

Unit - II

Governance in India

1. Parliament, Lok Sabha and Rajya Sabha

Parliament

In any democratic regime, the government has three organs - the executive, the legislature and the judiciary. To ensure the government is effective and citizens' rights are protected, each organ has its own powers and responsibilities, including working with the other branches. The legislature has different names in different countries. It is *Parliament* in the UK, *Congress* in the United States, *Diet* in Japan, *Bundestag* in Germany, *Shora* in Afghanistan and *Majlis* in Iraq. The Parliament of India is called the parliament (*Sansad*), which is constituted under Article 79 of the Constitution. It says that "There will be a Parliament for the Indian Union, which will be formed by the President and two Houses, whose names will be Rajya Sabha and Lok Sabha." Therefore, the President besides being the constitutional head of the executive of the Union of India; it is also an integral part of the legislature or the parliament. This is in tune with the concept of parliamentary system. Some people believe that establishment of representative institutions in India such as democracy and parliament is contribution of the British, although this is not true. Representative bodies and democratic autonomous institutions have existed in India since ancient times. The introduction of the modern parliament can be traced to the Rigveda which mentions two organizations called 'Sabha' and 'Samiti.' The committee can be considered as a modern Lok Sabha, while the

assembly used to be the organization of specific people, whose form was now similar to the Rajya Sabha.

1.1 Background-

Evolution of modern democratic institutions in the country was a gradual process which stemmed from the Indian struggle against the British rule. The process of parliamentary tradition in India was initiated in limited form during the British rule by various Acts which were largely not responsive. The elements of development of parliamentary system can be seen in all the acts passed from the Charter Act of 1833 to the Government of India Act of 1935. Indian Councils Act, 1892 aimed at giving further opportunities to the non-official and native elements to participate in the work of the Government. By the Act of 1892, number of members to the Legislative Council of the Governor General was increased to sixteen including four indirectly elected members. The first attempt, however, to introduce popular element was initiated by the Morley-Minto Reforms which were sought to be implemented through the Indian Councils Act, 1909. The maximum number of members was increased to 60 by the Act of 1909 and their rights were increased. The British, on the other hand, tried to break the Indian unity by introducing the communal system of representation in the elections. The Montagu Chelmsford Reforms led to the enactment of the Government of India Act, 1919 which was certainly a landmark in the constitutional

history of India. This Act introduced bicameralism for the first time. In which there was one State Council and the second was the Legislative Assembly and most of the members were elected in each house. After a lot of deliberations the Government of India Act, 1935 came into being which introduced federation and the provincial autonomy. Under the Act the Central Legislature was still made bicameral. The membership and rights of these two houses were also increased substantially, yet the form was still far away from being a responsible government. Moreover, it provided for very limited voting rights which were determined on the basis of property. Only fifteen percent of the people had the right to vote. Voters were divided into different classes on a communal and commercial basis. After independence, all anti-democratic elements of the British rule were repealed and a full-fledged parliamentary system of government with modern institutional framework in tune with the democratic principles was established in India by the Constitution of India.

1.2 Composition of Parliament-

According to Article 79 of the Constitution of India, the Parliament consists of President of India and the two Houses of Parliament known as Council of States (Rajya Sabha) and House of the People (Lok Sabha). As part of the legislature the President also has legislative powers which have been described under the legislative powers of the President. So now we will study the process of Parliament and the formation of the two houses and the functions and powers.

1.3 Qualifications and Disqualifications-

Qualifications- The Constitution has set the following qualifications-In order to be chosen as a Member of Parliament: a person (1) must be a citizen of India. (For a long time there has been demand in the country that the citizens born in India should only hold the highest positions of the country). There are also such provisions in many countries, although there is not even such a mention

in the Indian Constitution. (2) must not be less than twenty-five years of age in the case of Lok Sabha and not less than thirty years of age in the case of Rajya Sabha. (3) He should have other such qualifications that are determined by the Parliament.

Disqualifications- The following grounds could disqualify a person for being chosen and for a person for being chosen and for being a Member of Parliament: (1) if he holds any office of profit 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; and (5) if he is so disqualified by or under any law made by Parliament or the Tenth Schedule of the Constitution. No person can be a member of both houses of Parliament at one time. A person can contest from maximum two places for the Lok Sabha, if he is elected from both places then within a month he has to vacate one place. According to the Tenth Schedule of the Constitution, a Member of Parliament can be sacked from the membership if convicted of defamation. Apart from this, the member can also be sacked from the election if he is found guilty of a criminal offense or a corrupt conduct in election. Regarding the qualifications and disqualifications of Members of Parliament, it is also noteworthy that no educational qualification has been considered necessary, whereas in many states including Rajasthan, minimum educational qualification has been considered necessary to contest elections in local self-government.

1.4 Oath-

All the members of the Parliament, whom we call M.P. in common parlance, take oath before accepting his position. An oath of office is an oath or affirmation a person takes before undertaking the duties of an office, usually a position in government. The President administers the oath to the Speaker pro tem in the Rashtrapati Bhawan. The other three Members appointed by the President to assist him in administering the oath/ affirmation are administered

the oath/affirmation by the Speaker pro tem in the Lok Sabha.

1.5 Sessions of Parliament-

Article 85 of the Constitution empowers President to summon each House of the Parliament as he thinks fit. However he can summon the houses at intervals not be more than six month's gap between the two sessions. Thus, it is mandatory to Parliament meet at least twice a year as per constitution. The period during which the House meets to conduct its business is called a session. In India, the parliament conducts three sessions each year: Budget session: February to May Monsoon session: July to September Winter session: November to December. During the proceedings of Parliament, the house can be adjourned by the Presiding Officer (Speaker of Lok Sabha and Chairman of the Rajya Sabha). The President may from time to time-(a) prorogue the Houses or either House ;(b) dissolve the House of the People.

1.6 Quorum-

A quorum is the minimum number of members of a deliberative assembly (a body that uses parliamentary procedure, such as a legislature) necessary to conduct the business of that group. Article 100 of the Constitution of India stipulates that at least 10% of total number of members of the House must be present to constitute the quorum to constitute a meeting of either House of Parliament. For example, if the House (Lok Sabha) has the total membership of 545, at least 54 members must be present for the House to proceed with its business. For conducting the proceedings of the Rajya Sabha, at least 25 members in the House (Tenth of the total number of members 245 Part) must be present. If at any time during a meeting of a House there is no quorum, the Chairman has to either adjourn the House or suspend it until there is a quorum.

1.7 Language of Parliament-

Notwithstanding anything in Part XVII, but subject to the Article 348, business in Parliament shall be transacted in Hindi or in English: Provided that the ... acting as such, as the Case may be, may

permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother tongue.

1.8 Powers of Ministers and Advocate General in Parliament-

Article 88 of the Constitution mentions 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.

1.9 Composition of Rajya Sabha-

The Rajya Sabha is known as the Upper House of Parliament, the permanent House or the House of the States. The Rajya Sabha is constituted under Article 80 of the Constitution which says that, (1) The Council of States shall consist of (a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and (b) not more than two hundred and thirty eight representatives of the States and of the Union territories. Out of which two hundred and thirty-eight members represent the States and Union territories and twelve members are nominated by the President. Twelve members nominated by the President are from amongst the persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service. The provision of persons to be nominated by the President in the Rajya Sabha is inspired by the constitution of Ireland. The actual strength of Rajya Sabha, at present, is two hundred and forty-five; out of which 229 members are elected from different states and 4 members from the union territories, while 12 members are nominated by the President. The Rajya Sabha is a permanent body and is not subject to dissolution. However, one-third of its members retire biennially. A member who is elected for a full term retains his membership for six years. He is eligible for re-election. The Fourth Schedule to the Constitution provides for allocation of seats to various States and Union territories. The

representatives of the States are elected by the elected members of State Assemblies in accordance with the system of proportional representation by means of the single transferable vote. The representatives of the Union territories in Rajya Sabha are chosen in accordance with laws enacted by Parliament. Thus, on one hand, 31 members of Rajya Sabha are elected from Uttar Pradesh alone, while only one member is elected from many states like Goa, Manipur, and Meghalaya. Ten members of the Rajya Sabha are elected from Rajasthan. As regards the Union Territories, only Delhi and Puducherry are represented in the Rajya Sabha, and not the rest. Thus, instead of giving equal representation to all the states similar to the Upper House of the US Congress, here in India the states are not equally represented in Rajya Sabha. The number of members from a state depends on its population.

1.10 Election of Members of Rajya Sabha-

According to the constitution, the representatives of the States and of the Union Territories in the Rajya Sabha are elected by the method of indirect election. The representatives of each State and two Union territories are elected by the elected members of the Legislative Assembly of that State and by the members of the Electoral College for that Union Territory, as the case may be, in accordance with the system of proportional representation by means of the single transferable vote. Therefore, the members of the Rajya Sabha are indirectly elected, as the members of Rajya Sabha from Rajasthan will be elected by 200 MLAs of the Rajasthan Legislative Assembly. There have been two amendments recently for the Rajya Sabha elections - the condition for the candidates to be resident of that state from where he wants to be elected was done away with and the voting system adopted in place of the secret ballot system. The Election Commission of India has the responsibility to elect the Rajya Sabha.

1.11 Tenure of Rajya Sabha

Rajya Sabha is a permanent House and is not subject to dissolution. The tenure of Rajya Sabha was not mentioned in the original constitution and left for the parliament to decide later. Accordingly; the tenure of the Rajya Sabha members was fixed for six years by the parliament under the Representation of Peoples Act 1951. A member who is elected for a full term serves for a period of six years. However, one-third Members of Rajya Sabha retire after every second year. The election held to fill a vacancy.

1.12 Officials of Rajyasabha-

According to Article 64 and 89 of the Constitution, the Vice-President of India is the ex-officio Chairman of the Rajya Sabha, although he is not a member of the Rajya Sabha. According to Article 89, (A) The Vice President of India shall be ex officio Chairman of the Council of States (B) The council of States shall, as soon as may be, choose a member of the council to be Deputy an thereof and, so often as the office of Deputy Chairman becomes vacant, the council shall choose another member to be Deputy chairman thereof. Thus, the Speaker of the Rajya Sabha is not member of Rajya Sabha but the Deputy Chairman is a member. When the Vice-President acts as the acting President of India or absent from the House, the Deputy Chairman conducts the proceedings of the Rajya Sabha.

1.13 Composition of Lok Sabha-

The Lok Sabha is the lower or the popular house of the Indian bi-cameral parliament. It is constituted according to article 81 of the Constitution. Lok Sabha is composed of representatives of the people chosen by direct election on the basis of the adult suffrage. Initially, the total strength of the Lok Sabha was determined 500. By the States Reorganization Act, 1956, the strength was increased to 520 which was a later further increased to 525. According to the 31st Constitutional Amendment Act, 1974, the maximum number of members of the Lok Sabha can be 552, of which (1) 530 members will be elected from different states. (2) 20 members will be elected

from Union Territories and not more than two members of the Anglo-Indian Community to be nominated by the Hon'ble President, if, in his/her opinion, that community is not adequately represented in the House. The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all States. But in reality, current strength of the Lok Sabha is 545, out of which 530 are elected from different states and 13 members from Union Territories while two members are nominated by the President. The representation of the states to the Lok Sabha is based on population. Therefore UP which is the most heavily populated State in India sends as many as 80 members while 25 are elected members for Lok Sabha from Rajasthan. Under Article 82 of the Constitution, 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. The present delimitation of constituencies has been done on the basis of 2001. The present Constituencies carved out on the basis of 2001 census shall continue to be in operation till the first census after 2026. For the purpose of constituting the Lok Sabha, the whole country has been divided into 543 Parliamentary Constituencies, each one of which elects one member. The members of the Lok Sabha are elected directly by the eligible voters.

1.14 Election of Members of Lok Sabha-

There was many defects in the formation of the legislature during the colonial rule. At the plea of safeguarding the minorities, the British granted separate representation to the Muslims on communal grounds. The separate communal electoral system disrupted our political life. The Constituent Assembly had to fight a lot to end these problems. Most minority leaders wanted their communities to maintain a separate electoral system

even in independent India. Sardar Patel persuaded the minority representatives to end the communal electoral system. Therefore, members of Lok Sabha in independent India are directly elected by adult franchise. According to Article 326, the adult citizens aged 18 years or above who are registered in the electoral roll will be elected to the Lok Sabha by voting. Different political parties field their candidates for Lok Sabha constituencies. An Independent candidate can also contest the election. The registered voters in that particular Lok Sabha constituency exercise their votes on the date set by the Election Commission of India, and the candidate who receives maximum votes is declared elected. Thus, it is not necessary for a candidate to get a certain percentage in the election. For example, if in a constituency there are 5 or more candidates and the candidate who received the maximum votes got just 25 percent of the votes polled; he will be declared victorious, even if the remaining 75 percent of the votes were cast in opposition. Hence, there is no parity between the votes actually received by various political parties and the seats won by them. In the Lok Sabha elections held in 1984, Congress secured more than 400 seats out of 533 seats i.e. over 75 percent, even though it did not receive even 50 percent of the total votes. Some seats are reserved in Lok Sabha for the members of the Schedule Castes and Scheduled Tribes. As per the order issued by the Delimitation Commission in 2008, 412 are general, 84 seats are reserved for Scheduled Castes and 47 seats for the Scheduled Tribes. Earlier it was 79 and 41 for Scheduled Castes and Scheduled Tribes respectively.

1.15 Tenure of Lok Sabha-

According to Article 83 of the Constitution, the normal term of the Lok Sabha will be five years from its first meeting. But according to Article 85, the President, on the advice of Council of Ministers, may dissolve it before the expiry of five years. In the case of national emergency, its term can be extended for one year at a time. The term of the Lok Sabha was extended in 1976-77. But it will not exceed six months after the emergency is over. On several

occasions Lok Sabha was dissolved prior to the end of its term. The first Lok Sabha in India was formed in April, 1952, while the 16th Lok Sabha which is currently functioning was formed in May 2014.

1.16 Lok Sabha Speaker & Deputy Speaker-

According to Article 93 of the Constitution, the House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be. Speaker is elected by members of Lok Sabha from amongst themselves and remains in office till a new House is constituted through general elections. Speaker is by convention a member of the ruling party or alliance. Deputy Speaker is elected by members of Lok Sabha from amongst themselves and remains in office till the dissolution of Lok Sabha. The tradition is that Deputy Speaker is elected from the opposition party although there is no such constitutional or political obligation. The Speaker can submit his resignation to the Deputy Speaker and the Deputy Speaker can tender his resignation to the Speaker. As per Articles 94 and 96, both the Speaker and Deputy Speaker can be removed from office by the Lok Sabha by a resolution passed by an effective majority of the House in a session held fourteen days after the receipt of the notice. Speaker is also removed on getting disqualified for being Lok Sabha member under sections 7 & 8 of Representation of the People Act, 1951. The basic function of the Speaker is to preside over the house and conduct the meetings of the House in orderly manner. No member can speak in the House without his permission. He may ask a member to finish his speech and in case the member does not obey he may order that the speech should not be recorded. All the Bills, reports, motions and resolutions are introduced with Speaker's permission. He puts the motion or bill to vote. He does not participate in the voting but when there are a tie i.e. equal number of votes on both sides, he can

use his casting vote of Government vote. But he is expected to cast his vote in a manner so that his impartiality and independence is retained. His decisions in all parliamentary matters are final. He also rules on points of order raised by the members and his decision is final. He is the custodian of rights and privileges of the members. He disqualifies a member of his membership in case of defection. He also accepts the resignation of members and decides about the genuineness of the resignation. In case of joint sitting of Lok Sabha and Rajya Sabha, the Speaker presides over the meeting. Under Article 110 (3) of the Constitution, if any question arises as to whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final. Ganesh Vasudev Mavalankar was the first Lok Sabha Speaker and Madabhushi Ananthasayanam Ayyangar was the Deputy Speaker of Independent India.

1.17 Functions of Parliament-

Parliament of India has the cardinal functions of legislation, control of executive and ventilation of people's grievances. The legislative proposals are introduced mostly by the Government in order to fulfill the promises for which it has received the mandate of the people. Parliament, being the highest elected body, gives final approval to such proposals after discussing them fully and suggesting modifications, wherever felt necessary. Without the approval of Parliament, no Bill can reach the statute book.

1. Legislative Functions- Basically the Parliament is a law-making body of India and its primary function is to legislate, but it also plays a limited role in initiating the legislation. So its main task is to make laws. In federal system established in India, there is a division of power between the Centre (Union) and the States. The legislative powers have been divided into the union and the provinces. In the seventh schedule of the Constitution, There are three lists Union List, State List and the Concurrent List. Only Parliament can make laws on the subjects mentioned in the Union List. The Parliament can make legislation on any of

the subjects covered in the Union List. Along with the State Legislatures, the Parliament is empowered to make laws on the Concurrent List. In case, both the Centre as well as the States make a law on the subject mentioned in the Concurrent List then the central law prevails upon the state law if there is a clash between the two. Any subject not mentioned in any list i.e. residuary powers are vested with the Parliament. In some circumstances Parliament can also make legislation in relation to the subjects of the state list. As pointed out earlier basically the Parliament is a law making body. Any proposed law is introduced in the Parliament as a bill. After being passed by the Parliament and getting the President's assent it becomes a law. There are two kinds of bills, which come up before the Parliament: - (i) ordinary bill and (ii) money bill. The legislative procedure in each of these kinds of bills is given as under. The proposal to make a law is called a simple bill. This bill can be presented in any House of Parliament. If the bill is placed in the House by a member of the Council of Ministers, then it is called the Government Bill, whereas the bill passed by ordinary members is called private bill. Any bill not moved by a Minister is a Private Member's Bill, which means that the bill has been moved by a member of parliament but not a minister in the Government.

Ordinary Bills- The Bills pass through several stages. :-

(A) First Reading- With the introduction of the bill, the First Reading of the bill starts. This stage is simple. The Minister wanting to introduce a bill, informs the presiding officer. He/she puts the question of introduction to the House. When approved, normally by voice vote, the Minister is called upon to introduce the bill.

(B) Second Reading - This stage is the most vital stage. After general discussion the House has four options: - (i) it may straightaway take the bill into detailed (clause by-clause) consideration or (ii) refer it to a select committee of the House or, (iii) refers it to the Joint Committee of both the Houses or (iv) circulate it among the people to elicit

public opinion. If the bill is referred to a select committee of the House or the joint select committee of both the Houses, the concerned committee examines the bill very minutely. Each and every clause is examined. The committee may also take the opinion of professionals and legal experts. After due deliberations, the committee submits its report to the House.

(C) Third Reading- After the completion of the second reading, the Minister may move that the bill be passed. At this stage normally no discussion takes place. The members may oppose or support the adoption of the bill, by a simple majority of members present and voting.

Bill in the other House- After the bill has been passed by one House, it goes to the other House. Here also the same procedure of three readings is followed. The following consequences may follow:- (A) It may pass it; then the bill is sent to the President for his assent. (B) It may pass the bill with amendments. The bill will be sent back to the first House. In such a case, the first House will consider the amendments and if it accepts the amendments then the bill will be sent to President for his assent. In case the first House refuses to accept the amendments, then it means there is a deadlock. (C) It may reject it.

Joint sitting of the two Houses- In order to remove the deadlock between the two Houses, the President may call for a joint sitting of the two Houses. Such joint sittings are very rare in India and till now only three times such meetings have taken place. They were convened on the occasion of passage of Dowry Prohibition Bill 1959, Banking Service Commission (Repeal) Bill, 1978, and Prevention of Terrorism Bill, 2002.

President's Assent to the Bill- After being passed by either the Houses or the Joint Sitting of both Houses, the bill is referred to the President for his assent. The President also has some options in this regard: - (i) He may give his assent and with his assent, the bill becomes a law. (ii) He may withhold his assent, but may suggest some changes. In such a case the bill is sent back to the House from where it

had originated. But if both the Houses pass the bill again with or without accepting the recommendations, the President has no option but to give his assent. Thus, with the signature of the President the complicated process of lawmaking ends. In fact it is the most important function of the Parliament. It is through law making that the Parliament carries out its responsibility towards people and also fulfills the social, economic needs of the country. But parliament is so far not to legislate for all citizens of the country. It is surprising to note that Parliament cannot make laws for the social and religious life of the Muslims and Christians of the country. They are privileged to have their own personal boards to determine the rules of their social life. Apparently, this provision contrasts the fundamental right of equality. Uniform civil code is the ongoing point of debate within Indian mandate to replace personal laws based on the scriptures and customs of each major religious community in India with a common set of rules governing every citizen. Not only that, Article 44 provides that the State shall Endeavour to secure for the citizens a uniform civil code throughout the territory of India. There are a number of cases where the Supreme Court has referred to Article 44 and the concept of uniform civil code, mainly to highlight the lackluster attitude of the executive and the legislature in the implementation of the directive.

2. Passing the Money Bill - The second important function of Parliament is to pass the Money Bill. Article 109 describes Special procedure in respect of Money Bills and Article 110 defines the Money Bill. Article 109(1) makes it mandatory that Money Bill can be introduced only in the Lok Sabha on the recommendation of the President. It cannot be presented in the Rajya Sabha. However, the recommendation of the President is not necessary in case of an amendment making provisions for the reduction or abolition of any tax. A Money Bill after having been passed by the Lok Sabha, and sent to Rajya Sabha for its recommendations, has to be returned to Lok Sabha by the Rajya Sabha, with in a period of fourteen days from the date of its receipt, with or without recommendations. It is open for the

Lok Sabha, to either accept or reject all or any of the recommendations of the Rajya Sabha. If the Lok Sabha accepts any of the recommendations of the Rajya Sabha, the Money Bill is deemed to have been passed by both Houses with the amendments recommended by the Rajya Sabha and accepted by the Lok Sabha. If the Lok Sabha does not accept any of the recommendations of the Rajya Sabha, the Money Bill is deemed to have been passed by both Houses in the form in which it was passed by the Lok Sabha without any of the amendments recommended by the Rajya Sabha. In case a Money Bill is not returned by the Rajya Sabha to the Lok Sabha within a period of fourteen days from the date of its receipt, it is deemed to have been passed by both Houses in the form in which it was passed by the Lok Sabha after the expiry of said period. It is also worth noting that the money bill is essentially a government bill and not a private bill.

3. Function of Amending the Constitution -

The Constitution is a tool to fulfill the social, economic and political needs of the country. The constitution needs to be changed as per the requirements of the country. The constitution of every country has provision for amendment in it. The Constitution is flexible or rigid largely depends on the amendment process. While the British Constitution is an example of the most flexible constitution, the Constitution of the USA is considered a rigid constitution. The Constitution of India provides for a distinctive amending process when compared to the Constitutions of other nations. It can be described as partly flexible and partly rigid. The Parliament is competent to amend the Constitution. Amending the Constitution of India is the process of making changes to the nation's fundamental law or supreme law. The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution of India. This procedure ensures the sanctity of the Constitution of India and keeps a check on arbitrary power of the Parliament of India. Both the Houses have equal powers so far as amendment of the Constitution is concerned. A bill to amend the

Constitution may originate either in the Rajya Sabha or in the Lok Sabha. Unless it is passed by both the Houses with the required majority, the amendment cannot be effective. As per the procedure laid down in the Constitution, Constitution Amendment Bills can be of three types viz., (i) requiring simple majority for their passage in each House; (ii) requiring special majority for their passage in each House i.e., a majority of the total membership of a House and by a majority of ***not less than two-thirds*** of the members of that House present and voting (article 368); and (iii) requiring special majority for their passage and ratification by Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures (proviso to clause (2) of article 368). Article 368 governs last two types or the categories of amendments. The second category includes amendments that can be effected by Parliament by a prescribed '***special majority***'; and the third category of amendments includes those that require, ***in addition to such "special majority", ratification by at least one half of the State Legislatures***. Any such amendment, which is related to changes in the executive power of the Union and the States, changes in the legislative relations of the States, representation of States in Parliament and amendment in Article 368 itself etc. are governed by the last category, in which in addition to such "special majority", ratification by at least one half of the State Legislatures is also necessary. Constitution Amendment Bill under article 368 can be introduced in either House of Parliament and has to be passed by each House by special majority. There is no provision for a joint session in it. After a Bill has been passed by both Houses, it is presented to the President for his assent. The president cannot refuse to sign it. Thus, there are three types of bills the ordinary bill, money bill and Constitution Amendment Bill. On the General and money Bill the Lok Sabha has more powers than the Rajya Sabha and as regards the Constitution Amendment bill both houses have equal rights. Constitution Amendment Bill will not be deemed to be passed if one House passes the bill but the second house does not pass it.

The clause 2 of Art 368 also specifies certain situations in which apart from above mentioned special majority ratification by more than half of the number of States is required, they are: Election of the President, extent of executive power of the Union & State, provisions dealing with the Supreme Court, provisions dealing with High Courts in the States & Union territories, distribution of legislative power between Centre and State, representation of States in Parliament, Seventh schedule and the Article 368 itself.

Functions of Control over the Executive

Parliament also exercises control over the executive. The control is exercised by it at different levels. In the democratic system, the government is accountable to the people and they exercise their control over it through their voting rights. In a parliamentary system of government there is a close relationship between the legislature and the executive. But the task of controlling the executive on daily basis is exercised through the Parliament which is composed by representatives of the people. Moreover, the executive is responsible to the legislature for all its acts. Prime Minister and his Council of Ministers are responsible to the Parliament individually as well as collectively. The Parliament can dislodge a ministry by passing a vote of no confidence or by refusing to endorse a confidence motion. In India this has happened several times. But the no-confidence motion or the confidence motions are the extreme ways of maintaining the accountability of the Parliament over the executive. They are employed in exceptional cases. Parliament also maintains its control over executive in a routine manner through several ways. The members of Parliament can ask questions and supplementary questions regarding any matters connected with the affairs of the Central Government. The first hour of every working day of Parliament relates to the ***Question Hour*** (Starred, Unstarred and Short Notice), in which the Ministers have to answer the questions raised by the members. If the members are not satisfied with the Government's answer then they ***may demand***

separate discussion on the subject. The Parliament also exercises control over the executive through **several motions**. For example calling **attention notice** or **adjournment motion** are such ways by which some recent matters of urgent public importance are raised. The government always takes these motions very seriously because the government's policies are criticized severely and their likely impact on the electorate whom the government would have to face ultimately. If the motion is passed then it means that the government is censured. Parliament performs another important function of **highlighting people's grievances**. Various procedural devices available to members of Parliament afford ample opportunities for ventilating people's grievances. But the biggest strength of Lok Sabha to exercise control over the executive or the Council of Ministers is its power to pass the trust motion and no-confidence motion. The Constitution provides that the Council of Ministers shall be collectively responsible to Lok Sabha. The Prime Minister presents the motion of the vote of confidence and urges the members to pass it by voting in favor of it. The Government of the day has to go, if a Motion of No-Confidence is passed by Lok Sabha. Another method by which Parliament exercises check over the executive is through its control over finances. With this Parliament is the biggest platform for discussion in the country. Various schemes for development and welfare are discussed in detail in Parliament. The Parliament also have role in the election of the President, the Vice President etc. and their removal from the post.

Important points

- Parliament of India is constituted under Article 79 of the Constitution.
- Parliament consists of two houses-the Rajya Sabha and the Lok Sabha.

Qualification to Become a Member of Parliament

- He must be a citizen of India, must not be less than twenty-five years of age in the case of Lok

Sabha and not less than thirty years of age in the case of Rajya Sabha. He should have other such qualifications that are determined by the Parliament.

- A session of Parliament must be convened within a period of six months.
- **Quorum of the House means** - one-tenth of the total number of members. At present, 55 members are Quorum for Lok Sabha and 25 members for Rajya Sabha.
- In our parliament Rajya Sabha is the upper house and the Lok Sabha is the lower house.
- 12 members in Rajya Sabha and 2 members in the Lok Sabha are nominated by the President.
- There are 10 members in Rajya Sabha and 25 members in Lok Sabha from Rajasthan.
- Vice-President of India is the ex-officio Chairman of the Rajya Sabha.
- Speaker and Deputy Speaker of the Lok Sabha are elected from within the members themselves.
- The most important task of Parliament is law-making.

Exercise

Multiple Choice Questions-

1. What is the main function of our Parliament?
 (A) Enforcing the law
 (B) Lawmaking
 (C) Punishing those who break the law
 (D) Electing Panchayats ()
2. The two houses of Parliament are-
 (A) Rajya Sabha and Lok Sabha
 (B) Lok Sabha and Legislative Assembly
 (C) President and Legislative Assembly
 (D) Advocate General and President ()
3. The Money bill is first presented in-
 (A) Rajya Sabha

(B) Vidhan Parishad

(C) Lok Sabha

(D) Gram Panchayat ()

4. How many members of Rajya Sabha can be elected to from Rajasthan?

(A) 25

(B) 15

(C) 250

(D) 10

()

Very Short Answer Type Questions-

1. How many houses are there in the Parliament of India?
2. What is the minimum age of Lok Sabha member?
3. How many members are nominated to Rajya Sabha by the President?
4. Who elects the Speaker of Lok Sabha?
5. Of which house, Vice-President is the ex-officio Chairman?

Short Answer Type Questions-

1. Describe the qualification to become a Member of Parliament.
2. Write two functions of Parliament.
3. Write a comment on Money Bill.
4. What is the Constitution Amendment Bill?
5. What do you understand by quorum?

Essay Type Questions-

1. Explain the formation and structure of Indian Parliament.
2. Explain the law-making process of Parliament.
3. "The Indian Parliament is one of the most powerful legislatures of the world," Elaborate the powers and functions of parliament in the light of above statement.

Answers to Multiple Choice Questions-

- | | |
|------|------|
| 1. B | 2. A |
| 3. C | 4. D |

2. Union Executive, Election and Power of President and Position & Functions of Prime Minister

President

President of the three parts of the government, the executive body is responsible for implementing and administering the policies and laws enacted by the legislature. The legislative branch of government is responsible for enacting the laws of the state. The executives are not the same everywhere and may vary from country to country. The judicial branch is responsible for interpreting the constitution and laws and applying their interpretations to controversies brought before it. The distinction between parliamentary and presidential form of governance is mainly based on the different types of executive and the mutual relationship between the executive and the legislature. A parliamentary system is a system of democratic governance of a state where the constitution provides that the executive branch derives its democratic legitimacy from its ability to command the confidence of the legislative branch, typically a parliament, and is also held accountable to that parliament for its tenure and actions. In a parliamentary system, member of the executive must also be a member of the legislature and the head of state is usually a different person from the head of government. Japan, Germany, Italy, Britain, India are examples of parliamentary form of government. On the contrary, in the presidential system, the President is the head of both the state and the government and it is the focal point of all the powers of governance. America, Brazil etc. are examples of presidential system, while France, Russia, Sri Lanka etc. are countries with semi-presidential systems.

2.1 Nature of Executive

In the Parliamentary system established in India the President is the formal and constitutional head of the executive. The Prime Minister as the head of the Council of Ministers is the actual executive. The federal structure of Indian polity rests on the principle of parliamentary form of government which makes the executive accountable to the legislature. The President is a figure of prestige and dignity. He is the first citizen of the country and holds the highest position in the protocol. Article 52 of the Constitution provides that “there shall be President of India.” According to Article 53 (1) the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. The Union executive consists of the President, the Vice-President, and the Council of Ministers with the Prime Minister as the head to aid and advise the President.

2.2 Election of the President

According to the Constitution, The President is elected by an Electoral College, which consists of the elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of all the States and also of NCT of Delhi and the Union Territory of Puducherry. As per Article 55(3) of the Constitution of India, the election of the President shall be held in accordance with the system of proportional representation by means of single transferable vote and the voting at such election shall be by secret ballot. In order to be

victorious in this method, the candidate has to get one vote more than half of the total valid votes cast. It is called minimum quota. The President shall hold office for a term of 5 years from the date on which he enters upon his office. He shall, however, continue to hold office notwithstanding the expiry of his term, until his successor enters upon his office. (Article 56). The president can contest again. The President may address his resignation letter to the Vice President and tender his resignation. According to Article 61 (Procedure for impeachment of the President)

- (1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament
- (2) No such charge shall be preferred unless-(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one fourth of the total number of members of the House has been given of their intention to move the resolution, and (b) such resolution has been passed by a majority of not less than two thirds of the total membership of the House
- (3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented as such investigation
- (4) If as a result of the investigation a resolution is passed by a majority of not less than two thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed. An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no

case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall, subject to the provisions of Article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

2.3 Qualifications for Election to President-

According to Article 58 of the Constitution of India, a candidate should fulfill the following eligibility conditions to contest the election to the Office of President :-

1. Must be a citizen of India,
2. Must have completed 35 years of age,
3. Must be eligible to be a member of the Lok Sabha,
4. Should not be holding any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments. [Explanation: For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.] In order to prevent non-serious persons from contesting the elections, there have also been provisions for proposers and approvals from the Electoral College. Dr. Rajendra Prasad was the first President of India. He was elected twice to the post of President of India.

2.4 Election Procedure of the President-

The President of India is elected by an electoral college consisting of the elected members of both Houses of Parliament i.e. Lok Sabha and Rajya Sabha and of the State Legislative (Vidhan Sabhas). Nominated members of State Assemblies and the two Houses are not allowed to participate in the presidential election as they have been nominated by the President himself. Issuing whips to garner votes for a particular candidate is also prohibited. In the Electoral College for the election of President

special emphasis is given on two points. Firstly, it is tried that parity between the votes of the elected members of Parliament on one side and elected members of Legislative Assemblies of all the States on the other is obtained in proportion to the population of each state. Secondly, parity in votes of members of legislative assemblies of all the states is also obtained. A system has been devised to determine the value of vote of each Member of Parliament and Legislative Assembly, so as to ensure equality. To obtain the value of votes of each member of the legislative assembly the total population of the state is divided by the number of elected members to the legislative assembly, further divided by 1000. (The population data is taken from the 1971 census. This census will be used until 2026).

The formula as given below is helpful in determining the value of vote of each member of Legislative Assembly of a state-

The value of vote of each MLA =

$$\frac{\text{Total population of the State}}{\text{No. of elected members of State Legislative Assembly}} \div 1000$$

In other words the total population of the State is divided by the number of elected members of the State Legislative Assembly, and the quotient is divided by 1000.

Example : Let us suppose that the population of Rajasthan is 2, 57, 65,806 and the number of members of State Vidhan Sabha is 200.

The value of votes each Legislature will be :

$$\frac{2,57,65,806}{200} \div 1000 = 128.82 = 129$$

[As the remainder .82 is more than 50%, it is rounded off to 1]

The value of each vote of a Member of Parliament is determined by adding all the votes of members of the State Legislative Assemblies including the Legislative Assemblies of Union Territory of Delhi and Puducherry and divided by total number of elected members of both houses of the Parliament.

Value of each vote of a Member of Parliament =

$$\frac{\text{Total votes of state Legislative Assemblies}}{\text{Elected Members of Parliament (LS+RS)}}$$

Example : The votes of all the State Legislative Assemblies are added. Let us suppose that the total number of votes of all the Legislators is 5,44,971 and the total number of elected members of Parliament is 776.

Value of votes of each Member of Parliament =

$$\frac{5,44,971}{776} = 702.28 = 702$$

At both the stages if the remainder is less than 50% of the divides, it is ignored. But when the remainder is 50% or more, one vote is added to the quotient.

Single Transferable Vote System:

The election of the President is held through single transferable vote system of proportional representation. Unlike a traditional ballot, where the voter casts one vote only for his selected candidate, a presidential election ballot does not follow this system. What it follows is the Single Transferable Vote system. Under this system names of all the candidates are listed on the ballot paper and the elector gives them numbers according to his preference. Every voter may mark on the ballot paper as many preferences as there are candidates. If there are five candidates for example, the voter will give five preferences. It is mandatory to give a first preference as the vote will be declared invalid in its absence. However, if the voter doesn't give other preferences, the vote will be considered valid. Thus the elector shall place the figure 1 opposite the name of the candidate whom he chooses for first preference and may mark as many preferences as he wishes by putting the figures 2, 3, 4 and so on against the names of other candidates. The ballot becomes invalid if first preference is marked against more than one candidate or if the first preference is not marked at all. First preference votes of all the candidates are sorted out and counted. To be declared elected a candidate must get more than

50% of the total valid votes polled. This is known as Quota. The Quota is determined by totaling the total number of votes polled divided by the number of candidates to be elected plus one. In this case, since only the President is to be elected, so division is done by 1+1. One (01) is added to the quotient to make it more than 50%.

At the first count only first preference votes are counted. If any of the candidates reaches the quota, he is declared elected. In case no candidate reaches the quota, then the 2nd preference votes of the candidate getting the least number of first preference votes are transferred to other candidates. Thus the candidate getting the least number of votes is eliminated. If after counting, a candidate reaches quota, he is declared elected as the President. In case no candidate reaches quota, even at this stage, then the votes of next candidate getting the least number of votes are transferred to the others. It continues till any one candidate gets the quota of votes.

Let us understand it with the following example. Suppose there are four candidates, A, B, C, and D, and total value of votes is = 1,40,000.

The Minimum Quota required for winning is =

$$\begin{array}{r} 1,40,000 \\ \hline 1+1 \end{array} +1=70001$$

The results of the first preference counting are: A: 30,000 B: 20,000 C: 40,000 D: 50,000. As no candidate has acquired the minimum quota in the first counting, now in this case, candidate B will be eliminated and his votes will be distributed to the rest of the candidates on the basis of the second preference. Post this, suppose,

A gets 5000 votes, C gets 10000 votes and D gets 5000 votes. The new results are:

A: 35,000, C: 50,000 and D: 55,000

As no candidate has reached the quota i.e. 70001, the process of elimination and adding his votes to remaining candidates is repeated. Here candidate 'A' getting the least number of votes gets eliminated and his votes transferred to the other candidates. Supposing as a result of transfer of votes of 'A', 'C' gets 11,000 and 'D' 19,000. Now the

position would be as follows:

$$C = 50,000 + 11,000 = 61,000$$

$$D = 55,000 + 19,000 = 74,000$$

Since 'D' reaches quota he is declared elected as the President.

Before entering upon the office the President has to take an oath of office in the presence of the Chief Justice of India.

2.5 Salary/Privileges/Immunities and Other Facilities-

The office of the President is very august and the Constitution attaches to it many privileges and immunities. According to Article 361, he is not answerable to any court for the exercise and performance of the powers and duties of his office, or for "any act done or purporting to be done by him" in the exercise and performance of those powers and duties. The ambit of this immunity is very extensive. The second privilege is that no criminal proceedings whatsoever can be instituted against the President. Thirdly, no process for the arrest or imprisonment of the President can issue from any court during his term of office. Fourthly, no civil proceedings in which relief is claimed against the president shall be instituted during his term of office in any court. Civil proceedings against the President against things done by him in his personal capacity can be done only with a prior 2 months' notice. Upon the death of the former President, his wife will receive half of the pension received by the retired President and a government house for the lifetime.

2.6 Powers & Functions of President-

According to the Constitution of India, the President as constitutional head of the state is the highest office-bearer of the country.

The Powers of the President can be divided into two parts- General Powers and The Emergency Powers.

General Powers

1. Executive Powers

(i) **Head of the Union** : As said earlier, the

President is at the head of the Union Executive. Consequently, all executive powers are exercised in his name. The executive power of the Union to be exercised by the President is extended to the matters with respect to which Parliament has power to make laws and to conclude treaty and agreement.

(ii) Appointments : The President appoints the Prime Minister and with his advice the other Ministers of the Union Council of Ministers. As head of the executive, the President appoints the Attorney General of India, Governors of States, the Judges of the Supreme Court and the High Courts, Ambassadors to the foreign countries, the Auditor General of India, the Chairman and members of the Union Public Service Commission, and many other high officials, such as the members of Finance Commission, Election commission, Union Public commission etc. But here too, as in all other appointments, the President can seldom use his discretion. He is, ordinarily, duty-bound to summon the leader of the political party which secures a majority in the Lok Sabha to become the Prime Minister and form the Ministry. He enjoys some discretionary powers in the certain matters only under exceptional circumstances. When no single political party wins a clear majority and, as a result, no government can be formed without a coalition of parties; the President can exercise his discretion judiciously in appointing the Prime Minister. Such situations have arisen in the past when India ushered into an era of coalition politics. It may so happen that no single party is able to secure a requisite majority to form the government at its own and under such circumstances the President may be required to exercise his discretionary powers in appointing the Prime Minister and also in formation of government. Normally the Union Council of Ministers remains in office for five years, unless dissolved earlier for any reason. The President must be satisfied that the Council of Ministers enjoys the confidence of the majority of the Lok Sabha. In case of any doubt he can ask the Council of Ministers to prove its majority in the Lok Sabha.

(iii) Power to Grant Pardon : Under Article

72 of the Constitution of India President has 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

- (a) in all cases where the punishment or sentence is by a court Martial;
- (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;
- (c) in all cases where the sentence is a sentence of death.

(iv) As Supreme Commander- As head of State, the President is the supreme Commander of the Armed Forces of India and is entitled to declare war or conclude a treaty.

(v) The right to get information- The President has the right to get information about the proceedings of the Council of Ministers. According to Article 78 It shall be the duty of the Prime Minister

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

All these powers of the President are formal and in practice he acts upon the advice of the Council of Ministers. Only in particular political circumstances he uses his discretion in making some decisions. Formally the Prime Minister is appointed by the President, but he cannot appoint anyone on his own. In the Parliamentary system, he has to appoint the Leader of the majority party in the Lok Sabha as the Prime Minister, but when no party gets

a clear majority after the election, the President often may sometimes decides it on a political basis. After the elections in 1998, the Bharatiya Janata Party coalition was the largest and close to the majority, yet the President told the leader of the coalition, Mr. Atal Bihari Vajpayee "to present documents related to political parties in support of his claim." He even asked Vajpayee to get confidence vote in the Lok Sabha within just ten days of his taking office as Prime Minister. In contrast, after the 1991 election, Narasimha Rao's Congress government received more support from the President, whereas it was a minority government.

2. Legislative Powers-

In Indian Parliamentary practice, the President is the nominal executive or a Constitutional ruler. He is an integral part of Indian Parliament. Parliament consists of the President and two Houses the House of the people (Lok Sabha) and the Council of States (Rajya Sabha). He performs legislative functions in this capacity. The President has the power of to summon and prorogue both the House of Parliament. He can also dissolve the House of the People before the expiry of its term. Under Article 85, (1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session (2) The President may from time to time-

- (a) prorogue the Houses or either House;
- (b) dissolve the House of the People

The Constitution of India empowers the President to deliver an address to the Parliament at the commencement of the first session every year. He may also send messages to Parliament. The President nominates two members to the Lok Sabha from the Anglo-Indian Community and twelve members to the Rajya Sabha from among the persons who have acquired special knowledge in art, science, literature and social service.

Under Article 111, a public bill cannot become

an act without the assent of the President. A bill passed by the Union Parliament is sent to the President for his assent. The President may give his assent to the bill or may withhold his assent from the bill or he may return the bill to Parliament for its reconsideration. If the bill is again passed by both Houses of Parliament, the President shall have to give his assent. It is called limited veto of the President. A pocket veto is a legislative manoeuvre that allows a president or other official with veto power to exercise that power over a bill by taking no action Contents. In 1986, President Zail Singh exercised the pocket veto with respect to Indian Post Office (Amendment) Bill.

Under Article 123, the President may issue an ordinance when the Parliament is not in session. It has the same force as the law or Parliament. But it must be placed before the Parliament when it again assembles. If it is then approved by both the Houses of Parliament, it will cease to operate after six weeks of the date of meeting of Parliament. And the President can call a joint session of both Houses of Parliament to resolve a constitutional deadlock over a public bill. Facts as Above, establishes that the President is a vested with legislative powers besides his being a constitutional head.

3. Financial Powers

The President of India enjoys extensive powers. No money bill can be introduced in Parliament without the recommendations of the President. As per Article 112(1), the President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year. Under Article 113, (1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates (2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and

the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein(3) No demand for a grant shall be made except on the recommendation of the President. Under Article 117 (1) A Bill or amendment making provision for any of the matters specified in sub clauses (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States: Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax. With the permission of the President, supplementary, additional and other demands are made. The President appoints the members of the Finance Commission and the Comptroller and Auditor General. He submits the representations made by them before the Parliament. Based on the recommendation of the Finance Commission, President divides the income received from income tax and other taxes between the centre and the states.

4. Judicial Powers

The President has some judicial power. He cannot be punished by any court. According to Article 72, the President has the power to pardon, reprieve, and respite, remit, suspend and commute sentences of convicted persons. By exercising his power to pardon, the President of India can set free any offender who has been tried and convicted. By reprieve is meant a stay of execution of the sentence pending a proceeding for pardon etc. Respite means that a lesser sentence is awarded instead of the punishment prescribed. The President can exercise these powers in three types of cases first, with respect to all cases where punishment is awarded by military courts. He exercises this power in his capacity as the Supreme Commander of Indian Armed Forces. Secondly, He can exercise this power where the punishment is related to the offence against such laws as are within the executive power

of the Union. Thirdly, the President has the power to grant pardon in cases of punishment to death. The powers of the President's to grant pardon will not have any effect on the related power of the governors of the states and the military officers of the military courts. The President will use this power on the advice of his ministers.

2.7 Emergency Powers

Articles 352 to 360 as mentioned in the part 18 of the Constitution of India deal with the emergency provisions. There are 3 types of Emergencies:

1. National Emergency (Article 352)-

emergency due to war, external aggression or armed rebellion. According to Article 352, (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by Proclamation, made a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation Explanation. Under Article 352, National Emergency has been declared in our country three times. The national emergency was for the first time proclaimed in 1962 in the wake of the Chinese invasion. This emergency was also used by the government to tide over the situation arising out of the Indo-Pak war of 1965. The emergency was finally lifted in January, 1968. The second emergency was declared on 3 December 1971 in the wake of the second India-Pakistan War and was lifted on 21 March 1977 (originally proclaimed during the Indo Pakistan war, and later extended along with the third proclamation "the security of India" having been declared "threatened by external aggression"). The third national emergency was declared on June 25, 1975 on grounds of internal disturbance and was revoked on March 21, 1977.

2. Failure of Constitutional Machinery in States

Article 356 - According to Article 356, If the president is satisfied on receipt of a report from the governor or otherwise that a situation has arisen in which the Government in a state cannot be carried in

accordance with the provisions of the Constitution, he is empowered to proclaim an emergency by dissolving the Council of Ministers of the state. This is also called President's rule in common parlance.

The proclamation would have to be placed before the parliament for approval within two months where approval by both the Houses is necessary. However, even if Parliament has approved the proclamation, it will normally cease to operate 6 months after the Parliamentary approval. In any state, it can continue for one year when either emergency under Article 352 is underway and the Election Commission certifies that it is not possible to conduct elections in the state. But in no situation President's rule in any state cannot continue beyond three years. In reality, this provision was also misused on many occasions in the past on political basis. President's Rule in India was imposed 115 times till date. The Central Government tries to dismiss the governments of opposition parties in the states through this article. This trend has also affected the interaction between the Centre and the States. By 1967, when the Central Government and Congress had ruled most of the states, President's rule came into force only for seven times, but after that as soon as the opposition parties started forming governments, this was article widely used. In many cases, the Supreme Court cancelled the declaration of President's rule and ordered the reinstatement of the state government, proving that the use of this article is done more for political reasons than other reasons.

3. Financial Emergency:

Article 360 : If the President is satisfied that a situation has arisen whereby the financial stability or credit of the country or any part of it is threatened, he may declare a financial emergency. Proclamation in this case also has to be approved by the Parliament as in the case of two other cases of emergency. During the Financial emergency, the executive authority of the Union shall extend to giving of the directions to any state to observe such canons of financial propriety as may be specified in the direction or any other direction, the president

may deem necessary for the purpose. Such directions may include those requiring the reduction of salaries and allowances of the Government servants and even those of the Judges of Supreme Court and High Courts. Financial emergency has never been proclaimed in India.

It is thus clear that constitutionally the President enjoys extensive powers in normal times and also during the emergency. But he is not the real user of these powers. Due to constitutional provisions and traditions, he must act according to the advice given to him by the Council of Ministers, headed by the Prime Ministers, so that refusal to act according to such advice will render him liable to impeachment for violation of the Constitution. President, we should note the constitutional Limitations under which he is to exercise his executive powers.

The President is a ceremonial figure and owes respect as constitutional head of the State. He, however, is not a symbol of power.

Powers of President	
General Powers	Emergency Powers
1. Executive 2. Legislative 3. Financial 4. Judicial	1. National Emergency(Art.352) 2. Constitutional Failure in the States(Art.356) 3. Financial Emergency(Art.360)

Prime Minister-Position & Functions

In our country, the Prime Minister is one of the most important institutions. The Indian Constitution has various provisions facilitating the parliamentary system. India is a federal (or quasi-federal) democratic republic with a parliamentary system of government largely based on the UK model. There are two heads (executives) i.e. nominal head (The President) and real head (The Prime Minister). Here, ministers are members of both legislature and

executive. According to Article 53 the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. According to Article 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: Provided that the President may require the council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration. Article 74 also indicates that the President will not have any independent executive power and he cannot use his powers independently. He is obliged to follow the advice of the Prime Minister and the Council of Ministers. Our Indian parliamentary system is based on the model of the Westminster system and all executive powers are used by the Prime Minister. The prime minister is also the chief adviser to the President of India and head of the Council of Ministers. The first Prime Minister of India was Pt. Jawaharlal Nehru, and Narendra Modi is the 15th Prime Minister of India. The Prime Minister occupies a unique position of power and prestige. However, his power and prestige largely depends on his personality and the majority of his party in the Lok Sabha. In India there have been towering and powerful Prime ministers such as Pandit Nehru, Indira Gandhi and Narendra Modi and we also had relatively weak and less powerful Prime ministers in the era of coalition politics such as H.D Deve Gowda and Inder Kumar Gujral. It is compulsory for the prime minister to be a member of either the Lok Sabha or any of the Rajya Sabha. If he is not a member of any house when he was appointed a Prime Minister, he has to get elected and be member of either of the house within six months from the date of his appointment as Prime Minister.

2.8 Formation of Council of Ministers-

Article 74 (1) of the Constitution of India provides that Prime Minister will be appointed by

the President and on his advice other ministers of his Council of Ministers are appointed. The appointment of the Prime Minister is the first step towards the Council of Ministers.

2.9 Appointment of Prime Minister-

Article 75 (1) states that the Prime Minister shall be appointed by the President. This is a *carte blanche* power given to the President. The President has the power to appoint anyone as the Prime Minister. Thus, even a non-Member of Parliament can also be appointed as the Prime Minister.

2.10 Appointment of Ministers & Allocation of Portfolios-

Under Article 75(1) of the Constitution of India, the President appoints the Prime Minister and other Ministers of the Council of Ministers, on the advice of the Prime Minister. He also allocates the portfolios or the departments to his ministers. The Prime Minister sends a list of his ministers to the President for approval. President administers oath of office and secrecy to the Prime Minister and his Cabinet ministers. The Council of Ministers of present government headed by Prime Minister Narendra Modi comprises of 78 ministers that includes him.

2.11 Types of Ministers-

The three categories of Council of Ministers in order of their rank are :

1. Cabinet level Minister - A cabinet is a body of high-ranking ministers of important portfolios, typically consisting of the top leaders of the executive branch. The Cabinet Ministers have a right to attend meetings of the Cabinet. They determine the policy and programme of the Government. This is the highest level of an independent department. The Cabinet Minister is an independent in charge of the department.

2. State level ministers - These ministers are second ranking ministers and do not participate in the cabinet meetings. They may or may not hold an independent charge of any portfolio. The Prime

Minister may or may not consult them. Some of them can also be given independent charge and in this capacity they can be head of the concerned department. They are mostly affiliated with the cabinet minister.

3. Deputy Ministers - These are the third-level ministers. They neither hold independent charge of any department and nor do they participate in Cabinet deliberations. These ministers of the state assist the cabinet ministers in performance of duties of their department.

In recent years, the tradition of appointment of parliamentary secretary is also in vogue. However, neither is he given any constitutional power nor any administrative responsibility is entrusted to him. The Prime Minister appoints him and also administers the oath of the office. His job is to help the ministers of the departments in Parliament.

2.12 Size of Council of Minister-

91st Constitutional Amendment Act (which was passed by Parliament and approved by President in 2004) came into force on July 7, 2004 provides that the size of the council of ministers in the union government and in a state government cannot be more than 15 per cent of the total number of members of the Lower House of the Parliament or State Legislature respectively. According to the Indian Constitution, the total number of ministers in the council cannot exceed 15 per cent of the total number of members of the Lok Sabha. Narendra Modi's council now has strength of 78, which is near the maximum limit prescribed limit of 82.

2.13 Tenure-

According to Article 75 of the Constitution, "the Ministers shall hold office during the pleasure of the President." The Prime Minister and the Council of Ministers remain in office till the time they get the faith of the Lok Sabha. Generally, the term of the Council of Ministers is followed with the tenure of the Lok Sabha.

2.14 Oath-

Prior to their accepting their post the Prime

Minister and other members of the Union Council of Ministers administers two types of the oath before the President-(i)The oath of office and(ii) The oath of secrecy. One is related to position and second to confidentiality. Oath is administered to be obedient and honest in discharge of duties. Confidentiality means that every person will keep the Cabinet's decision secret.

2.15 Role and responsibilities of Prime Minister and Council of Ministers-

Link between President & Council of Ministers-The Prime Minister is the leader of both the Council of Ministers and the Lok Sabha. He is a link between the President and the Council of Ministers. It is the obligation of the Prime Minister to inform about the decisions taken in the Council of Ministers. It is the the prime minister who informs the President about the administration of the Union government and the information of legislative and other proposals to the President.

2.16 Allocation of Portfolios-

The Prime Minister allocates the departments to his fellow ministers and also divides the work in different offices and departments. The Prime Minister coordinates work between various ministries and departments through the Cabinet Secretariat.

2.17 In Charge of Ministers-

The Prime Minister keeps certain departments or portfolios which have not been allocated to other Ministers with himself. He is in charge of the departments / ministries generally held by him.

2.18 Leader of the Cabinet-

The Prime Minister summons and presides over the various meetings of the cabinet. He also determines what business will be discussed in these meetings.

Link between Parliament & Cabinet- The Prime Minister also acts as a link between the parliament and the cabinet. He is the main spokesman from the government in Parliament. He

is also a leader of the Lok Sabha. It is the responsibility of the Prime Minister to declare important policy decisions. The prime minister can intervene in the general debate in the Parliament and keep its side to clarify the government's policy.

As an Official Delegate- Prime Minister's various delegations represent India in high level meetings with its counterparts in the international forums and organizations. The Prime Minister addresses the nation on issues of national importance on the television and radio on different occasions.

Powers & Rights of Prime Minister- Prime Minister of India is one of the most powerful heads of the governments of the World's Sovereign States. However, it is interesting to note that the Constitution has not made any specific provisions as regards his powers and the position, though; he is the most powerful functionary of the Union government. The only provision in the Constitution is that the President shall exercise his powers on the aid and advice of the Council of Ministers with the Prime Minister at the head, and that advice will be binding.

1. The Prime Minister of India is one of the most powerful heads of government of the world; he is the head of the government, while the President is the head of the State. All important decisions related to the Union Council of Ministers and other policy making bodies are taken under its supervision. The Prime Minister is the Ex-officio Chairman of the NITI and the National Development Council.
2. He is the real head of the government. He advises the President to appoint his ministers and allot their departments, change their portfolios accept or reject their resignation.
3. He presides over all the meetings of the Council of Ministers and ensures that the Council of Ministers will work on the principle of collective responsibility.

4. He communicates its decisions to the President regarding the administration and legislative proposals.
5. He can again lay before the Council of Ministers for the consideration of the decision taken by any minister on the request of the President.
6. The Prime Minister provides leadership in the functioning of the Parliament. All government bills are prepared in under his supervision and according to its advice.
7. He also oversees the functions of the departments of the Ministers under his supervision and removes differences between the Ministers and maintains a consensus in the entire administration.
8. In the Parliament, the Prime Minister is the Chief Spokesperson of the Government. The official declaration related to government policy comes only in the jurisdiction of the Prime Minister.
9. He gives advice to the President in relation to all important appointments.
10. He acts as the link between the President and the Council of Ministers. If, due to any reason, he submits his resignation, the entire Council of Ministers stands dissolved. As and when the necessity arises, he may recommend to the President that the Lok Sabha be dissolved and fresh general elections be held.
11. The Prime Minister works as a contact form between the Lok Sabha and the Rajya Sabha. It gives advice to the President as to when the Parliament session is to be convened, when it should be suspended and dissolved. He also ensures that which bill should be presented in the parliament and how to respond and reply to the opposition according to the cabinet decision.
12. The Prime Minister takes important decisions related to the foreign Policy and represents India in the foreign countries.

Important Points

- According to Article 53 of the Constitution, all the executive powers of the Union are vested in the President.
- The President is elected by the elected members of the parliament and the state legislative assemblies.
- The minimum age of the presidential candidate is 35 years.
- The powers and functions of the President can be classified into two parts General Powers and the Emergency Powers.
- General Powers contain - executive powers, legislative powers, judicial powers and appointment related and discretionary powers.
- Emergency Powers of the President- The powers to impose emergency during war or external aggression as outlined in Article 352. Powers to impose President's rule on the constitutional failure of the state's administration as mentioned in Article 356. Powers to impose the financial emergency as mentioned in the Article 360. *Under Article 75 of the Constitution, the leader of the majority party in Lok Sabha is appointed by the President as the Prime Minister. The President has some discretionary powers in this regard.
- There are three types of ministers in the Union Council of Ministers - Cabinet Ministers, Ministers of State and Deputy Ministers. The Prime Minister can also appoint Parliamentary Secretary to manage the work.

Exercise

Multiple Choice Questions-

1. Which of the following must be the qualification to become the President of India?
(A) He must be a citizen of India
(B) He must be of 35 years of age or above
(C) He must be qualified to become a member of the Lok Sabha

- (D) All of the above ()
2. The President's power to pardon donot include -
(A) Commuting a death penalty to a life sentence.
(B) Commuting a life imprisonment into death sentence.
(C) Completely absolving the person of the crime and letting him go free Indian
(D) A delay allowed in the execution of a sentence of death penalty. ()
 3. Under the provisions of which of the Article of Constitution of India, the emergency has not been proclaimed till date -
(A) Article 352 (B) Article 356
(C) Article 360 (D) Article 75 ()
 4. Which of the following is not a part of the Council of Ministers?
(A) Cabinet Minister
(B) Parliamentary Secretary
(C) Ministers of State
(D) Deputy Minister ()
 5. Under which Article of the Constitution, the Prime Minister is appointed by The President?
(A) Article 75
(B) Article 74
(C) Article 356
(D) Article 53 ()

Very Short Answer Type Questions-

1. In whom the executive powers of the Union of India are vested?
2. Who was the first President of our country?
3. Who was the first woman president of India?
4. Who appoints the Prime Minister?
5. Write two key powers of the prime minister.

Short Answer Type Questions-

1. Describe the election procedure of the

presidential election in India.

2. Write a comment on the executive powers of the President.
3. Explain the rights of the President under article 356.
4. What are the privileges of the President?

Essay Type Questions-

1. Explain in detail about the election and general powers of the President.
2. "Will the emergency powers of the President not make him a dictator someday?" Discuss the emergency powers of the President in context of above statement.
3. "The Prime minister is the key stone of the cabinet arch; all the powers revolve around it." Write an essay on the powers of the Indian Prime Minister in the context of the statement.

Answers to Multiple Choice Questions-

- | | | |
|------|------|------|
| 1. D | 2. B | 3. C |
| 4. B | 5. B | |

3. Judiciary - Composition of Supreme Court, Functions and Judicial Review

Supreme Court

The Supreme Court of India is one of the most powerful courts in the world. Judiciary has played an important role in interpreting and protecting the Constitution of India since 1950. Judiciary is very important for the protection of rights. In every society, disputes may arise between the individuals, groups and between individual groups and the government. All these disputes should be resolved by an independent organization on the basis of '*rule of law*'. The term rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms. The '*rule of law*' is a common law applicable to all the rich and poor, women and men, and the backward and forward. The judiciary protects the '*rule of law*' and also ensures the supremacy of law. The judiciary protects the rights of an individual, resolves disputes in accordance with the law, and ensures that the democracy is not replaced by the dictatorship of any individual or group. It is important for the judiciary to be free from any political pressure. Keeping the judiciary free from any intervention and ensuring its freedom is a big challenge. The Indian Constitution has ensured the independence of the judiciary through a number of measures. In the case of the appointment of judges, the legislature has not been included. This ensured that there was no role of party politics in these appointments. To be appointed as a judge, a person should be an expert in

law and have an adequate experience of legal practice. The political views or allegiances should not be the criteria for appointment as a judge. The tenure of the judges is fixed. They remain on the post till their retirement. The judges can be removed from their post (though exceptionally) through impeachment in peculiar circumstances.. Apart from this, their tenure cannot be reduced. Due to the safety of the tenure, the judges can do their job without any fear or discrimination. The constitution has set a very difficult process to remove the judges. The Constitution makers believed that if the process of removal of the judiciary would be difficult then judges would be more secure. The judiciary is not financially dependent on the legislature or executive. Article 125 of the Indian constitution leaves it to the Indian parliament to determine the salary, other allowances, leave of absence, pension, etc. of the Supreme Court judges. However, the parliament cannot alter any of these privileges and rights to the judge's disadvantage after his/her appointment. Judges' actions and judgments cannot be individually criticized. If somebody is found guilty of contempt of a court, then the judiciary has the right to punish him. It is believed that right of contempt of a court will be useful in protecting the judges from the criticism. Parliament can only discuss the conduct of judges when they are considering impeachment motion against them. This leaves the judiciary free from fear of criticism and enables it to function independently.

3.1 Appointment of Judges

Judges of the Supreme Court and High Courts are appointed by the President under Articles 124(2)

and 217 of the Constitution. The President is required to hold consultations with such of judges of the Supreme Court and of the High Court as he may deem necessary. It therefore means that the actual powers regarding the appointments are vested with the Council of Ministers. The matter repeatedly appeared before the Supreme Court between 1982 and 1998. Initially the court thought that the role of the Chief Justice was purely limited to consultations alone. The court later admitted that it was must for the President to accept the advice of the Chief Justice in this regard. Finally the Supreme Court came forward with a new arrangement of "*Collegiums System.*" Collegiums system is a process through which decisions related to appointments and transfer of judges in Supreme Court and High Court, and not by an Act of Parliament or by a provision of the Constitution. *The Supreme Court collegium* is headed by the Chief Justice of India and comprises four other senior most judges of the court. A *High Court collegium* is led by its Chief Justice and four other senior most judges of that court. Names recommended for appointment by a High Court collegium reaches the government only after approval by the CJI and the Supreme Court collegium. Thus, the Supreme Court established "*the principle of collective advice*" in relation to the recommendation for the appointments. The group of senior judges of the Supreme Court has lot of influence as regards the appointments. In this way, the Supreme Court and the Council of Ministers play an important role in the appointment of the Judiciary.

Striking Down of the New System of Appointment in the Supreme Court and High Courts as Unconstitutional by the Supreme Court-

The Supreme Court struck down the Constitution (Ninety-ninth Amendment) Act, 2014 that enabled the constitution of the National Judicial Appointments Commission terming it as unconstitutional. It also restored old the Collegiums system. The Court declared that the Collegiums of judges would have exclusive authority to select candidates for appointment as judges of the

Supreme Court and the High Courts. The decision of the Supreme Court has virtually created rift between the Central Government and the Supreme Court. The five-judge bench of the apex court has unfairly refused to allow the government to appeal against its flawed judgment. The reality is that judges have decided to award themselves the right to decide who their brethren should be, with no external checks. The present government wanted to bring a new system for appointment of judges to prevent the tendency of nepotism. The collegiums system is flawed and criticized for creating empire within an empire (*imporium in imperio*) in the Supreme Court. Another criticism which emerged against the collegiums system was that the collegium instead of promoting pure merit seemed to make appointments which did not always reflect the splendour of the superior judiciary. For this purpose, The Constitution (One Hundred and Twenty- First Amendment) Bill, 2014 was introduced in the Lok Sabha by the Central Government on August 11, 2014 which said that there was a need for a broad based National Judicial Appointment Commission (NJAC), for making recommendations for selection of judges. The Bill sought to enable equal participation of Judiciary and Executive, ensured that the appointments to the higher judiciary were more participatory, transparent and objective. The Commission was established by amending the Constitution of India 99th Constitutional Amendment Act-2014 and the 121st Constitution Amendment Bill, 2014 were passed by the Lok Sabha on 13 August 2014 and by the Rajya Sabha on 14 August 2014. The NJAC Bill and the Constitutional Amendment Bill, was ratified by 16 of the state legislatures in India. On receipt of the approval of more than half the State Legislatures as necessitated under Article 368 (2) of the Constitution, the President of India assented to it by according his sanction on 31 December 2014. The NJAC Act and the Constitutional Amendment Act came into force from 13 April 2015. After the approval of the President's approval, the Constitution was amended in the Gazette on 31 December 2014 as 99 Constitutional Amendment

Act, 2014 and National Judicial Appointments Commission Bill 2014 National Judicial Appointment Act 2014. The Central Government had fixed the date of effect of these Acts on April 13, 2015. As per the amended provisions of the constitution, the Commission would have consisted of the following six persons: Chief Justice of India (Chairperson, *ex officio*), two other senior judges of the Supreme Court next to the Chief Justice of India - *ex officio*, the Union Minister of Law and Justice, *ex-officio*, two eminent persons (These two eminent persons would have been nominated by a committee consisting of the Chief Justice of India, Prime Minister of India, and Leader of Opposition in the Lok Sabha (or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in Lok Sabha), provided that of the two eminent persons, one person would be from the Scheduled Castes or Scheduled Tribes or OBC or minority communities or a woman. The eminent persons shall be nominated for a period of three years and shall not be eligible for re-nomination. It is notable that the above constitutional amendment was struck down by the Constitutional Bench of the Supreme Court. Due to tussle between the judiciary and the the government the new appointments for many vacant positions in the Supreme Court and the High Courts have been held up.

3.2 Removal of Judges from Office

It is very difficult to remove the judges of the Supreme Court and the High Court from their post. The procedure relating to the removal of a judge of the Supreme Court is regulated by the Judges Inquiry Act, 1968, by the process of impeachment. There are two grounds for removal - proved misbehaviour or incapacity. A judge of the Supreme Court can be removed from his office by an order of the President. The President can issue the removal order after an address by the Parliament, supported by a special majority of each House of Parliament (that is, a majority of the total membership of that House and 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

of Parliament for such a removal. It is clear that the process of removal of a judge is extremely difficult and no judge can be removed till the members of Parliament have a consensus. It is also worth mentioning that while the executive has an important role in his appointment, the legislature has the power to remove them. It is ensured that the independence of the judiciary remains and the the balance of power is also maintained. So far, only one proposal to remove a judge has come to the Parliament for consideration. So far, no judge of the Supreme Court has been impeached. The only case where an impeachment motion was initiated and the Inquiry Committee found the judge guilty was of Justice V Ramaswami of the Supreme Court (1991-1993). But, this motion was defeated in the Lok Sabha. In this case, although two-thirds of the members voted in favour of the motion, the judge could not be removed because a majority of the total number of members of the House could not be received on the proposal.

3.3 Structure of Judiciary

Indian Constitution establishes an integrated judicial system. This means that unlike other federal countries of the world, India does not have separate provincial-level courts. The pyramidal structure of the judiciary in India has the Supreme Court as the apex or the highest court followed by the high court at state level and the district and subordinate courts the lower level. The lower courts functions under the supervision of the courts above them.

Supreme Court of India-

- Its decisions are binding on all courts.
- It can transfer Judges of High Courts.
- It can move cases from any court to itself.
- It can transfer cases from one High Court to another.

High Court-

- It can hear appeals from lower courts.
- It can issue writs in case of breach of Fundamental rights of any citizen.

- It can deal with cases within the jurisdiction of the State.
- It can exercise superintendence and control over courts below it.

District Courts-

- It can hear cases at district level.
- It can consider the appeal made on the decisions of the lower courts.
- It can decide cases involving serious criminal offences.

Subordinate Courts-

- It can consider cases of civil and criminal nature

3.4 Jurisdiction of the Supreme Court-

Supreme Court of India is one of the most powerful courts in the world. It must function within the limits set by the Constitution. The functions and responsibilities of the Supreme Court are described in the Constitution. The **Supreme Court** has original, appellate and advisory **jurisdiction**.

1. Original Jurisdiction-

The **original jurisdiction** means that the Supreme Court can directly hear the cases of some lawsuits. It can be directly approached with regard to such matters without contacting any other court of law. In such cases, hearing first in the lower courts is not necessary. The laws related to federal relations are directly heard by the Supreme Court. Its exclusive original jurisdiction extends to any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States, if and in so far as the dispute involves any question (whether of law or of fact) on which the existence or extent of a legal right depends. In any federal system, mutual legal disputes may arise between the centre and the states and also among the different states. It is responsibility of the Supreme Court to resolve these disputes. This is called original jurisdiction because only the Supreme Court can

hear these cases of federal nature. The hearing of such cases is not done in the High Court nor subordinate courts. By applying original jurisdiction, the Supreme Court can not only resolve the disputes that may emerge between the centre and the states and also between the different states, but also interprets the powers of the union and state governments conferred to them by the constitution

2. Powers Related to Writ Petition

In addition, Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* to enforce them. The Supreme Court has been conferred with power to direct transfer of any civil or criminal case from one State High Court to another State High Court or from a Court subordinate to another State High Court. The Supreme Court, if satisfied that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, may withdraw a case or cases pending before the High Court or High Courts and dispose of all such cases itself. Under the Arbitration and Conciliation Act, 1996, International Commercial Arbitration can also be initiated in the Supreme Court.

3. Appellate Powers

Supreme Court is the highest Court of Appeal. Any person can appeal in the Supreme Court against the decision of the High Court. Appellate jurisdiction means that the Supreme Court will reconsider the entire lawsuit and re-examine its legal issues. The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court concerned under Article 132(1), 133(1) or 134 of the Constitution in respect of any judgement, decree or final order of a High Court in both civil and criminal cases, involving

substantial questions of law as to the interpretation of the Constitution. Appeals also lie to the Supreme Court in civil matters if the High Court concerned certifies : (a) that the case involves a substantial question of law of general importance, and (b) that, in the opinion of the High Court, the said question needs to be decided by the Supreme Court. In criminal cases, an appeal lies to the Supreme Court if the High Court (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or (b) has withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial convicted the accused and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or (c) certified that the case is a fit one for appeal to the Supreme Court. Parliament is authorised to confer on the Supreme Court any further powers to entertain and hear appeals from any judgement, final order or sentence in a criminal proceeding of a High Court. The High Courts also have an appellate jurisdiction against the judgment of the courts under them. The Supreme Court has also a very wide appellate jurisdiction over all Courts and Tribunals in India in as much as it may, in its discretion, grant special leave to appeal under Article 136 of the Constitution from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India.

4. Advisory Jurisdiction

In addition to the original and appellate jurisdiction, the Supreme Court also has the advisory jurisdiction. The Supreme Court has special advisory jurisdiction in matters which may specifically be referred to it by the President of India under Article 143 of the Constitution. The President of India can refer any subject relating to the public interest or to the interpretation of the constitution to the Supreme Court for consultation. However, neither the Supreme Court is obliged to give advice on the subject nor is the President obliged to accept the advice of Court. Then, what is use of this

advisory jurisdiction? It has two uses - first, the government gets an interim relief by asking for the legal opinion of the court before taking any action on any important or contentious issue. It can be helpful in avoiding legal dispute at later stage. Secondly, the government can make appropriate amendments in its proposed judgment or bill by considering the advice of the Supreme Court.

3.5 Judicial Activism

Many people believe that *judicial activism* or *public interest litigation* have made revolutionary changes in the functioning of the judiciary and made it people oriented. *The Indian judiciary had gone through several phased changes since its inception from the positivist era to the golden era of judicial activism.* **Judicial activism** refers to court rulings based on a judge's political or personal considerations, rather than existing laws. Judicial activism is a “philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions. Supreme Court of India started off as a technocratic court in the 1950s but slowly started acquiring more power through constitutional interpretation. Its transformation into an activist court has been gradual and imperceptible. The main instruments of judicial activism in India have been the public interest litigation or the petitions of public interest reflecting social behaviour. After all, what is a 'PIL' and when and how did it came into being? In the normal process of law a person approaches the court only when some personal loss is caused to him. Meaning thereby that if his rights are violated by someone or he becomes involved in a dispute he can knock the door of the court to get justice. This concept changed around 1979. Initiating the process in 1979, now the Supreme Court and High Courts also decided to hear a case which was not filed by the actual victim but by others on behalf of the aggrieved. Since these cases were mostly related to issues of public interest, the lawsuits were named as the public interest litigations. At the same time, the Supreme Court also considered the laws related to prisoners' rights. This led to the flood of such

lawsuits, in which citizens and volunteer organizations, who have a sense of public service, demanded the intervention of the judiciary on various issues related to the protection of the rights, the betterment of the lives of the poor, the protection of the environment, and the public interest. Public interest litigation has become the most effective means of judicial activism. Judicial activism connotes the assertive role played by the judiciary to force the other organs of government to discharge their assigned constitutional functions towards the people. It has held reinforcing the strength of democracy and reaffirms the faith of people in rule of law. Judicial activism may have been force upon the judiciary by an insensitive and unresponsive administration that disregards the interest of the people and that the nation does not suffer because of the negligence on the part of the executive and legislature. The judiciary began to consider the complaints published in the newspapers as basis of litigation rather than considering the issues directly brought to the court by filing a proper case by someone. This new role of the judiciary earned huge popularity in the form of judicial activism. Dealing with the issues such as removing air and noise pollution, corruption and reforming the election etc is not really the job of judiciary. These functions are meant to be performed by the administration under the supervision of the legislature rather than the judiciary. Therefore, it is believed that judicial activism is disturbed the equilibrium among the three organs of the government. Since Parliament and Executive have well-defined powers under the Constitution and these need to be respected by the judiciary. Legality and legitimacy are important concepts and go hand in hand. If there is excess of judicial overreach, then the legitimacy of judgments will be obliterated. The basis of democratic governance is that every part of the government respects each other's powers and jurisdiction. Excessive judicial activism can be very damaging to democratic system. But in most cases it has been experienced that judicial activism has positive

effects on public interest.

3.6 Judiciary and Rights

The judiciary has been entrusted with the responsibility of protecting the rights of an individual. The Constitution provides two ways in which the Supreme Court can remedy the violation of rights. First, it can restore fundamental rights by issuing writs of *Habeas Corpus*; *mandamus* etc. (article 32). The High Court also has the power to issue such writs (article 226). Secondly, the Supreme Court can declare the concerned law as unconstitutional and therefore non-operational (article 13). Judiciary together these two provisions of the Constitution establish the Supreme Court as the protector of fundamental rights of the citizen on the one hand and interpreter of Constitution on the other. The second of the two ways mentioned above involves judicial review. **Judicial Review** refers to the power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void, if it finds them in conflict with the Constitution of India.

3.7 Judiciary and Parliament-

Besides being active on the matter of rights, the court has also been active in seeking to prevent subversion of the Constitution through political practice. Thus, the areas which were not within the scope of judicial review, such as powers of the President and Governor were also brought under the purview of the courts. There are many examples in which the Supreme Court actively involved itself in the administration of justice giving directions to executive agencies. Thus, it gave directions to CBI to initiate investigations against politicians and bureaucrats in the Hawala case, the Narasimha Rao case, illegal allotment of petrol pumps case etc. The Indian Constitution is based on a delicate principle of limited separation of powers and checks and balances. This means that each organ of the government has a clear area of functioning. The Indian Constitution is based on a unique principle of limited sharing of power, constraints and

equilibrium. This means that every part of the government has a clear working area. Parliament is supreme in making laws and amending constitution, the executive is supreme in implementing them and solving judiciary disputes and ensuring that the laws made are favourable to the constitution. Despite this clear work split, the confrontation between the parliament and the judiciary and the executive and the judiciary has been characteristic of Indian politics. Immediately after the constitution was enacted, a dispute arose over the power of Parliament to curb the right to property. The Parliament wanted to impose certain restrictions on the right to keep property so that land reform could be implemented. The court ruled that Parliament cannot limit the fundamental rights. The Parliament then tried to amend the Constitution. But the court said that fundamental rights cannot be limited even by the amendment of the Constitution.

Conclusion-

Judiciary in India is also known for its independence. It has time and again interpreted the Constitution and protected the rights of the citizens through its various decisions. In fact, democracy is based on a very delicate balance between the legislature and the judiciary and both of them have to work within the periphery of the constitution.

Important Points

- The Supreme Court is the third and most powerful balancing organ of the Government.
- The Supreme Court is responsible for the interpretation of the constitution and the protection of civil rights.
- The Supreme Court can take cognizance on any issue related to public interest.
- It is not mandatory for the government to accept the advice given by the Supreme Court in form of consultation.

- India does not have an independent provincial court like federal states, but there is a provision for the Supreme Court, High Courts and District Courts under the three-tier structure.
- The Supreme Court covers original, writ, appellate and advisory jurisdiction.

Exercise

Multiple Choice Questions-

- Which one of the following is not involved in the process of appointment of judiciary?
(A) President (B) Legislature
(C) Chief Justice (D) Lokayukta ()
- The Supreme Court's consultative jurisdiction means -
(A) to advise the government before making every new law.
(B) to advise on legal issues to be presented before the legislature.
(C) to advise the President of India on his seeking for a consultation on any question of public interest or constitution.
(D) to advise on PILs. ()
- Which one of the following is the most powerful means of safeguarding the public interest in the present time?
(A) PIL petition
(B) Mercy petition
(C) Revision petition
(D) Inspection petition ()
- Which one of the following statements about the Supreme Court is not correct?
(A) The order of the Supreme Court is binding on all the courts.
(B) It can demand any lawsuit for hearing.
(C) It can open a new bench of the Supreme

Court anywhere in the country.

(D) It can transfer judges of High Courts.

()

Very Short Answer Type Questions -

1. Who has the right to interpret the principle of balance of power among three organs of government?
2. Where is the trial of lawsuits related to federal relations directly undertaken?
3. What is the petition as regards the judicial activism called?
4. What can the court do to maintain the originality of the Constitution?

Short Answer Type Questions-

1. What is the meaning of judicial activism?
2. What is the appellate jurisdiction?
3. What are the main areas covered in the original jurisdiction?

Essay Type Questions -

1. Explain the powers and functions of the Supreme Court.
2. Judicial activism and public interest litigations are related to each other. Prove it.

Answers to Multiple Choice Questions-

- 1.A 2.C 3.A 4.C

4. State Administration and Local Self Government- Present Perspective with Reference to 73rd and 74th Constitutional Amendments

State Administration

India is a sovereign, socialist, secular and democratic republic, which is federal in structure with unitary facilities. The President is the constitutional head of the state while the Prime Minister in his council of ministers is the head of the government. The federal system is different from the other federation because it is a "Union of States" and not a true federation. In this form the state and central governments shall be both separate and independent. There shall exist coordination between the two types of governments and that shall function in accordance with the principles of the constitution. Similarly, in the states for the governor's constitutional head of that state and the chief minister in his Council of Ministers is the head of the government. Parliamentary system in the states is adopted on the similar lines of one adopted in India. Similar to that, the governor is a formal executive whereas the chief minister is the real executive. As the prime minister is real executive at the centre, in the same way the chief minister is the real executive in the state. The governor is a constitutional head and the nominal executive of the state in the same manner as the President is at the center. The entire business of the government is carried out in the name of the governor. Part VI of the Constitution deals with state administration. The Governor shall be appointed by the President for a term of five years and he shall hold office during the pleasure of the President. The executive power of the state shall be vested in the Governor. These powers shall be exercised by him either directly or through the

officers subordinates to him. In the state administration there shall be a council of ministers and the functions of the council of ministers is to aid and advise the Governor in the exercise of his functions. Article 153 of the Constitution of India cites the post of the governor. Article 154 of the Constitution of India states that - The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. Article 155 states that The Governor of a State shall be appointed by the President by warrant under his hand and seal. The leader of the majority party in the Assembly is appointed chief minister by the governor. Like the center, the administrative structure of the governor is divided into departments. A government department is the largest subdivision of its administrative structure. The department is headed by a politician and an administrative officer is appointed for consultation and technical advice. He is responsible for the implementation of policies. The use of the word "Union of States" in the Constitution of India in place of 'federation' indicates that in India, state administration cannot go against the national stream despite all its autonomy. State administration has been further divided into different districts. The main responsibility of the district administration is to maintain law and order and to collect revenue. The responsibility of the District Collector is to take responsibility for the execution of the entire public welfare policies in practice. The responsibility of

establishing a public-welfare state in India also lies with the District Collector. District administration has become more important with the provisions of 73rd and 74th Constitutional Amendments. The District Collector is now the Chief Architect and Coordinator of the democratically decentralized structure of India. He is also called the middleman between the local self-government and the district administration.

4.1 Characteristics of State Administration-

1. Independent Existence of State Administration
2. Lack of separate constitution
3. Under Central Administration during Emergency
4. Dependent on Centre
5. State Administration Represents Development Administration
6. Based on Public Participation
7. Secretariat- Pivot of State Powers
8. The Chief Administrators selected from All India Services.
9. Governor's Representative of President in the State
10. Local Administration Remains under State Administration

4.2 Governor as Constitutional Head of the State -

In our Parliamentary System, The executive authority of a state is vested in the Governor; and Governor is the constitutional head of the state in the same way as President is the Constitutional head of the Union. He is the Chief Executive official and nominal head of the state and perceived as the Constitutional head of the state in the backdrop of federalism. The Executive power of the state is vested in him and all executive actions are taken in his name in accordance with the Constitution. The real executive powers are used by the Council of Ministers of the state; headed by the Chief Minister.

4.3 The Position of Governor -

In the beginning, the role of the governor was largely ceremonial and limited to formalities. However, the change in the political situation and circumstances made this post very powerful and dignified. The theoretical exposition of the position of Governor under the Constitution of India still remains to be a utopia. Commenting on the post of governor, Dr. Pattabhi Sitaramayya once said- "The duties of a Governor lay more in getting visitors and invitees to tea, lunch and dinner. Sometimes, he found that either the husband or the wives were separately invited. If both the husband and wife came, the children were kept out for their nuisance value." The Union Government utilizes the Governors for its own political ends. A few of them came to regard themselves as the agents of ruling party rather than the guardians of federal democracy. Similar to arrangements made at the Union government, the Council of Ministers of the state headed by the Chief Minister is the real head of state. According to Article 163 (1) of the Constitution, there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion. Article 163(2)- If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

Article 163 (3) - The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

Causes of Changing Role of Governor-

- Weak personality of Chief Ministers
- Lack of clear majority of the state government but with a simple majority.
- Fragmentary trend of alliance

- Tendency of political defection and instability
- Emergence of powerful Regional parties
- Causes of Nomination of Governor -
- He is to be a sentinel of the Constitution in the state in the parliamentary system of governance at Centre and State both
- He is to be a nominal head vested with nominal executive power and to make way for Chief Minister to be a real executive in the state.
- He is to establish unity and integrity in the Union and States in a country full of diversities.
- He is to be an independent and impartial arbitrator and decision maker, who is supposed to act as a formal channel of communication between the Union and the State.
- He is to keep a watch on the functioning of the administrative machinery and every organ of the State. Governor while acting in such capacity in the larger interests of people acts as an observer of the Union.

4.4 Some Traditions Related to the Appointment of the Governor-

Generally a resident of the same state is not appointed as a governor in a state. A Governor is appointed on the advice of the Union Council of Ministers, or in reality on the advice of the Prime Minister. For the President to consult the Chief Minister of the concerned state, before the appointment of a Governor is not a constitutional requirement. But a healthy convention grew up that the Chief Minister as head of the Council of Ministers is consulted. But in the case of appointment of several Governors, this convention has not been obeyed. A Governor may be simultaneously assignee to more than one state. Senior politicians, the bureaucrats and the military officers are mostly appointed as governors to the states. As per the advice of the Administrative Reforms Commission, a person should be appointed the governor only once.

4.5 Recommendations of Sarkaria Commission in Respect of Governor-

Recommendations on Appointment of Governor:

- should be an eminent person;
- must be a person from outside the State;
- must not have participated in active politics at least for some time before his appointment;
- he should be a detached person and not too intimately connected with the local politics of the State;
- he should be appointed in consultation with the Chief Minister of the State, Vice-President of India and the Speaker of the Lok Sabha;

4.6 Powers of Governor-

The Governor is the head of a state just like the President is the head of the republic. The powers and functions of the Governor of Indian State resemble that of the President of the Union of India. In the words of Durga Das Basu, "The powers of the governor and the President are the same, except for the diplomatic, military and emergency powers."

The Governor is appointed by the President of India. He holds office during the pleasure of the President. Under the Constitution of India, the Governor of a State possesses wide powers and functions executive, legislative, financial and judicial.

The powers of Governor are as follows:

1. Executive Powers - According to Article 154(1) of the Constitution, The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. According to Article 166 of the Constitution (Conduct of business of the Government of a State) (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor (2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the

Governor, and the validity of an order on instruction which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor (3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion. According to Article 163 of the Constitution, there will be a Minister-Council for giving assistance and advisory to the governor, whose chairperson will be the Chief Minister.

According to Article 164 (Other provisions as to Ministers (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor: Provided that in the States of [Chhattisgarh, Jharkhand], Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work. (2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State (3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule (4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister (5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule The Advocate General for the State. The Governor appoints the Advocate General of the State. He appoints the Chairman and members of the State Public Service Commission. The appointment of the High Court judges is consulted with the governor. The Governor appoints the District Judges from the High Court Advisory.

Article 167 (a) of the Constitution says it shall be the duty of the Chief Minister of each State to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation. Under Article 167(b), the Chief Minister is also required to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and Under Article 167(c), if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council. Article 161 of the Constitution of India confers on the Governor of a State the right to grant pardons, remissions, reprieves or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. In case the Governor feels that the Anglo-Indian community has not been adequately represented in the Vidhan Sabha, he or she can nominate one member of the community to the Legislative Assembly of the state. A member of the governor's state assembly can nominate an Anglo-Indian; if he understands that he is not adequately represented in the Legislative Assembly. The governor (in states which have two houses) can nominate 1/6 members in the Legislative Council, on the basis of their special knowledge / practical experience and contributions in education, literature, art, science, cooperative movement or social service.

2. Legislative Powers- Article 168 provides that for every State there shall be a legislature. The governor summons the sessions of both houses of the state legislature and prorogues them. The governor can even dissolve the Vidhan Sabha. These powers are formal and the governor while using these powers must act according to the advice of the Council of Ministers headed by the Chief Minister. The Governor gives his speech in the legislative assembly at the beginning of the session and in the first session of the year. The Governor has the right to address the Legislature and send a message to the

Legislature in relation to any important bill. The Governor's approval is necessary on any bill passed by the Legislature. The Governor can approve or refuse the bill, or it may hold that bill for the President's acceptance. The Governor can return the General Bill with his suggestions to the Legislature. If the Legislature passes the bill again with or without reconciliation, the governor will have to give approval. Under Article 213 The Governor has the power to promulgate an ordinance when the Legislative Assembly is not in session, and a law has to be brought into effect immediately. However, the ordinance is presented in the state legislature in the next session, and remains operative for a total of six weeks, unless it is approved by the legislature.

3. Financial Powers - He causes to be laid before the State Legislature the annual financial statement which is the State Budget. No money bill can be submitted in the assembly without prior approval of the governor. In case it is not a money bill, the Governor holds the right to send it back to the Vidhan Sabha for reconsideration. But if the Vidhan Sabha sends back the Bill to the Governor the second time, then he has to sign it. Further no demand for grant shall be made except on his recommendation. The governor can also present the demand for supplementary grant. He can also make advances out of the Contingency Fund of the State to meet any unforeseen expenditure, but the acceptance of the Assembly for the expenses incurred by him is necessary. Moreover, he constitutes the State Finance Commission. The Governor lays before the State Legislature, the annual financial statement and also makes demands for grants and recommendation of 'Money Bills'. The Governor constitutes the State Finance Commission. He also holds the power to make advances out of the Contingency Fund of the State in the case of any unforeseen circumstances.

4. Judicial Powers - According to Article 161, The Governor has the power to grant pardons, reprieves, respites or remission of punishments or to suspend, remit or commute the sentence of any person convicted of any offence against any law

relating to a matter to which executive power of the State extends. He is also consulted by the President in the appointment of the Chief Justice and the Judges of High Court of State. He appoints the District Judges. Under Article 361 (2) of the Constitution "*no criminal proceedings whatsoever shall be instituted or continued against the President or the Governor of a State, in any court during his term of office*".

5. Allowing the Trial of Ministers - The Supreme Court has given important provisions in its verdict on November 5, 2004, that if there is a prima facie case established against a minister, then the governor can allow him to sue; even if the Council of Ministers has refused to allow it.

6. Other powers - Some other powers of the Governor are as follows-

- A situation may arise when in the opinion of the Governor there is the breakdown of the constitutional machinery in the State. In such a case, the Governor may report the situation to the President for imposition of the President's Rule in that State. As the Governor exercises this power on his/her own, it is called the discretionary power of the Governor. In case the Governor's report is accepted by the President, and he/she proclaims emergency under Article 356, the State Council of Ministers is removed, and the State Legislative Assembly is either dissolved or put under suspension. During such emergency, the Governor rules on behalf of the President.
- In case no political party wins a clear majority in the Vidhan Sabha of the state, the Governor holds the power to use his discretion to select the Chief Minister.
- In the States of [Chhattisgarh, Jharkhand], Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.
- The Governor of Assam uses the right of

discretion in respect of disputes arising out of the division of income generated from the mines between the Government of Assam and the Zila Parishads of this primitive area.

Chief Minister & the Council of Ministers-

The Chief Minister is the real executive of the state. Constitutionally there is clear cut division of powers between the chief minister and the Governor. He is appointed by the Governor. The person who commands the majority support in the State Legislative Assembly (Vidhan Sabha) is appointed as the Chief Minister by the Governor. The other Ministers are appointed by the Governor on the advice of the Chief Minister. The portfolios to the members of the Council of Ministers are allocated by the Governor on the advice of the Chief Minister. The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State and individually responsible for the Governor. The ministers included in the Council of Minister's must belong to either House of the State legislature. A person who is not a member of the State legislature may be appointed a minister, but he ceases to hold office if he is not elected to the State legislature within six months of his appointment. The Chief Minister has power to remove any Minister from office. Under the Constitution, the Ministers stay in office during the pleasure of the Governor, but in reality they stay in office during the pleasure of the Chief Minister. If the Chief Minister is not happy with any Minister, he can ask the latter to resign. He decides the date and place of the Cabinet meetings. Chief Minister presides over the Cabinet meetings. He coordinates the functioning of different ministries. He guides the functioning of the Cabinet. The final approval and disapproval of the Cabinet decisions is the prerogative of the Chief Minister.

4.7 The Chief Minister & Governor-

The Chief Minister is the real executive whereas Governor is the constitutional head of the state. The Chief Minister is the main link between

the Council of Ministers and the Governor. The Chief Minister is appointed by the Governor on the basis that he has the power of majority in the Legislative Assembly. In situation of hung Assembly the governor can exercise self-discretion in the selection and appointment of the Chief Minister when there is no clear majority with any of the political parties. Under Article 167(Duties of Chief Minister as respects the furnishing of information to Governor)-It shall be the duty of the Chief Minister of each State(1) to communicate to the Governor of the State all decisions of the council of Ministers relating to the administration of the affairs of the State and proposals for legislation; (2) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and (3) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council. On the instructions of the Governor, the Chief Minister will keep it before the Council of Ministers for consideration.

4.8 The Chief Minister and the State Legislature-

The chief minister is the leader of the majority party in the assembly. He is the leader of the house. He advises the governor to convene and prorogue a session of the Legislative Assembly. He can advise the governor to dissolve the assembly during his majority in the house. He declares government policies in the legislature. He presents perspective of his government during the debate of Confidence or the No confidence motion or can appoint some minister for the purpose.

4.9 State Council of Ministers-

In India, there is a parliamentary system of governance in the states similar to the one at Center. In this scheme, the Council of Ministers headed by the Chief Minister is the real executive.

Organization

Article 163(1) says that-there shall be a

Council of Ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his functions. The governor constitutes and also dissolves the Council of Ministers on the advice of Chief Minister. The Chief Minister can dissolve the Council while he enjoys majority in the Assembly. The Chief Minister also decides about the size of his Council of Ministers. The three-tier system of ministry is composed of Cabinet, State and Minister of State ranks. Sometimes Parliamentary Secretaries are also appointed. All these must be a member of the Legislature or they have to get the membership of the Assembly within the 6 months from the date of appointment. The Chief Minister distributes portfolios and the division of work is also done by him. Generally the members of the Legislative Assembly are appointed ministers. 91st Amendment Act states that -the size of the Council of Ministers should not be more than 15% (Fifteen Percent) of the total members of the Assembly.

4.10 Powers and Functions of the Chief Minister-

Chief Minister is the head of the Council of Ministers of his State. The constitutional position of the Chief Minister is more or less similar to that of the Prime Minister. The Chief Minister plays an important role in the administration of the State. We can discuss his functions as follows :

1. Chief Minister is the real head of the State Government. Ministers are appointed by the Governor on the advice of the Chief Minister. The Governor allocates portfolios to the ministers on the advice of the Chief Minister.
2. Chief Minister presides over the Cabinet meetings. He also ensures that the Council of Ministers will work on the principle of collective responsibility. He coordinates the functioning of different ministries. He guides the functioning of the Cabinet.
3. The Constitution provides that the Chief Minister shall communicate to the Governor all decisions of the Council of Ministers relating to the administration and the affairs of the State and proposals for legislation.
4. If the Governor so requires, the Chief Minister submits for consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Cabinet.
5. The Chief Minister provides leadership in the functioning of the legislature. All government bills are prepared in accordance with its inspection and advice and the time of division of the house and draft of the program and the timing of government and personal work is decided.
6. He also oversees the functions of the departments of the Ministers under his supervision and removes differences between the Ministers and maintains a consensus in the entire administration.
7. The Chief Minister is the Chief Speaker of the State Legislature. The official declaration related to the government policy comes only in the jurisdiction of the Chief Minister
8. The Advocate General gives advice to the Governor, regarding the members of the State Public Service Commission and other important appointments.
9. He acts as a link between the governor and the Council of Ministers. If a minister wants to meet the governor or the governor wants to talk to any minister, then it has to give prior information to the Chief Minister.
10. The Chief Minister also acts as a contact form between the Assembly and the Legislative Council. He gives advice to the governor as to when the session of the legislature should be called, when it should be suspended and dissolved. He also ensures that which legislation should be written in the legislature and how to face the protest of the opposition according to the cabinet decision.
11. He is the leader of the ruling party in the legislature. He has to maintain discipline among his party members in the legislature.

For this purpose, he appoints a whip whose directive is to be obeyed by the legislators belonging to his party.

4.11 Position of Chief Minister-

Chief Minister is the state's head of the State and the real executive. He selects members of his Council of Ministers. He distributes different portfolios among them. He can also remove any minister or make changes in his departments as per the requirement. He is responsible for ensuring the principle of collective responsibility. He acts as a link between the Council of Ministers and the Governor and the Legislature and the Governor.

Local Self Government

The concept of local self-government is known to Indian since ancient times. During the vedic age, there existed village assemblies known as 'Sabha' and 'Samiti'. Gradually cities and Towns came into prominence. They also enjoyed greater level of autonomy in administration as witnessed during the Mauryan and Gupta period. The system of local self-government in its modern sense was revived during the British period. In a democratic country power is decentralized and shared at different levels. Apart from the Central and State Government, the administration at the local level is handled by the local government in urban as well as rural areas. The local Self-Government ensures effective people's participation and ensures overall development. India is a federal republic with three spheres of government: central (Union), State and Local. The 73rd and 74th constitutional amendments give recognition and protection to local government and in addition each state has its own local government legislation. The local self-government exists at two levels in our country. The first form is rural local government known as 'Panchayati Raj' and the second form is urban local government. Panchayati Raj system has existed in India since ancient times. There was a great deal of local self-government in the villages in the Chola Empire. Historian Altker has called the Indian villages as small republics. After independence, Balwant Rai Mehta committee was appointed in 1957 to make recommendations

for the revitalization of the Panchayati Raj system and define its role in the development process. It recommended the implementation of "*three-tier Panchayati Raj System*" in the whole country. Rajasthan was the first state to implement the recommendations of the Balwant Rai Mehta committee. It was inaugurated by the then Prime Minister, Pt. Jawaharlal Nehru in Nagaur district on October 2, and 1959. In the first decade of 1960s, the Panchayati Raj was adopted in different states of the country but these institutions formed by the states did not have the similarities in the number of levels, their tenure, methods of election etc. In Rajasthan three- tier Panchayati Raj system as suggested by the Mehta Committee was adopted.

4.12 Committees Constituted for Reforms in Panchayati Raj System-

1. Ashok Mehta Committee (1977)

The committee was constituted by the Janata government of the time to study Panchayati Raj institutions. Out of a total of 132 recommendations made by it, the most important ones are :

1. The two-tier system of Panchayati Raj system should be adopted. The Gram Panchayat to be replaced by Mandal Panchayats.
2. All officers, including the District Collector, should be kept under the Zilla Parishad.
3. Elections of the institutions should be conducted on the party basis. Political parties should participate at all levels in the elections.
4. Reservation should be given to the Scheduled Castes, Scheduled Tribes and the women of the society.
5. Role of voluntary organizations should be increased in the Panchayati Raj system.

2. G.V.K. Rao Committee (1985)

The G.V.K. Rao Committee was appointed by Planning Commission to once again look at various aspects of PRIs. The Committee was of the opinion that a total view of rural development must be taken in which PRIs must play a central role in handling people's problems. It recommended the following

Recommendations

1. Gram Panchayats should be given more financial powers.
2. State Finance Commission should be constituted.
3. Tenure of institutions should be 8 years.

3. L. M. Singhvi Committee- 1986

The committee recommended the constitutional status of Panchayati Raj. The Central Government made an effort by the 64th Constitution Amendment Bill, but the bill could not be passed from the Parliament.

4. P. K. Thungan Committee- 1988

The committee also recommended the constitutional status of these institutions. The Thungan Committee recommended that the Zilla Parishad should be the most effective level in the Panchayati raj system. The Committee recommended for a detailed list of subjects for Panchayati raj to be incorporated in the Constitution and setting up of the State Finance Commission to lay down the principles for devolution of financial resources to PRIs.

73rd Constitutional Amendment Act

This Amendment was passed by Parliament in 1992, which came into effect on 24 April 1993. A Joint Parliamentary Committee under the chairmanship of Nathuram Mirdha, an MP from Nagaur was appointed to examine the Bill and report to the Parliament. The Parliament took up the bill and JPC Report on December 1st, 1992. The Bill became the Seventy Third Constitution Amendment Act finally on April 23, 1993 with the assent of the President to the Bill. The Panchayati Raj Day is celebrated on 24th April.

4.13 Main Features-

The three-tier system - 73rd Constitutional Amendment Act provides for three-tier institutional structure for all states. Accordingly, the structure adopted in our state becomes clear from this chart.

Level	Name of elected institution	Elected official
Village	Gram Panchayat	Sarpanch
Block	PanchayatSamiti	Pradhan
District	ZilaParishad	ZilaPramukh

4.14 Direct Election

The Act provides for direct election of Ward Panch and Sarpanch at village level, Mandal member at the block level and the members of Zila Parishad. In addition, it also provides that Chairpersons at the block level and district level which are called Pradhan and Zila Pramukh respectively, will be elected from the elected members. The post of Chairman at the Zila and Block levels should be filled by indirect election.

4.15 Provision of Reservation-

The Act provides for reservation of one-third seats for women in all institutions. The Act also provides for reservation for the Scheduled Castes and Scheduled Tribes in proportion to their population. This Act also authorizes the State Legislatures to make provision for reservation for the backward classes in these institutions.

4.16 The Fixed Tenure of the Panchayats -

Act provides that tenure of Panchayati Raj institutions shall be five years, if dissolved earlier, fresh elections to be held within six months. Act also provides that it is necessary that the new institutions must to be constituted within the period of 6 months. Minimum age for contesting elections to the Panchayati Raj institutions is twenty one.

4.17 State Election Commission-

State Election Commission is to be set up in each State to conduct regular and fair elections to Panchayati Raj institutions. The State Election Commission monitors the process of preparing this

voter lists from the time of declaring the officials as elected and giving an oath. The state's governor appoints the state election officer / commissioner. The terms and conditions of its appointment are also decided by the governor. In the service of the state election officer / commissioner, there will be similar ways of discharging the High Court Judge of the High Court.

4.18 The Formation of the State Finance Commission-

For the review of the financial condition of the Panchayat Raj institutions, the Finance Commission will be constituted, after every 5 years. Article 243I of the Indian Constitution prescribes that the Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to -

A. The principles which should govern

1. The distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;
2. The determination of the taxes, duties, tolls and fees which may be assigned as, or appropriated by, the Panchayats;
3. The grants-in-aid to the Panchayats from the Consolidated Fund of the State;

B. The measures needed to improve the financial position of the Panchayats;

C. Any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats. Article 243Y of the Constitution further provides that the Finance Commission constituted under Article 243 I shall make similar

recommendation vis-a-vis municipalities. The Governor is required to cause every recommendation made by the State Finance Commission together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State. This Commission recommends the Governor to review the financial status of these institutions, the sources of income, distribution of funds, grants received by the state government, taxes, collections etc.

4.19 Audit of Accounts-

State Government can make provisions for audit of accounts of the Panchayats. In order to strengthen these Panchayati Raj Institutions, 11th schedule has been added in the Constitution by the 73rd Constitutional amendment. It contains 29 items which increase the jurisdiction and power of these institutions.

ELEVENTH SCHEDULE (Article 243G)

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of

electricity.

15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

As part of the Directive Principles of State Policy, Article 40 (Organisation of Village Panchayats) says that -The State shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

74th Constitutional Amendment Act

The constitution 74th Amendment Act 1992, relating to Municipalities (Urban local Government) was passed by the parliament in 1992. It received the assent of the president of India on 20th April 1993. The Act seeks to provide a common framework for the structure and mandate of urban local bodies to enable them to function as effective democratic units of local Self Government. Constitution of three types of municipalities:

1. Nagar Panchayat- First, Nagar Panchayats which are also known as municipalities in Rajasthan

are created in towns with populations of 10 thousand to 1 lakh, whose chief is called Chairman. This base of population is variable from time to time. These are created for a transitional areas (the area which is fast changing from rural to urban area) or for a very small urban areas. The tenure of Nagar Panchayat is five years.

2. Municipal Council- second, municipal councils are usually established in the cities with population of one lakh to 3 lakh. It is divided into several wards. A councilor is elected directly by the public from each ward. The head of municipal councils is called president or chairperson. Its tenure is five years.

3. Municipal Corporation-Third, Municipal Corporation is established in big cities with population of more than 3 lakh. Municipal corporations are created for larger urban areas. Its tenure is 5 years. But they can be dissolved before the fixed term by vote of no confidence. The 74th Constitution has made it is a constitutional obligation for the state government to hold elections within a period of 6 months. Municipal councilors are directly or indirectly elected (by councilors), or whatever is prescribed by the state government's legislation.

18 subjects are included in twelfth Schedule (Article 243 W) of the Constitution for these urban bodies powerful and effective, which are as follows:

1. Urban planning including town planning.
2. Regulation of land use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health sanitation, conservancy and solid waste management.
7. Fire services.
8. Urban forestry protection of the environment and promotion of ecological aspects.

9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds, cremations, cremation grounds and electric crematoriums.
15. Cattle pounds, prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

In addition to these three levels of urban local governance in Rajasthan there are also Notified Area Committee, Town Area Committee, Cantonment Board, Township, and Special Purpose Agency.

Important Points

- Local decentralization is the proper medium of decentralization of powers.
- L.M. Singhvi Committee recommended constitutional status to Panchayati Raj.
- On April 24, 1993, 73rd Amendment to the Constitution which is related to Panchayati Raj system came into effect.
- In the three-tier structure of the Panchayati Raj, the Gram Panchayat at the village level, the Panchayat Samiti at the Block level and the District Council work at the district level.
- The State Election Commission organizes free and fair elections of local bodies.
- 73rd and 74th Amendments are related to Panchayati Raj Institutions and the Urban

Bodies respectively.

- The head of the municipal corporation is called mayor or **Mahapor**.
- It is a constitutional obligation for the state government to hold elections within a period of 6 months.
- No constituency can be held without representation for more than six months.

Exercise

Multiple Choice Questions

1. Under which Article of the Constitution of India, the President of India appoints the Governor of the State-
(A) Article 154 (B) Article 155
(C) Article 160 (D) Article 356 ()
2. State's Actual Executive Power lies in -
(A) Chief Minister (B) Governor
(C) Speaker of the Assembly
(D) Leader of the Opposition ()
3. The Constitutional Head of the State is -
(A) Finance Minister
(B) Governor
(C) Chief Minister
(D) Vidhan Sabha Speaker ()
4. Under which Article, the Chief Minister of the State is required to furnish information to the governor -
(A) 167 (1) (B) 163 (1)
(C) 162 (1) (D) 155 (1) ()
5. In which of the districts of Rajasthan, the first phase of the *Three Tier Panchayati Raj System* was initiated on October 2, 1959?
(A) Jodhpur (B) Nagaur
(C) Jhalawar (D) Bikaner ()
6. Which historian named the Indian villages as the Mini-Republics?
(A) Altker (B) Vice-Chancellor
(C) James Tod (D) Ashok Mehta ()

7. Which of these organizations is not related to rural self-government?
 (A) Gram Panchayat
 (B) Panchayat Samiti
 (C) Municipal Council
 (D) District Council ()
8. A third of the posts for women in Panchayati raj institutions were reserved in the constitution of the constitution -
 (A) 72nd Amendment Act
 (B) 73rd and 74th Amendment Act
 (C) 75th Amendment Act
 (D) 43rd Amendment Act ()
9. The elected head of the Municipality is called -
 (A) Chairman (B) President
 (C) Commissioner (D) Mayor ()

Very Short Answer Type Questions

1. Who is the nominal executive of the state?
2. Who gives advice to the Governor?
3. The Governor administers the Chief Minister to whom?
4. To what the words "Union of States" used in the Constitution of India indicate?
5. Which Amendment Act of the Constitution of India prescribes that Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly?
6. What levels of local governance exists in Panchayati Raj system?
7. When is the '*Panchayati Raj Day*' celebrated?
8. Which is the smallest elected institution in rural local government?
9. Name the largest organization of urban self-government?
10. Which institution conducts the elections of the local bodies?

Short Answer Type Questions

1. Describe the five characteristics of the state

administration.

2. Describe the main recommendations of the Sarkaria Commission in relation to the appointment of the Governor.
3. Describe the relationship between the Chief Minister and the Governor.
4. Comment about the formation of the State Council of the Council.
5. Comment briefly on the relations between the Chief Minister and the State Legislature.
6. What were the two major recommendations of the Ashok Mehta Committee? Describe.
7. What are the three levels of three-tier Panchayati Raj structure?
8. Describe any two tasks of the State Finance Commission.
9. What does Article 40 of the Constitution provide?
10. What are the three units of urban local governance?

Essay Type Questions:

1. Write an Article on State Administration.
2. Describe in detail about the relationship between the Governor and Chief Minister and also explain the functioning of state administration.
3. What is local governance? Publish the key recommendations of the committees constituted for strengthening
4. Explain the Three-Tier Structure of Panchayati Raj.
5. What are the main functions of Panchayati Raj Institutions mentioned in the 11th Schedule of the Constitution?
6. What are the functions of local administration of our cities? Describe.

Answers to Multiple Choice Questions

1. B 2. A 3. B 4. A 5. B
 6. A 7. C 8. B 9. D