A question to which a member wishes to have an **oral answer** on the floor of the House and which is distinguished by an asterisk, is known as "**Starred Question**"
- ✍ A question placed on the List of Questions for **written answer** is called "**Unstarred Question**".

## Types of Majority

### Simple Majority:

Simple majority is also called Working Majority. This means more than 50% of the members "Present and Voting".

The bills which require simple majority to get passed are as follows:

1. Confidence, No-confidence or censure Motions.
2. Money, Finance or ordinary Bill.
3. Budget

### Absolute Majority:

Absolute majority is refers to more than 50% of the members "of the **Total Strength** of the House".

### Effective Majority:

This refers to more than 50% of the **effective strength** of the house and **vacancies are NOT taken in account**.

### Special Majority:

This refers to **2/3<sup>rd</sup>** of the member's present and voting. The bills which require the Special Majority are :

- ✍ Constitution amendment bills
- ✍ Impeachment of the president
- ✍ Creation of all India services
- ✍ Resolutions for removal of the Judges of the Supreme Court and High Courts
- ✍ Chief Election Commissioner
- ✍ Comptroller and auditor general of India etc.





## PARLIAMENTARY COMMITTEES

The committees of the parliament are considered to be a necessary adjunct of the work of the parliament as they make the parliamentary work smooth, time saving and expeditious. They exercise effective control of the government activities at a regular basis.

As per the “Rules of Procedure and Conduct of Business in the Lok Sabha” , there are 19 Standing parliamentary Committees and 24 Departmentally Related Standing Committees.

Out of the 19 Standing Parliamentary Committees, 3 are Financial Committees viz. Committee on Public Accounts, Committee on estimates and Committee on Public Undertakings.

- Some committees have members only from Lok Sabha while some have members from Both Rajya Sabha and Lok Sabha.

The table on the following page summarizes the number of members in each of these 19 committees.

Name of Committee	Number of Members		Total
	RS	LS	
<b>Financial Committees</b>			
1. Committee on Public Accounts	7	15	22
2. Committee on Estimates	0	30	30
3. Committee on Public Undertakings	5	17	22
<b>Other Parliamentary Committees</b>			
4. Business Advisory Committee	0	15	15
5. Committee on Private Members Bill and Resolutions	0	15	15
6. Committee on Petitions	0	15	15
7. Committee on Privileges	0	15	15
8. Committee on Subordinate legislation	0	15	15
9. Committee on Government Assurances	0	15	15
10. Committee on Absence of Members from the Sittings of the House	0	15	15
11. Rules Committee	0	15	15
12. General Purpose Committee	Number not fixed		
13. House Committee	0	12	12
14. Library Committee	3	6	9
15. Joint Committee on Salaries and Allowances of the MPs	5	10	15
16. Joint Committees on Offices of Profit	5	10	15
17. Committee on Welfare of Scheduled castes and Scheduled Tribes	10	20	30
18. Committee on papers laid on Table	0	15	15
19. Committee on empowerment of Women	10	20	30

The 24 Departmentally related committees have 31 Members each and each of them includes 10 Members of Rajya Sabha.

Important Points on these committees are noted as follows:

## Committee on Public Accounts

Public Accounts Committee examines the **manners and results of spending the public funds**. It examines the accounts showing appropriation of the funds granted by the parliament to various ministries and ensures that the money was used for the purpose for which it was sanctioned.

✍ **The Comptroller & Auditor General of India supports this committee.**

✍ Apart from the Reports of Comptroller and Auditor General of India on Appropriation Accounts of the Union Government, the Committee examines the **various Audit Reports** of the Comptroller and Auditor General on revenue receipts, expenditure by various **Ministries/Departments** of Government and **accounts of autonomous bodies**.

✍ This committee oversees the regularization of the excess in the manner envisaged in Article 115 of the Constitution.

✍ It has 22 members comprising 15 Members of Lok Sabha elected by **Lok Sabha** from amongst its members according to the principle of **proportional representation** by means of the single transferable vote for a term not exceeding **one year** and not more than seven members of **Rajya Sabha** to be **nominated by the House** for being associated with the Committee.

✍ Chairman of this committee is appointed by **Speaker amongst the Members from Lok Sabha**. A **Minister is not eligible** to be elected as a member of the Committee, and if a member after his election to the Committee is appointed to hold such an office he ceases to be member of the Committee from the date of such appointment.

✍ Please note that for the first time, **Public Accounts Committee was set up by the central legislative Assembly in 1923**.

## Estimates Committee

✍ The difference between the Estimates committee and public Accounts committee is that Estimates committee **scrutinizes the Estimates** while the Public Accounts Committee scrutinizes the **appropriation and manner of spending**.

✍ Estimates Committee 's functions are

1. To **examine the annual estimates and suggest the alternative policies** to the Government to ensure the efficiency and economy in administration.
2. To report what economies, **improvements in organization, efficiency or administrative reform, consistent with the policy underlying the estimates**, may be effected.
3. To report whether the **money laid down in estimates is well within the limits of the policy** implied.

✍ This Committee has 30 members elected annually by the Lok Sabha from amongst its members according to the principle of proportional representation by means of the single transferable vote.

✍ Chairman of the Committee is appointed by the Speaker.

✍ A Minister cannot be member of this committee and if the member is appointed as Minister, he/ she shall cease to be a member of this committee.

## Committee on Public Undertakings

✍ Committee on Public Undertakings was for the first time in **November 1963** by a resolution of Lok Sabha and at that time it was having 15 members viz. 10 from Lok Sabha and 5 from Rajya Sabha.

✍ Now it has not more than 22 members out of whom 15 members are elected by Lok Sabha from amongst its members according to the principle of proportional representation by means of single transferable vote and not more than 7 members from **Rajya Sabha to be nominated** by that House.

✍ The term of office of members is 1 year.

✍ Chairman is appointed by Speaker.

✍ Minister is not eligible to become a member and if a member is appointed Minister, he / she shall cease to be a member on such appointment.

✍ This committee examines the **reports and accounts of the Public Undertakings** and **reports** of the **Comptroller and Auditor General** thereon, if any.

✍ This committee oversees whether in the context of their autonomy and efficiency, the affairs of the Public Undertakings are being managed in accordance with **sound business principles** and **prudent commercial practices.**

The companies include **all the Government Companies** whose Annual Reports are placed before the Houses of Parliament under section 619A (1) of the Companies Act, 1956 and **statutory Corporations** whose names have been specified in the Fourth Schedule to the Rules of Procedure come within the purview of the Committee.

## Business Advisory Committee

The Business Advisory Committee is constituted at the commencement of new Lok Sabha after the general elections and thereafter from time to time under the provisions of Rules of Lok Sabha. **No specific term** of its office is laid down in the rules but like other parliamentary committees, it holds office until a new committee is nominated by the Speaker. In practice, however, the Committee is usually reconstituted every year and assumes office in the first week of June. **It consists of 15 members including the Speaker who is the ex-officio Chairman of the Committee.** The **members of the Committee are nominated by the Speaker.**

✍ The function of the Committee is to recommend the time that should be allocated for the discussion of the stage or stages of Government Bills and other business as the Speaker, in consultation with the Leader of the House, may direct for being referred to the Committee. The **committee plans and regulates the Business of the house and renders advice regarding the allocation of time on various discussions.**

## Committee on Petitions

Committee on Petitions consists of 15 members **nominated by the Speaker**. A Minister is not nominated a member of the Committee and if a member after his nomination to the Committee is appointed to such an office, he ceases to be a member of the Committee. The

✍ Chairman of the Committee is appointed by the Speaker from amongst the members of the Committee.

Normally the Committee is reconstituted every year. **Major function is to examine every petition referred to it and if the petition complies with the rules to direct that it be circulated.**

## Committee of Privileges

The Committee of Privileges consists of 15 members nominated by the Speaker. The Chairman of the Committee is appointed by the Speaker from amongst the members of the Committee. The committee **examines the cases regarding the violation of privileges of the members of parliament and also recommends appropriate action.**

✍ After March 1986, when Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985, became effective, the Speaker may **refer** to the Committee **any petition regarding disqualification of a member on ground of defection** for making a preliminary inquiry and submitting a report to him. The procedure to be followed by the Committee in these cases is so far as may be the same as is applicable to questions of **breach of privilege.**

## Committee on Subordinate Legislation

The major function of this committee is **to examine the rules and regulations enacted by the executive to fill the gaps in the laws** enacted by the parliament and report how far these rules are within limits prescribed in the main law.

## Committee on Government Assurances

Committee on Government Assurances **scrutinizes the assurances, promises, undertakings, etc., given by Minister** on the floor of the House from time to time **during the Question Hour as also during the discussion** on Bills, resolutions, motions etc., and to report to the House, the **extent to which** such assurances, promises or undertakings, etc., **have been implemented** and where implemented whether such implementation has taken place within the minimum time necessary for the purpose.

## Committee on Absence of Members from the Sittings of the House

Committee on Absence of Members from the Sittings of the House examines the leave applications of the members. It also examines if any member is absent from the house without permission for more than 6 months.

## Rules Committee

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Rules committee considers the matters of procedure and conduct of business in the House and recommends any amendments or additions to the rules that may be deemed necessary.

## General Purposes Committee

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This committee consists of Speaker, Deputy Speaker, Members of the Panel of Chairmen, Chairmen of all Standing Parliamentary Committees of Lok Sabha, Leaders of recognized parties and groups in Lok Sabha and such other Members as may be nominated by the Speaker. The Speaker is the ex-officio Chairman of the Committee. This committee considers and advises on such matters concerning the affairs of the House as may be referred to it by the Speaker from time to time.

## House Committee

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House Committee deals with all questions relating to residential accommodation for members of Lok Sabha and exercises supervision over facilities for accommodation, food, medical aid and other amenities accorded to members in members' residences and hostels in Delhi.

## Library Committee

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Library Committee considers and advises on such matters concerning the Parliament Library.

## Joint Committee on Salaries and Allowances of Members of Parliament

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As per the provisions of Salary, Allowances and Pension of Members of Parliament Act, 1954 a Joint Committee of both Houses of Parliament consisting of five members from the Rajya Sabha nominated by the Chairman and ten members from the Lok Sabha nominated by the Speaker is constituted. It is empowered to frame the rules for regulating the salaries and amenities such as housing, Telephone, Postal, Secretarial and medical facilities.

## Joint Committee on Offices of Profit

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The Joint Committee on Offices of Profit is constituted in pursuance of a Government motion adopted by Lok Sabha and concurred in by Rajya Sabha for the duration of Lok Sabha. It examines the composition of the various committees and bodies constituted by the Union and State Governments and recommends whether the persons holding these offices and reports whether the persons holding these offices should be disqualified from being elected as MPs or not.

## Committee on the Welfare of Scheduled Castes and Scheduled Tribes

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This 30 member committee examines the report of the National Commission for the Scheduled Castes and the National Commission for the Scheduled Tribes under Articles 338 (5)(d) and 338A(5) (d), respectively of

the Constitution and to report as to the measures that should be taken by the Union Government in respect of matters within the purview of the Union Government including the Administrations of the Union Territories.

## Committee on Papers Laid on the Table

This committee examines all papers laid on the Table by Ministers and to report to the House as to whether there has been compliance of the provisions of the Constitution, Act, rule, etc. under which the paper has been laid; and whether there has been any unreasonable delay in laying the paper.

## Committee on Empowerment of Women

Committee on Empowerment of Women considers the Reports submitted by the National Commission for Women and report on the measures that should be taken by the Union Government for improving the status/conditions of women in respect of matters within the purview of the Union Government.

## Departmentally Related Standing Committees (DRSCs)

17 Departmentally Related Standing Committees (DRSCs) were constituted on 29th March, 1993 covering all Government Ministries/Departments. These DRSCs replaced the earlier three subject Committees constituted in August, 1989. The 17 DRSCs were formally constituted with effect from 8th April, 1993. At present there are 24 Departmentally Related Standing Committees (DRSCs) as follows:

## UNION JUDICIARY- SUPREME COURT OF INDIA

### Introduction to Union Judiciary

We all know that India is a Union of States and there is a division of power between the State Governments and the Central Government. This division is in written words and expressed in the Constitution. Though, there are times when there might be some disputes between the States and the Central Government regarding the division of power and other matters which need to be settled. So the need for a impartial and independent judiciary body is fulfilled by the Supreme Court which is the Highest Interpreter of the Constitution and tribunal for final settlements of the disputes between:

- Center and States
- States and States

This is the main function of Supreme Court of India. The Constitution Article 124 (1) says that “there shall be a supreme court of India”.

We studied in the Fundamental Rights that Article 32 (Right to Constitutional Remedies) makes the Supreme Court the protector of the fundamental rights embodied in the Constitution of India. Supreme Court has from time to time interpreted the fundamental rights and has protected the Citizens of India from any



unconstitutional legislation which breach their fundamental rights. So **protecting the Fundamental rights** is the **second most important function** of Supreme Court of India.

The Judiciary Hierarchy in India has the Civil Judges at the bottom, followed by session courts, District Courts, High Courts and Supreme Court. The Supreme Court is the all India supreme appellate authority for **civil as well as Criminal Jurisdictions**. As the supreme appellate court, Supreme Court not only reviews the constitution but also the laws enacted by the parliament and various state legislatures. So, **being the Supreme Appellate Court is the third most important function of the Supreme Court of India.**

Apart from that Supreme Court **gives advice to the President of India** when he/ she refer the court for matters of public importance. So advising the President of India on the matters referred by the President is the fourth most important function of the Supreme Court of India.

In a nutshell, Honorable Supreme court of India stands at the apex of the single, integrated Judicial system which has become the "essential part" of the Indian Federation "to maintain the unity" of the country. The Original and Exclusive Jurisdiction of the court lies in the disputes between Union Government and one or more states and in disputes between two or more states. It has Appellate jurisdiction in any case whether Civil or Criminal that involves by its own certification a substantial question of law in the meaning and intent of the Constitution. The Honorable Supreme Court is the interpreter and Guardian of the Constitution, the Supreme law of the land.

## Comparing Supreme Courts of Independent India and British India

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The Supreme Court of India came into being on 28 January 1950; two days after India became a sovereign democratic republic. Though, **the Government of India Act 1935 had provisions of establishment of a Federal Court, yet it was not the ultimate Judicial Authority of the country because appeals could go to Privy Council in London.**

The Supreme Court of India has no such limitation. It stands at the apex of the Indian Judicial hierarchy.

## Comparing Supreme Courts of India and England

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In Britain, no court is empowered enough to hold an act of parliament invalid, but in India all the legislations passed in the Union legislature and State legislatures must be in conformity with the Constitution of India and **Constitutionality of any act is determined in India by the Judicial Review** of the Supreme Court. This is the major difference between the India and UK supreme courts. Example of this Judicial Review could be seen in 1975, when Supreme Court struck down the provisions of 39th amendment act on the account of violation of the "Basic structure" of the Constitution.

## Comparing Supreme Courts of India and United States

In US also the Supreme Court is the Final Interpreter of the Constitution but in comparison to Supreme Court of US, Indian Supreme Court has more powers and a wider jurisdiction. The US Supreme Court only hears the Federal features and Constitutional Validity of the laws and treaties but Supreme Court of India has much more than that. The Indian Supreme court has been given "Infinite Powers" to grant leave to appeal in any matter from a decision of any other court or tribunal of the land and US Supreme court does not have such supreme powers. In India, the parliament by legislation can enlarge the jurisdiction of the Supreme Court while in US the Jurisdiction is limited as conferred by the Constitution.

Indian Supreme court when started had 8 Judges and the strength of the Judges has increased of the period of time and now it stands at 31 Judges (Including Chief Justice). In United States, Judiciary Act of 1789 called for the appointment of six justices, which was expanded to seven members in 1807, nine in 1837 and ten in 1863. From 1863 till date it has only 10 judges.

In India, One of the important functions of the Supreme Court is "Advisory Jurisdiction" where the court can give opinion on the matters referred by the President. In US there is no advisory jurisdiction.

## Constitutional Provisions

Articles 124 to 147 of the Constitution of India have the provisions for the Supreme Court. The subject matters of the articles (other than repealed) are listed as follows:

- 124. Establishment and Constitution of Supreme Court.
- 125. Salaries, etc., of Judges.
- 126. Appointment of acting Chief Justice.
- 127. Appointment of ad hoc Judges.
- 128. Attendance of retired Judges at sittings of the Supreme Court.
- 129. Supreme Court to be a court of record.
- 130. Seat of Supreme Court.
- 131. Original jurisdiction of the Supreme Court.
- 132. Appellate jurisdiction of Supreme Court in Appeals from High Courts in certain cases.
- 133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.
- 134. Appellate of jurisdiction of Supreme Court in regard to criminal matters.
- 134A. Certificate for appeal to the Supreme Court.
- 135. Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court.
- 136. Special leave to appeal by the Supreme Court.
- 137. Review of judgments or orders by the Supreme Court.
- 138. Enlargement of the jurisdiction of the Supreme Court.
- 139. Conferment on the Supreme Court of powers to issue certain writs.
- 139A. Transfer of certain cases.
- 140. Ancillary powers of Supreme Court.
- 141. Law declared by Supreme Court to be binding on all courts.

- 142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.
- 143. Power of President to consult Supreme Court.
- 144. Civil and judicial authorities to act in aid of the Supreme Court.
- 145. Rules of Court, etc.
- 146. Officers and servants and the expenses of the Supreme Court.
- 147. Interpretation.

## Strength of the Supreme Court

Article 124 in the original Constitution said that there shall be a supreme court consisting of a Chief Justice and not more than 7 Judges until the parliament by law prescribes a larger number of the Judges.

☞ Parliament by law can alter the number of Judges.

By a parliament enactment the number was increased to 11 in 1960. It was raised to 14 in 1968, 18 in 1978 and 26 in 1986. After that it was raised to 26. In February 2009 the strength of the Supreme Court was raised from 26 to 31.

☞ 31 means that can be the maximum number of the Judges including the Chief Justice. It does not mean that at any time there should be 31 judges in place.

## Appointment of Judges of the Supreme Court

Every Judge of the Supreme Court is appointed by the President by warrant under his hand and seal after consultation with the Judges of the Supreme Court and High Courts in states, the president may deem necessary for the purpose.

☞ Please note the underlined phrase, President if thinks necessary, can consult the Judges of the High Courts of States to appoint a supreme court Judge, as per article 124(2).

☞ However, in appointment of the other judges, president shall always seek consultation from the Chief Justice of India.

Consider the following:

1. Chief Justice of India
2. Other Judges of Supreme Court

President may consult the Judges of the High Courts for appointment of which among the above?

- A. Only 1
- B. Only 2
- C. Both 1 and 2
- D. Neither 1 nor 2

In the above question correct answer is both 1 and 2.

## How much relevant is the advice of CJI?

There was a case in 1993, which is known as Supreme Court Advocates on-Record Association v/s Union of India Case. In this case, the Supreme Court held that as far appointment of judges of Supreme Court and High

Courts is concerned, the President shall act in accordance with the opinion of the **Chief Justice of India, who will in turn give advice after consulting his colleagues.**

This was a change in the procedure of selection. Up till 1993, the Judges of the Supreme Court were appointed by the President on recommendation of the CJI, but now a **committee of 5 senior most judges recommends the names to the law ministry** which after scrutinizing send the paper to the president. The president either approves the names or returns the names for reconsideration of the Supreme Court. If still the Supreme Court sends the same names president appoints the persons recommended.

## Qualifications of the Judges of the Supreme Court

The qualifications are as follows: To be appointed a Judge of the Supreme Court, a person must be

1. A Citizen of India
2. Must have been the judge of a High Court / more High Courts for a period of 5 years or an advocate of the High Court for at least 10 years or in view of the President a distinct Jurist of the country.

So, we can see that **there is nothing which can prevent the direct appointment of the Judges of Supreme Court from the Bar**, yet, so far the appointments have been made from the Judges of High Courts.

## Tenure of the Judges

The CJI and other Judges of the Supreme Court of India hold the office until they attain the age of 65 years.

- ☞ A Judge can relinquish the office by addressing the resignation to President of India.
- ☞ A **retired Judge** of the Supreme Court is **prohibited** from practicing law before any court or authority within the territory of India, however, there is NO constitutional prohibition that a retired judge gets appointed for some specialized work of the Government.
- ☞ They can be removed from the office before the age of the retirement by President of India on the basis of a resolution passed by Both the houses of the parliament on the **grounds of proved misbehavior or incapacity.**

## Impeachment of Justice V Ramaswami

In India, a Judge of the Supreme Court can be removed from his position only on the ground of proved misbehavior or incapacity. The **power for investigation** and proof of such misbehavior or incapacity is vested in the **parliament.** Each house, in order to remove the judge, will have to pass a resolution which is supported by 2/3<sup>rd</sup> of members present and voting and majority of the total membership of the house.

Such impeachment proceeding for the first time had started in 1989 against Justice V Ramaswami, whose tenure as Chief justice of Punjab and Haryana High Court was reportedly objected by the Audit reports regarding the purchase of Furniture, carpets and Air conditioners. The motion was introduced in Lok Sabha and a three judge committee of supreme court was formed to enquire into the allegations. But the VP Singh Government fell shortly afterwards. In the new government the motion was again moved but Congress

abstained from the voting and the motion again failed. Thus no Supreme Court Judge has been removed from office by impeached so far.

## Impeachment of Justice Soumitra Sen

On 19 August 2011, in a historic first, the Rajya Sabha voted in favour of impeaching Calcutta High Court judge Justice Soumitra Sen, finding him guilty of misappropriating funds as a judge and of misrepresenting facts.

- ✓ This was the first televised impeachment proceedings ever in which Rajya Sabha voted 189 to 17 in favour of Justice Sen's removal.

The motion was first passed by voice vote and then through division.

We should note that till date, no judge of the higher judiciary (Supreme Court and High Courts) has been successfully impeached. In India **Article 124(4)** covers the removal of a Judge of the **Supreme Court**. This article says:

*A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.*

Similarly **Article 217 (1)(b) and 218** cover the removal of the **Judge of an High Court**.

So, the Constitution makes provision for removal of a judge of a Supreme Court on the *ground of proven misbehaviour or incapacity*. A judge may be removed **only through a motion in Parliament with a two thirds support in each House**. The process is laid down in the Judges (Inquiry) Act, 1968.

## How the motion of impeachment is started?

An impeachment motion has to be moved by either **100 Lok Sabha members** of Parliament or **50 Rajya Sabha Members**. After the motion is admitted, the **Speaker** of Lok Sabha or **Chairman** of Rajya Sabha constitutes an **inquiry committee**. This inquiry committee is consisted of 3 members viz.

1. A Supreme Court judge,
2. A High Court Chief Justice,
3. An eminent jurist.

The Committee frames charges and asks the judge to give a written response. After the inquiry, the committee determines whether the charges are valid or not. It then submits its report. The judge is given chance to examine the witnesses. If the inquiry committee finds that the judge is not guilty, then there is no further action.

## What if the inquiry committee finds the judge guilty?

If they find him guilty, then the **House** of Parliament which **initiated the** motion may consider **continuing** with the motion. Please note that **such motion can be initiated in any house of the parliament**. Then, the motion is debated. During debate, the judge has the right to represent his / her case. After that, the motion is voted upon. **If there is two-thirds support of those voting**, and majority support of the total strength of the House, it is considered to have passed. The process is then repeated in the other House. After that, the Houses send an address to the President asking that the judge be removed from office.

## What is historic background of impeachments in India?

Till now there has been **one such case**. Justice Ramaswamy of the Supreme Court faced such a motion. The inquiry committee found that the charges against him were valid, but the motion to impeach him did not gather the required support in **Lok Sabha**.

## Who is Justice Soumitra Sen?

Justice Soumitra Sen, born on Jan 22, 1958, did BCom from Guwahati before studying law in Kolkata.



- ✓ Enrolled as an advocate in Calcutta HC on Feb 13, 1984.
- ✓ Elevated as permanent HC judge on Dec 3, 2003. As a receiver for SAIL in a dispute case, Sen (then an advocate) misappropriated sale proceeds.
- ✓ Received Rs 33.22 lakh, which he deposited in two accounts. From one account, he issued cheques to individuals and even paid for his credit card.
- ✓ As special officer for disbursement of workers' dues to the tune of Rs 70 lakh, he withdrew Rs 25 lakh and deposited it in another company.
- ✓ For paying the workers, withdrew Rs 25 lakh from SAIL account. Did not submit accounts to the court.
- ✓ Ignored a number of court notices.

So, in summary, against him there are two charges. He is accused of misappropriating large sums of money which he received as a receiver appointed by the Calcutta High Court. He is also accused of misrepresenting facts in this regard to the High Court.

## What were the conclusions of the inquiry committee?

Justice Soumitra Sen was appointed Receiver in a case by an order of the Calcutta High Court on April 30, 1984. As a Receiver, Justice Sen had the power to collect outstanding debts and claims due in respect of certain goods. But, the Receiver is required to file and submit for passing, his half yearly accounts in the Office of the Registrar of the High Court. However, Justice Sen did not comply with this rule. As a Receiver,



Justice Sen was required to open only one account and not move funds without prior permission. However, the Inquiry Committee found that two separate accounts were opened by Justice Soumitra Sen as Receiver, with ANZ Grindlays Bank and Allahabad Bank. A total sum of over Rs 33 lakh was transferred in these accounts from the sale of the goods which was unaccounted for.

### What were defence claims by Justice Sen?

Justice Sen claimed he could not account for this amount since it was invested in a company called Lynx India Ltd. to earn interest but the Inquiry Committee found this claim to be false. The amount transferred to Lynx India Ltd. had been made out of an account opened by Justice Sen in his own name. The Committee concluded that (a) there was a large-scale diversion of fund, and (b) such diversion was in violation of the orders of the High Court.

### How it ended?

Justice Soumitra Sen escaped impeachment by the Lok Sabha by resigning from the office, before the impeachment was taken up by Lok Sabha. When the Law Minister Salman Khurshid conveyed to the House the information about Justice Sen's resignation, the House before which the impeachment business was put, dropped it **after a Sense of the House** was sought by **Speaker** Meira Kumar relating to dropping the proceedings against Sen. The Members responded in agreement after which the Speaker declared that the House agrees. **Thus , Justice Sen became the first judge to be impeached by Rajya Sabha.**

### Salary of the Judges

The Salaries and Allowances of the Judges of the Supreme Court are mentioned in the Second Schedule of the constitution in part D. This says:

There shall be paid to the Judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say:

- ☞ The Chief Justice. 10,000 rupees.
- ☞ Any other Judge. 9,000 rupees.

However as per the latest enactment of the "The High Court and Supreme Court Judges Amendment (Salaries and Conditions of Service) Bill 2008" , which was passed in 2009, the salary of the Judges and Chief Justice is as follows:

1. Chief Justice : ₹ 1 Lakh
2. Other Judges : ₹ 90,000

In case of High Courts this is as follows:

1. Chief Justice : ₹ 90,000

2. Other Judges : ₹ 80,000

This was a 3 fold hike in the salary. The revision was made as the 6th pay commission had hiked the salary and allowances of the Civil Servants.

### Can the salary of Judges be reduced?

Yes, during grave financial emergency proclaimed by President and only by a law of the parliament.

### Who gives salary to these Judges?

The salary and pension of Supreme Court Judges and CJI and High Court CJ is charged Non-votable expenditure from the Consolidated Fund of India. The pension of the High Court Judges is charged from the consolidated fund of the states.

### Who acts as CJI in his / her absence?

Any other Judge of the Supreme Court is appointed by the President as Acting Chief justice as per provisions of Article 126.

### Ad Hoc Judges

Ad hoc judges can be appointed in the Supreme Court by "Chief Justice of India" with the prior consent of the President, if there is no quorum of judges available to hold and continue the session of the court. Only the persons who are qualified as to be appointed as Judge of the Supreme Court can be appointed as ad hoc judge of the Supreme Court. (Article 127)

Further, as per provisions of the Article 128, Chief Justice of India, with the previous consent of the President, request a retired Judge of the Supreme Court High Court, who is duly qualified for appointment as a Judge of the Supreme Court, to sit and act as a Judge of the Supreme Court. The salary & allowance of such judge are decided by the president.

👉 The retired Judge who sits in such a session of the Supreme Court has all the jurisdiction, powers and privileges of the Judges BUT are NOT deemed to be a Judge.

### Court of Record

✍ **In India, Both the Supreme Court and High Courts regarded as courts of record.**

Supreme Court is a court of record as per provisions of Article 129 and has the powers of such a court including the power to punish for contempt of itself.

### Seat of Supreme Court

As per article 130, Seat of the Supreme Court is Delhi, **but it can hold its meeting anywhere in India.** The decision to hold a meeting anywhere in India is taken by the **Chief Justice of India in consultation with President.** There **are no regional benches** though the demand was made in past. The demand was turned down by the Supreme Court.

## Original Jurisdiction

Original Jurisdiction of the Supreme Court is discussed in **Article 131.** The Supreme Court has original Jurisdiction in any dispute that arises between

1. Government of India and one or more states
2. Government of India and State(s) on one side and State(s) in other side
3. State(s) and State(s)

The dispute should involve a question whether of law or fact on which depends existence of a legal right which the court is called upon to determine.

✍ Please note that **dispute regarding the enforcement of Fundamental Rights** comes under the **Original Jurisdiction** of the Supreme Court.

### Does Mulla-Periyar Dam Controversy come under the Original Jurisdiction of the Supreme Court?

There is a limitation to the Original Jurisdiction of the Supreme Court. As per article 131, the **original jurisdiction does not extend** to any dispute arising out of any treaty, agreement, covenant, engagement, sanad or similar instrument which having been **entered into or executed before the commencement of the Constitution.** The roots of the Mullaperiyar Dam go back to 1886, when a lease was made between the Maharaja of Travancore (a Princely state) and Secretary of State for India (Earl of Kimberley) for Periyar Irrigation works. This lease was for 999 years and it granted full right to make and carry out any construction on the leased land to Secretary of State for India (Now Tamil Nadu). The Dam is operated by state of Tamil Nadu and by another agreement in 1970; Tamil Nadu was permitted to generate power also. There is a controversy between Kerala and Tamil Nadu regarding the height of the dam and we had discussed it in our current affairs modules in October. **This does not come under the original jurisdiction of the Supreme Court.**

This issue is in Supreme Court but rather than article 131 or original jurisdiction of the Supreme Court, it is article **262** (Adjudication of disputes relating to waters of interstate river or river valleys) and **Inter State Water Disputes Act 1956** under which the **petition** seems to **have been filed.** **Article 262 seeks to exclude Article 131 when a dispute between States concerns waters.**

## Appellate Jurisdiction

The appellate Jurisdiction of the Supreme Court has been discussed in articles **132-136.** The Supreme Court is the Highest Court of appeal and the writs and decrees of **Supreme Court run throughout the country.**

👉 The cases come to the supreme court in the form of appeals against the judgments of the lower courts and this is called appellate jurisdiction.

👉 Appellate jurisdiction involves the Constitution, Civil and criminal matters.

An appeal can be made in the Supreme Court against any judgment, decree or final order of the High Court in the territory of India, whether in a civil criminal or other proceedings, if the High Court Certified that the

case involves a substantial question of law as to the interpretation of the Constitution. Even of the High Court refuses to give such certificate, the Supreme Court can grant special leave to appeal if the court is satisfied that the case involves a substantial question of law as to the interpretation of the Constitution.

### What makes the Supreme Court of India the Ultimate Interpreter and Guardian of the Constitution?

In every matter that involves the interpretation of the constitution whether, civil, criminal or any other proceeding, the supreme court has been made the final authority to elaborate the meaning and intent of the Constitution.

As far as criminal cases are concerned there are 3 situations in which criminal appeals in Supreme Court are permitted: (Article 134)

1. The High Court has on appeal reverse the order of acquittal of accused person and sentenced him to death.
2. The High Court has withdrawn for trial before itself any case from any subordinate court and such trial convicted the accused person and sentenced him to death.
3. High Court certifies that the case is worth appeal to the Supreme Court.

### Advisory Jurisdiction

**Article 143** (Power of President to consult Supreme Court) discusses the advisory jurisdiction of the Supreme Court.

✍ If the president feels that a question of law or fact has arisen or is likely to arise and the question is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he can refer the same to Supreme Court for its advisory Opinion. (A question was asked in Civil Services Prelims 2010 on this)

✍ Such an opinion is NOT binding on the president.

### Review of Supreme Court's own verdicts

It is said that the Lower court is concerned with the facts and High Court with the error of the judgment of the lower court. The Supreme Court is concerned with wisdom<sup>8</sup>. But the Supreme Court may also go wrong and such wrongs can be rectified. **This has been enshrined in the Article 137 of the Constitution of India, that the Supreme Court can review and revise its own orders.**

### Judicial review

Judicial Review means that the Supreme Court can ensure that the laws passed by the State legislature and Union legislature and the orders issued by the State Executives and Union Executives don't contravene the provisions of the Constitution and if the Supreme Court finds so, it can held them unconstitutional.

<sup>8</sup> Indian Constitution: Ministry of Information and Broadcasting, Government of India

Any law that has been declared unconstitutional by the Supreme Court cannot be enforced.

Judicial Review is a remarkable feature in the constitution of India. The power of Supreme Court to rule legislation invalid if it violates the constitution was first seen in 1975 when The Supreme Court struck down the provisions of the 39th Amendment Act. The constitution of India has made the Supreme Court Guardian of the fundamental rights under the article 32 and article 13 declares that every law in force or every future law inconsistent with or in derogation of the Fundamental rights shall be void. Articles 131 to 136 also expressly vest the power of reviewing legislative enactments of the Union and the States.

The 42nd amendment act curtailed the jurisdiction of Supreme Court in some ways but some of the changes were repealed by the 43rd amendment act 1947.

### Is Judicial Review relevant?

Judicial Review is relevant because the law of the land in India is written and the language is apt to be ambiguous and its meaning may not be taken same by all at all times. So the at time to time the question of interpretation of the constitution and other enactments is bound to arise at time to time.

The Judicial Review is also relevant in the sense that Legislature may not possess the impartiality which is needed to explain the meaning and implications of a particular law and an independent impartial judiciary body alone can do it aptly.

The State can put restrictions of the Fundamental rights of the citizens in the name of security of the state and in public interest, but only court can decide whether the restrictions imposed are reasonable or not.

### Judicial Activism

In 1608, Stuart King James I , the ruler of the England claimed absolute power. He entered the royal courts and claimed that he could take any case he chose, remove it from the courts and decide it in his royal person. He was answered by the Chief Justice Coke that he could not do so but the case ought to be determined and adjudged in a court of justice according to the law and custom of England.

The offended King said "Does it mean that I shall be under law" The Justice replied, "Bracton (Henry de Bracton) says that the King should not be under man but should be under God and law."

The judges were removable by the King at that time but it is the earliest affirmation of the judicial power while upholding the rule of law against arbitrary decisions of the sovereign. This was the Judicial Activism in its true sense!

### What is Judicial Activism?

By Judicial Activism, we refer to the process by which the judiciary uses the concept of Judicial Review to iterate the unconstitutionality of the legislative and executive orders.

☞ Concept of Judicial Activism originated in United States, from the “Due Process of Law” clause of its constitution.

☞ In Indian constitution, it corresponds to the “**Procedure established by Law**” and not the “due process of the law”

The phenomenon of Judicial Activism has not developed in India spontaneously. **It has evolved because of the inaction or over action of the other two organs of the government** in the country viz. the Legislature and the Executive.

In the first two decades of the adoption of the constitution, the country saw a series of tensions between the courts and parliament on the decisions of the Supreme Court in context with the protection of the fundamental rights of the citizens. One of them was right to property which was under the sword of the socialist Government of that time. The very first amendment of the Constitution was a response to the Supreme Court's decision that had invalidated the state laws to abolish Zamindari estates on the basis of equal protection clause of the constitution. The result of this amendment was that the court lost the power to declare the Government acquisition of property invalid only on the ground that it abridges the fundamental rights.

## Public Interest Litigation



However, the present form of judicial activism got birth in 1980s when Justice **P N Bhagwati** turned a postcard written to him by an aggrieved citizen into a **Public Interest Litigation**.

☞ Prior 1980s only the aggrieved party could approach the courts for justice.

The Indian legal system which was more or less with colonial nature saw the state of deprivation of civil and political rights particularly during the emergency era. After the emergency got ended in 1977, the 2 judges of the honorable Supreme Court Justice V. R. Krishna Iyer and P. N. Bhagwati recognized the possibility of providing access to justice to the poor and to reach out to the people.

☞ Hence Public Interest Litigation was devised an innovative way wherein a person or a civil society group could approach the supreme court seeking legal remedies in cases where public interest is at stake.

☞ **Justice V. R. Krishna Iyer and P. N. Bhagwati were the first judges to accept PIL.**

☞ Judicial activism earned a human face in India by liberalizing access to justice and giving relief to disadvantaged groups and the have-nots under the leadership of **Justices V.R. Krishna Iyer and P.N. Bhagwati**.

☞ In *S. P. Gupta v. Union of India*, 1981 case, Justice P. N. Bhagwati articulated the concept of PIL.

☞ *Hussainara Khatoon v. State of Bihar* was the first such PIL case. This case was filed by an advocate and focused on the inhuman conditions of the prisons. The case led to release of more than 40, 000 under trial prisoners.



In *S. P. Gupta v. Union of India*, 1981 case, Justice P. N. Bhagwati provisioned that if an injury is caused to a person or class of person or a legal right of the person/class of person is violated, and such person or class of person by reasons of poverty, helplessness or disability or social/economical disadvantageous position cannot approach the court, then a member of the public can maintain an application for an appropriate direction / order/ writ in the High Court under article 226 and in case any breach of the fundamental rights the person or class of person can seek judicial redress in Supreme court under article 32.



☞ Article 226 is Power of High Courts to issue certain writs

In *Ashok Kumar Pandey v. State of West Bengal* case it was maintained that one can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration.

### Remedial nature of PIL:

The PIL has remedial nature and indirectly incorporates the principles enshrined in the part IV (Fundamental Duties) of the Constitution of India into part III (Fundamental Rights) of the Constitution.

### Judicial Activism in 1990s:

In the decade of 1990s the judicial activism became popular and widely appreciated. Some of the important court actions of this era were as follows:

☞ The court sensitized the Central Intelligence agencies to discharge their constitutional obligations in the Hawala Case.

In 1994, in the *Jain Hawala Case*, the court ordered the director of the CBI to report personally its progress to the court. The progress of the CBI was too slow and a top leaders in the Government as well as Opposition seemed to be involved in that, the Court in 1996 ordered CBI to spare no one and to report no one but to the court. The impact was such a large that many ministers from the then Narsimharao Government , top opposition leaders and top bureaucrats were exposed.

### Judicial Activism and the Public Interest:

The Judgments of the supreme court which can be placed under the “Judicial Activism” range from the Uniform Civil Code, Pollution, Preservation of Historical Monuments, Urban Development, Food Security, Occupation of Governmental Buildings, Compensation to the Rape victims, camera Trials of the Rape victims, Punishment of the senior bureaucrats, illegal structures in VIP zones, monkey menace, dog menace, unpaid dues by former and serving legislators, nursery admissions, and admissions in institutions of higher learning and so on...

### Judicial Activism For:

1. In India majority of the people are socially, economically and “emotionally” backward and they are subjected to various kinds of discrimination, the role of Judiciary is important and judicial activism is need of the hour.
2. The executive and legislature are apathetic and they fail to discharge their constitutional duties, the apex court which is the guardian of the Citizens rights and liberties acts as a sentinel through the Judicial Activism.
3. The Judges of the courts can not sit idle and close their eyes to the stress and storms that affect the society and protect the fundamental rights sitting in cocoons.
4. The great contribution of judicial activism in India has been to provide a safety valve and a hope that justice is not beyond reach.
5. The common citizens have discovered that the administration has become so apathetic and non-performing and corruption and criminality so widespread that they have no recourse except to move the courts through PIL, enlarging the field for judicial intervention.

### Judicial Activism Against:

1. The active role of the Judiciary has been criticized also on several grounds. Entertainment of the Public Interest Litigations on insignificant matters and imposition of fines without proper trial are such grounds. Sometimes these orders are triggered by righteous indignation and emotional responses.
2. Some critics have alleged that the Courts have tried to assume the positive policy making role which is vested in the elected representatives of the people.
3. It has been alleged that the courts have been crossing boundaries of their jurisdiction.

### Conclusion:

1. Unless the Executives and the Legislatures begin to respond to the needs of the citizens and discharge their responsibilities, Public Interest Litigations and Judicial Activism are bound to remain at the centre stage as long as Judiciary is respected and courts continue to respond the way they do now and the image of the Judiciary is not undermined by negative perceptions.
2. To successfully controvert the undemocratic conduct and to uphold the legitimacy of the Judicial Review, the judiciary must strive to maintain the respects it commands amongst the masses for its independence and integrity.
3. Supreme Court has to do its duty to interpret the law and the Constitution and wherever there is any gap courts have been given certain directions by the Constitution, the supreme law of the land.
4. There is concern among the public about lack of transparency in judicial appointments and a sense of increasing unease because of a lack of a credible mechanism to deal with serious complaints against the higher judiciary.

**REVISED**

7:58 pm, Apr 10, 2013