

# INDIAN POLITY

## PRESIDENT

Pratibha Devisingh Patil was declared elected the 12<sup>th</sup> President on July 21, 2008. On July 25, 2008 she became the first woman to head the Indian Republic. Ms. Patil defeated her lone opponent, Vice-President Bhairon Singh Shekhawat, by an impressive margin of 3,06,810 in an electoral college with votes valued at 10.98 lakh, in what was described as the most keenly contested poll.

The 73-year-old First Citizen once again made history on January 26, 2008 when she took salute at the main Republic Day parade on the 59<sup>th</sup> Republic Day of India, becoming the first woman Head of the State in the country to do so.

The Constitution of India provides for the office of the President of India. Article 52 of the Indian Constitution says that there shall be President of India. The President is the Head of the state. All executive power of the Union is vested on him and these powers are to be exercised by the President either directly or through officers subordinate to him in accordance with the constitution.

### Election of the President

The President of India is elected by an electoral college. In India the electoral college consists of the elected members of the two Houses of Parliament and Legislative Assemblies of the States (article 54). In this context, the term (state) includes the national capital territory of Delhi and the Union territory of Pondicherry also. Article 55 of the Constitution provides that, as far as practicable, there shall be uniformity in the scale of representation of the different states at the election of the President. The President's election is held in accordance with a system of proportional representation by means of a single transferable vote and the voting takes place by secret ballot.

According to article 58 of the Constitution, a person to be eligible for the election of the President should fulfill the following conditions -

- The person willing for the President's election should be a Indian citizen.
- He should have completed the age of thirty-five (35) years.
- He should be qualified for election as a member of the House of the People i.e. the Lok Sabha.
- He should not hold any office of profit under the Union Government or any state government or any local or other authority.

In addition to the above mentioned the article 59 of the Constitution lays down a few more conditions of the Presidents office -

- The President should not be a member of any house of Union or State legislature.
- He should not hold any office of profit. He is entitled to the free use of his official residences; such emoluments, allowances and privileges are determined by Parliament by law.
- During the President's term of office his emoluments and allowances shall not be diminished.

### Presidents' Term of Office

The oath of office to the President is administered by the Chief Justice of India and in his absence, by the senior most judge of the Supreme Court available. Article 62(1) says that an election should be held to fill the vacancy caused by the expiration of the term of office of President before the expiration of that term.

- The President shall hold office for a term of five years from the date on which he enters upon his office.

- President can resign at any time by addressing the resignation letter to the Vice-President of India.

## Presidents Impeachment

When a vacancy occurs in the Presidents office due to his death, resignation or removal or otherwise, the Vice-President acts as the President until a new President is elected. An election to fill such vacancy should be held within six months from the date of occurrence of such vacancy. A person who holds, or who has hold the office of a President is eligible for re-election to that office.

Article 61 lays down that the President may be removed by impeachment from his office on grounds of violation of the Constitution.

- The impeachment charges may be initiated by either houses of Parliament and these charges should be signed by 1/4<sup>th</sup> members of the house which framed the charges.
- Regarding the charges a 14 days' notice should be given.
- The resolution of the charges for impeachment of the President should be passed by a majority of not less than 2/3<sup>rd</sup> of the total membership of the House.
- Afterwards the charges are investigated in the other House of the Parliament. If the resolution is passed in this House also with a majority of 2/3<sup>rd</sup> of its total membership, then the President stands removed from his office from the date on which the bill is so passed.

## The Powers and Functions of the President

The powers enjoyed and by the President and the functions performed by him are divided into the following heads -

**Executive Powers of the President:** Article 53 pro-vides the executive powers of the President. All executive powers of the Union are vested in him. These powers are exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The Supreme Command of the Defence Force is vested on the President and the exercises it in accordance with law.

- Executive powers of the President must be exercised in accordance with the Constitution. In particular it includes the provisions of article 14 i.e., equality before law.
- Without prior legislative support also, the President can exercise the executive powers if it does not violate the Constitution or the law.
- Executive power is the residue of functions of Government, which are not legislative or judicial.
- All the executive actions of the Government of India are formally taken in his name.
- The President can make rules specifying the manner in which the orders and the other instruments which are made and executed in his name shall be authenticated.
- President appoints the Prime Minister and other ministers; and they hold office during his pleasure. He appoints the Attorney General of India, he too holds office during Presidents pleasure.
- The President also appoints the Comptroller and Auditor General of India, the Chief Election Commissioner and other Election Commissioners, the Chairman and Members of the UPSC, the Governors of the states, the Chairman and the members of the Finance Commissions etc.
- The President can appoint a commission to investigate into the conditions of SCs, STs and OBCs.
- He directly administers the union territories through administrators appointed by him.

## The Legislative Powers

The President is an integral part of the Parliament. He enjoys the following legislative powers -

- The President can summon or prorogue the Parliament and dissolve the Lok Sabha. He can address the Parliament at the commencement of the first session after each general election and the first session of each year. He can also summon a joint sitting of both the houses of Parliament which is presided over by the Speaker of the Lok Sabha.
- The President can appoint any member of the Lok Sabha to preside over its proceedings when both Speaker's and Deputy Speaker's office fall vacant. He also can appoint any member of the Rajya Sabha to preside over its proceeding when both the Chairman's and Deputy Chairman's office fall vacant.
- He nominates 12 members of the Rajya Sabha from amongst the persons having special knowledge or practical experience in respect of literature, science, art and social service. He can nominate two members to the Lok Sabha from the Anglo-Indian Community.
- For introducing bills in the parliament regarding a bill involving expenditure from Consolidated Fund of India or a bill for alternation of boundaries of states or creation of new state, President's prior recommendation or permission is needed.
- When a bill is sent to the Parliament after it has been passed by the parliament, the President can give his assent to the bill or withhold his assent to the bill or return the bill (if it is not a Money Bill or a Constitutional Amendment Bill) for reconsideration of the Parliament.
- When a bill is passed by a State legislature is re-served by the Governor for consideration of the President, the President can give his assent to the bill, or withhold his assent to the bill or direct the Governor to return the bill (if it is not a Money bill) for reconsideration of the State Legislature.
- According to article 123, President can promulgate ordinances when both the Houses of the Parliament are not in session. These ordinances must be approved by the Parliament within the six weeks of its reassembly. The ordinance can be effective for a maximum period of six months and six weeks.

## Emergency Powers of the President

To deal with the emergency the President is given some extraordinary powers by the Constitution of India.

Under article 352, the President may proclaim a state of emergency in the whole or part of India if he realises/ feels that a grave situation has arisen in which the security of India on part of its territory might get threatened by war or external aggression or rebellion. The President deals with the following three types of emergencies –

- (1) **National Emergency:** According to article 352, the President proclaims National Emergency which must be approved by the both Houses of the Parliament within one month, and after approval the emergency continues for six months. During the period of National Emergency, the President acquires certain extraordinary powers. He can give directions to any state with regard to the manner in which its executive power is to be exercised. He can modify the pattern of distribution of financial resources between the Union and the states. The President can suspend the Fundamental Rights of citizen except article 20 and article 21.
- (2) **President's Rule:** President's Rule is also known as a state emergency or a constitutional emergency. On the ground of article 356 i.e. failure of constitutional machinery in the states and article 365 i.e., failure to comply with or to give effect to directions given by the Union, the President proclaims President's Rule. The proclamation should be approved within two months by both Houses of the Parliament, then it remains in force for six months. If National Emergency is in force in the entire country or in the whole or any part of the concerned state and the Election Commission certified that due to difficulties the general elections to the concerned State Legislative Assembly can not be held then President's Rule can be extended beyond the first year of implementation; it can be extended six months at a time. During President's Rule, the State Governor on behalf of the President, carries on the State Administration with the help of the

advisors appointed by the President or the Chief Secretary of the State. However the President cannot interfere with the jurisdiction of the concerned State High Court.

- (3) **Financial Emergency:** The President proclaims Financial Emergency under article 360 if he is satisfied that the financial stability or credit of India or any part thereof is threatened. This proclamation must be approved within two months by the Parliament. During the period of Financial Emergency the President can give directions to the states to observe the canons of financial propriety. He can issue directions to reduce the salaries and allowances of all or any class of persons serving under the state, under the Union including the judges of the Supreme Court and High Court. All money bills and financial bills passed by the state legislative can be reserved for President's consideration during the period of Financial Emergency. However it should be mentioned here that so far this type of Emergency has not been declared.

## Financial Powers

- Only with the prior recommendation, the Money bill can be introduced in the Parliament. Demand for a grant can not be made without his recommendation.
- The President lays the Annual Financial Statement i.e. the Union budget before the Parliament.
- To meet the unforeseen expenditure, the President can make advances out of the Contingency Fund of India.
- The President continues a Finance commission after every five years to recommend the distribution of the taxes between the centre and the States.

## Diplomatic powers

The diplomatic powers of the President empowers to him in the way that the international treaties and agreements are negotiated and concluded on behalf of the President. They are subject to approval of the parliament.

- He represents India in International forms and affairs and sends and receives diplomats like ambassadors. High commissioners etc.

## Military powers

- The President is the supreme commander of the defence forces of India, he can declare war and conclude peace which are subject of Parliaments' approval.
- The President appoints the chiefs of Army, Navy and Air Force.

## Judicial powers

- The President appoints the Chief Justice and the judges of Supreme Court and High Courts.
- He can seek advise from the Supreme Court on any question of law or fact. But the advice given by the Supreme Court is not binding on the President.
- In certain cases like in cases where the punishment or sentence is by a court martial, where the punishment or sentence is for an offence against any law relating to matter to which the executive power of the Union extends and where the sentence is a sentence of death, the President can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person.

## THE VICE-PRESIDENT OF INDIA

Mohammad Hamid Ansari, the common candidate of the United Progressive Alliance and the Left parties, was declared elected on August 10, 2008 as the country's new Vice-President. In a triangular contest, Mr. Ansari scored a

comfortable victory defeating National Democratic Alliance (NDA) nominee, Najma Heptulla, and the United National Progressive Alliance (UNPA) candidate, Rasheed Masood securing 455 out of the 762 votes polled.

Mr. Ansari, a former diplomat, became the 13<sup>th</sup> Vice-President of India. He is also the Chairman of the Rajya Sabha.

Article 63 of the Indian Constitution says that there should be a Vice-President of India. The Vice-President shall be the ex-officio Chairman of Rajya Sabha (article 64). However as the Vice-President as such no functions have been assigned to him in the Constitution. Vice-President generally takes part in several ceremonial functions like meeting ambassadors, visiting foreign dignitaries etc. in practice. The Vice-President is the Chairman of the Rajya Sabha, but he is not a member of Rajya Sabha. So, he does not have any right to vote.

- Article 65 lays down that in the event of a vacancy in the office of President by reason of his death, resignation, removal or otherwise, the Vice-President acts as the President. In case the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President discharges his functions. However while discharging the functions of President, the Vice-President does not perform the duties of the office of the Chairman of Rajya Sabha (article 64). During the period of discharging Presidents functions by the Vice-President, he is entitled for the salaries, emoluments, allowances and privileges of the office of the President of India.
- Being the Vice-President of India, he is not entitled for any salary, but is entitled to the salary and allowances payable to the Chairman of the Council of States.

## ELECTION OF VICE-PRESIDENT

The Vice-President is elected by an electoral college consisting of all members of the Lok Sabha and Rajya Sabha (including nominated ones), through proportional representation of means of a single transferable vote (article 66). This is intended to ensure that he enjoys the confidence of both the houses of Parliament.

- The eligibility conditions for the election of Vice-President is same as the President except that the Vice-President must be qualified for election as a member of the Rajya Sabha (article 66).
- The election to the vacancy of the office of the Vice-President occurring due to death, resignation or removal is held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy is entitled to hold office for the full term of five years from the date on which he enters upon his office. However generally the election to the vacancy of the office of the Vice-President is completed before the expiry of his term. Regarding vacancy there is no such mandatory provision to hold election within the six months like in the case of the President.
- The Parliament has the power to regulate matters relating to the election of the Vice-President; however all the doubts and disputes arising out of or in connection with the election of the Vice-President, are decided by the Supreme Court whose decision is the final decision.

## Vice-President's removal

- The Vice-President can be removed from his office by a resolution of the Council of States (the Rajya Sabha) passed by a majority of all the then members of the Council of States and agreed to by the House of People (the Lok Sabha). Regarding Vice-Presidents' removal there is no formal impeachment.
- Removal of the Vice-President of India requires effective majority for passage of such a resolution to this effect [article 67(b)]. The effective majority is determined by the total strength of the House minus the number of vacancies.
- The Vice-President may resign his office by writing under his hand.

## **THE PRIME MINISTER**

In the scheme of parliamentary system of government provided by the Constitution, President is the nominal executive authority (dejure executive) and Prime Minister is the real executive authority (Defacto executive). It means the President is the head of the state while Prime Minister is the head of the government. The Prime Minister is the Political head of the Services, he is the leader of the ruling party. He is the ex-officio Chairman of the Planning Commission, National Development Council, National Integration Council and Inter-state Council.

## **POWERS AND FUNCTIONS OF THE PRIME MINISTER**

### **In Relation to the Council of Ministers**

- The Prime Minister recommends persons who can be appointed as ministers by the President.
- He can allocate and also can change the portfolios among the ministers according to his will.
- If a difference in opinion arises between the Prime Minister and any of his subordinate ministers, he can ask the minister to resign or can advice President to dismiss him.
- Prime Minister presides over the meeting of the Council of Ministers and he also influences the decision of the meeting.
- He guides, directs, controls and coordinates the activities of all the ministers.
- By resigning from office, the Prime Minister can bring about the collapse of the council of ministers.

### **In Relation to the President**

- Prime Minister is the principal channel of communication between the President and the council of minister. He communicates with the President regarding all decisions of the council of ministers relating to administration of the affairs of the Union and proposals for legislation.
- He furnishes such information relating to administration of the affairs of the Union and proposals for legislation as the President may call for and if the President so requires, Prime Minister submits 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.
- Regarding the appointment of important officials like Attorney General of India, Comptroller and Auditor General of India, Chairman and members of the UPSC, Election Commissioners, Chairman and members of the Finance Commission etc. the Prime Minister advice the President.

### **In Relation to Parliament**

The Prime Minister is the leader of the lower House i.e. the Lok Sabha. He advises the President with regard to summoning and proroguing of the sessions of the Parliament.

He can recommend dissolution of the Lok Sabha to President at any time.

He announces government policies on the floor of the house.

## **ATTORNEY GENERAL OF INDIA**

The current Attorney General is Milon Banerjee, who was appointed by the Congress-led government after the 2004 General Elections.

The Centre extended his tenure by two years till 2009 with effect from June 5, 2007. His three-year tenure from June 5, 2004 was to expire on June 4, 2007. Mr. Banerjee (77) was enrolled as an advocate in 1955 and designated senior advocate in May 1972. Besides regular appearances in Supreme Court and other courts in India, he appeared in several



international arbitrations as well.

He was appointed second Additional Solicitor General of India in August 1979 and thereafter as the first ASG. He was Solicitor General from 1986 to 1989 and Attorney General from November 1992 to July 1996.

Apart from the present Attorney General, the following have served as Attorney Generals since 1950: M.C.Setalvad, C.K.Daphtary, Niren De, S.V.Gupte, L.N.Sinha, K.Parasaran, Soli Sorabjee, G.Ramaswamy and Ashok Desai.

According to article 76, the President appoints a person qualified to be a Supreme Court judge as the Attorney General of India. The Attorney General is the first legal officer of India. He functions as the Chief Law Officer of the Government.

- The Attorney General of India advises the Government of India on any legal matter. He performs any legal duties assigned to him by the President of India. He discharges any functions conferred to him by the Constitution or the President.
- In the performance of his duties, the Attorney General of India has right of audience in all courts in the territory of India.
- The Attorney General represents the Union and the States before the Courts but is also allowed to take up private practice provided, the other party is not the State.
- He is not a member of the either House of the Parliament. Still he enjoys the right to attend and speak in the parliamentary deliberations and meetings (of both the Lok Sabha and the Rajya Sabha), without a right to vote.
- He is not a full time officer of the House, nor is he a member of a Cabinet, he is not barred from private practice except that he can not advise or hold briefs against the Government of India.
- He should not defend accused persons for criminal prosecution without the permissions of the Government of India.
- He is entitled to all the privileges and immunities as a Member of the Parliament.
- The Attorney General of India is assisted by two Solicitor General and four assistant Solicitor General.
- He is prohibited to be appointed as a Director in any company.
- The Attorney General is not paid salary but a retainer that is determined by the President. The retainer of the Attorney General of India is equal to the salary of a judge of the Supreme Court.
- As a convention, after the change of the Government, the Attorney General resigns and the new Government appoints a new Attorney General of its own choice.
- The Attorney General holds office during the pleasure of the President and receives remuneration as determined by the President.

## **Comptroller and Auditor General of India**

Vinod Rai took over as the Comptroller and Auditor-General of India on January 7, 2008 replacing V. N. Kaul. He is a 1972 batch IAS officer, and has been appointed for a term of six years or till he attains the age of 65, whichever is earlier.

Article 148 of the Indian Constitution provides for an Independent office of the Comptroller and Auditor General of India (CAG). He is the head of the Indian Audit and Account Department. At both Central and State level the Comptroller and Auditor General of India controls the entire financial system of the country.

## Appointment of CAG

The Comptroller and Auditor General of India is appointed by the President of India for a full term of 6 years or 65 years of age whichever comes earlier. By writing a resignation letter to the President, the Comptroller and Auditor General can resign at any time. The President can remove him from his post on the same ground and in the same manner as a judge of the Supreme Court of India. He can be removed by the President on the basis of a resolution passed in the both Houses of the Parliament with special majority, either on the ground of proved misbehaviour or incapacity.

## Duties and Powers

The Parliament enacted the CAG's Act, 1971 (duties, powers and conditions of service). This Act was amended in 1976 to separate accounts from audit in the Central Government.

- CAG audits the accounts related to all expenditure from the Consolidated Fund of India, consolidated fund of each state and consolidated fund of each union territory having Legislative Assembly.
- He audits all expenditure from the Contingency Fund of India and the Public Account of India in both Central and State level.
- He audits the receipts and expenditure of all bodies and authorities substantially financed from the Central or State revenues, Government companies and other corporations and bodies when so required by related laws.
- He advises the President with regard to the prescription of the form in which the accounts of the centre and the states shall be kept.
- He submits his audit reports relating to the accounts of the Centre to President and relating to the accounts of a state to the Governor.
- He compiles and maintains the accounts of the state governments as the separation of Central Governments' accounts took place.
- He audits all transactions of the Central and State governments related to debt, sinking funds, deposits, advances, suspense accounts and remittance business. He audits the accounts of any other authority also on a request of President or Governor.
- CAG acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament

## Some immunities enjoyed by the CAG

- CAG is appointed by the President, but he does not hold office in accordance with Presidents' pleasure. However the President can remove him in accordance with the procedure mentioned in the Parliament.
- Once CAG ceases to hold his office, he become ineligible for further office. - The Parliament determines his salary and other service conditions.
- The administrative expense of the office of CAG is charged upon the Consolidated Fund of India.
- No minister can be called upon to take any responsibility for any action done by CAG. The Comptroller and Auditor General of India is not represented by any minister in the Parliament.

## THE GOVERNOR

Banwari Lai Joshi was appointed the Governor of Uttarakhand on October 29, 2007.

Rameshwar Thakur was appointed the Governor of Karnataka on August 21, 2007.

Murlidhar Chandrakant Bhahdare was appointed as Governor of Orissa on August 19, 2007.



On August 19, 2007 Sudarshan Agrawal was appointed the Governor of Andhra Pradesh.

On August 19, 2007 Shilendra Kumar Singh was appointed the Governor of Andhra Pradesh.

On August 19, 2007 Narayan Dutt Tiwari was appointed the Governor of Andhra Pradesh.

On August 19, 2007 Kateekal Sankaranarayanan was appointed the Governor of Arunachal Pradesh.

Ekkadu Srinivasan Lakshmi Narasimhan was appointed the Governor of Chhattisgarh on January 25, 2007.

Article 153 says that there should be a Governor for each state. According to the Constitution (Seventh Amendment) Act of 1956, the same person may some times be appointed as Governor of two or more states, when he discharges the responsibilities of more than one state, he acts on the advice of the Council of Ministers of the respective states. President appoints the Governor and he holds office accordance with the Presidents' pleasure. The Governor's pre-scribed office term is five years but he may be any time removed by the President. However a Governor is the chief executive head of a state unlike the President who is a nominal executive head (or titular or constitutional head). The office of the Governor has dual role i.e., the Governor acts as an agent of the Central Government also in addition to that of the state.

## The Conditions for the appointment of the Governor and his office

The Constitution lays down the following conditions for Governor's office -

- According to article 157, the person opting for the Governorship should be a citizen of India and should have completed 35 years of age.
- The Governor can not be a member of either House of the Parliament or any of the State Legislatures.
- The Governor can not hold any office of profit.
- The Parliament determines the emoluments and allowances payable to him and also his free official residence. These emoluments and allowances should not be diminished during his term of office.
- The Chief Justice of the concerned High Court administers the oath of office to the Governor of that State. In the absence of the Chief Justice of the High Court, the oath is administered by the available senior most Judge of the concerned High Court.
- The Governor can be transferred from one state to another by the President. He can "resign any time by addressing his resignation to the President. The Legislature of a State does not have any role in removing the Governor from his post.
- In case, the same person is appointed as the Governor of two or more states, the President of India determines the emoluments and allowances payable to him in a proportion among the States concerned.

## The Constitutional Position of a Governor

As in the centre, the Constitution of India provides for a parliamentary form of government in the states also. As the President in the central level, the Governor in the State level exercises his powers and functions with the aid and advice of the council of ministers headed by the Chief Minister. In other words the Governor is a nominal executive, the real executive constitutes the council of ministers headed by the Chief Minister in a state. However the Governor can act in his wisdom and discretion in certain cases. They are mentioned below –

- The Governor can appoint a new Chief Minister in a situation where no single party or leader commands majority support. He can dissolve the Assembly on the advice of a Chief Minister who has lost majority support.
- He can dismiss a Ministry where the Ministry refuses to resign even after losing majority support in the

- House or after being defeated on a non-confidence notion.
- The Governor can act in his discretion in the case of reservation of a Bill for the consideration of the President.
- He can give or withhold assent to Bills, return a Bill for reconsideration of the House concerned or both the Houses reserving it for the consideration of the President. He advises the President on the issue of the failure of the constitutional machinery; and recommends for the imposition of the President's rule in the State concerned. He can use his discretion while exercising the functions as the administrator of an adjoining union territory (in case of additional charge).
- He seeks information from the Chief Minister with regard to the administrative and legislative matters of the state.

Some of the Governors may have to discharge certain special responsibilities also under the articles 371 to 371 I. In this regard, the Governor though has to consult the Council of Ministers led by the Chief Minister, the Governor acts in his individual judgement or discretion. These special cases are mentioned as follows –

- Maharashtra - Establishment of separate development boards for Vidarbha and Marathwada.
- Gujarat - Establishment of separate development boards for Saurashtra and Kutch.
- Nagaland - With respect to law and order in the State for so long as the internal disturbance in the Naga Hills Tuensang Area continues.
- Assam - With respect to the administration of the tribal areas.
- Manipur - With respect to the administration of the Hill areas in the state.
- Sikkim - For peace and for ensuring social and economic advancement of the different sections of the population.
- Arunachal Pradesh - Regarding the law and order in the state.

## The Powers and Functions of the Governor

The Governor's powers and functions can be studied under the following heads –

- (1) Executive Powers
- (2) Legislative Powers
- (3) Financial Powers
- (4) Judicial Powers under Article 356? Ans. Kerala.

### Executive Powers:

The executive power of the state is vested in the Governor and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution (art 154).

- All executive actions of the government of a state are formally taken in the government's name. He can make rules specifying the manner in which the orders and other instruments made and executed in his name is authenticate.
- He appoints the Chief Minister, the other subordinate ministers, the Advocate General of a state and they hold office during the Governor's office.
- The Governor also appoints the State Election Commission and the Chairman and members of the State Public Service Commission. However, they can be removed by the President of India and not by the Governor.
- He can ask for any information regarding the state's administration of the affairs.
- He can recommend the President to impose the constitutional emergency in the state.

## Legislative Powers

- The Governor of the State summons or prorogues the state legislature and he can dissolve the State Legislative Assembly.
- When both the offices of the Speaker and the Deputy Speaker fall vacant then the Governor appoints any member of the State's Legislative Assembly to pre-side over its proceedings.
- After a bill is passed in the state legislature, the Governor can give his assent to the bill, or withhold his assent. He can return the bill (if it is not a money bill) for reconsideration of the State Legislature. He can reserve the bill for the President's consideration.
- The Governor must reserve for President's consideration any bill passed by the State Legislature which endangers the position of the State High Court. Further he can also reserve the bill if it is of the nature of ultra-vires, i.e., against the constitution's provisions, if it is opposed to the Directive Principles of State Policy (DPSP); if it is against the larger interest of the country, if it is of grave national importance, and if the bill is of the nature of dealing with compulsory acquisition of property under article 31A of the Constitution.
- The Governor nominates one member to the State Legislative Assembly from the Anglo-Indian Community, he nominates 1/6<sup>th</sup> of the members of the State Legislative Council from amongst the persons having special knowledge or practical experience in literature, art, science, cooperative movement and social service.
- He can promulgate ordinances when the state legislature is not in session.
- He decides on the question of disqualification of the members of the State Legislature in consultation with the Election Commission.
- The Governor of the State lays reports of the State Finance Commission, the State Public Service Commission and the Comptroller and Auditor-General relating to the accounts of the state, before the state legislature.

## Financial Powers

- The Governor of the state confirms that the state budget or the Annual Financial Statement is laid before the State Legislature.
- With the Governor's prior recommendation only Money Bills can be introduced in the State Legislature.
- Demands for a grant must be made only on the Governor's recommendation.
- To meet any unforeseen expenditure, he can make advances out of the Contingency Fund of the State.
- To review the financial position of the Panchayats and the municipalities the Governor constitutes a Finance Commission in the state after every five years.

## Judicial Powers and Functions of the Governor

- The Governor can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and 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. However, the pardoning power of the Governor differs from that of the President in the manner that the President can pardon death sentence whereas the Governor is deprived of this pardoning power. The Governor does not have the power that could empower him to pardon sentences inflicted by court martial as this power is entitled only to the President of India.
- Consulted by the President, the Governor of the State appoints the judges of the concerned State High Court. And with the consultation of the State High Courts, he makes, appointments, postings and promotions of the district judges. And with consultation with the State High Court and the State Public Service Commission he appoints persons to the judicial service of the state other than the district judges.

## **CHIEF MINISTER**

The Chief Minister of a State is the head of the government, he is the real executive of the government of the State. The

position of the Chief Minister of a state resembles that of the Prime Minister's of the Centre. Generally the leader of the majority party in the Vidhan Sabha is appointed by the Governor of the concerned state as the Chief Minister of that state. The Chief Minister's oath is also administered by the Governor. The Chief Minister takes oath to his office States. Generally the Judiciary is separate from the Executive. Among the three organs of the state the Legislative, the Executive and the Judiciary, the Judiciary enjoys supreme position in the Constitution of India.

- Under various names like Nyaya Panchayata, panchayat Adalat etc., the Panchayat Courts function in some States to decide civil and criminal disputes of a petty and local nature.
- Different State laws provide for different kinds of jurisdiction of courts.
- All the states are divided into judicial districts which are the principal civil court of original jurisdiction and can try all offences including those offences which are punishable with death. These judicial districts are presided over by a district and session judge. He is the highest judicial authority in a district.
- Below the district judge, there are courts of civil jurisdiction, known in different states as munsifs, sub judges, civil judges and the like.
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## **THE SUPREME COURT**

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The Constitution of India consists provisions related to the Union Judiciary in Articles 124 to 147. Article 124 provides for the establishment of the Supreme Court with a Chief Justice and seven other Judges. However the same article authorises the Parliament to increase the number of judges by law. In addition to the Chief Justice, the number of other judges was fixed at 25 by law in 1985.

## **The appointment of the Chief Justice and the other judges of the Supreme Court**

- Under article 124(2), Supreme Court Judges are to be appointed by the President. The President appoints the Judges of the Supreme Court after consultation with such Judges of the Supreme Court and of the High Courts as the President may consider to be necessary. In the appointment of a judge, other than the Chief Justice, the Chief Justice of India is always consulted with.
- In actual practice, after receiving the Opinion of the Chief Justice, the Cabinet deliberated on the matter and advised the President in regard to persons to be appointed, the President used to act according to the advice. Before the 70s generally the senior most judge of the Supreme Court was appointed as the Chief

Justice of India, but this trend was ignored when in the 70s a couple of Chief Justice were appointed superstandingly their more senior colleagues.

- The procedure of appointment of the judges of the Supreme Court was revised in 1994. According to this revision, in the matter of the appointment of the judges, the decisive view is given by the Chief Justice of India. Generally the senior most judge is appointed as the Chief Justice unless the retiring Chief Justice reported of his unfitness.
- According 1998 judgement, the Chief Justice had to consult four senior most judges of the Supreme Court and if two of the four disagreed on some name, it could not be recommended. Practically decisions were to be taken by consensus where the Chief and at least three of the four judges had to agree.
- For appointment of judges, the Constitution Com-mission (NCRWC) has recommended appointment of a National Judicial Commission as a machinery.
- Article 129 of the constitution declares that the Supreme Court is a Court of record and has all the powers of such a court including the power to punish for contempt of itself.

## Qualifications as a judge of the Supreme Court

To be qualified as a judge of the Supreme Court, a person has to fulfill the following conditions –

- He should be an Indian citizen.
- He should have been a judge of a High Court for atleast five years or he should have been a judge of two such Courts in succession.
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- He should be in the opinion of the President, a distinguished jurist.

NCRWC has recommended that the retirement age of High Court judges may be increased to 65 years and of the Supreme Court judges to 68 years. Normally there is no provisions in our Constitution for the impeachment of a judge.

However a judge can be removed on the ground of misbehaviour or incapacity by the order of the President passed after an address by each House of the Parliament for his removal. The majority of the total membership of the House must support it and also it should be supported by a majority of not less than two-thirds of the members present and voting is presented to him in the same session. The procedure is regulated in the Parliament by law.

The person appointed as a judge of the Supreme Court, taken oath before the President or some other person appointed in that behalf by the President in the form prescribed in the Constitution before the person appointed as a judge of the Supreme Court enters upon his upon office. A person who has held office as a judge of the Supreme Court is prohibited by the constitution from practicing law before any court in the territory of India. Every Judge of the Supreme Court holds office till the age of 65 years. However, he may relinquish office earlier by addressing his resignation to the President.

In- case of any vacancy in the office of the Chief Justice of India, the President of India appoints an Acting Chief Justice from among the Judges of the Court to function as the Chief Justice. In case need arises to continue a session, the Chief Justice is free to appoint ad-hoc judges in the Supreme Court from among judges of any High Court with the necessary qualifications. A retired judge of the Supreme Court or a High Court may be invited by the Chief Justice to act as judge in the Supreme Court. However, regarding these ad-hoc appointments, the President's previous consent is required.

The judges enjoy independence in a number of ways which are ensured by the Constitution. They are as follows –

- Article 125 of the Constitution says that the salaries of the judges are fixed and can not be varied to their disadvantage during their term (except during a Financial Emergency). These salaries are charged

- on the Consolidated Fund of India, so they are not votable.
- The Chief Justice of India is entitled to receive a salary of Rs. 33,000 per month and the other judges of the Supreme Court receive 33,000 per month.
- In addition to the salary, they are entitled to a rent free accommodation and other allowances like rent free furnished residences, telephone, water, electricity, medical and other facilities exclusive of allowances and privileges like traveling expenses within the country, persons etc.
- By law, the Parliament determines the salary of the Supreme Court judges. During the office term of a judge, the Parliament can not reduce his salary or any other allowances.
- The President appoints an Acting Chief Justice from among the judges of the courts to perform the duties of the Chief Justice when the office of the Chief Justice of India lies vacant or when the Chief Justice is unable to perform the duties of his office due his absence.
- If at any time, the session of the court can not be continued due to the unavailability of the judges for any reason, the Chief Justice of India is empowered to appoint ad-hoc judges in the Supreme Court from among the Judges of the High Courts having qualifications to be appointed Judges of the Supreme Court for such a period he feels/considers as necessary. He however can do all these only with the President's previous consent and after consultation with the Chief Justice of the High Court concerned. The judges appointed in this way are bound to give priority to the Supreme Court regarding duties.
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## Rules of procedure

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## The jurisdiction and powers of the Supreme Court

The Supreme Court's jurisdiction and powers are really vast. Article 129 provides that the Supreme Court is a court of record and has all the powers of such a court. It is the highest court, of the land, so its proceedings, acts and decisions are kept in record; its records cannot be questioned for their authenticity in any court. The Supreme Court has mainly three-fold jurisdiction.

They are mentioned as follows –

### (1)Original Jurisdiction

- The Supreme Court of India has been provided with the power of Judicial The Supreme Court of India has original jurisdiction. It means there are certain cases which can originate only with the Supreme Court



over disputes (1) the government of India and one or more states and (2) the government of India and any State or States or one side and secrecy to the ministers. The State Legislature determines the salaries and allowances of the ministers. Every state has a council of ministers which is headed by the Chief Minister to aid and advise the Governor in the exercise of his powers and functions, except the discretionary ones.

## **The Powers and Functions of the Chief Minister**

The Powers and Functions of the Chief Minister can be studied under the following heads –

### **In Relation to Council of Minister**

As the head of the state of council of ministers, the Chief Minister enjoys the following powers –

- The Chief Minister recommence persons who are appointed as ministers by the Governor. It means the Governor can appoint only those persons as ministers who are recommended by the Chief Minister.
- He allocates and reshuffles the portfolios among ministers.
- In case of difference of opinion the Chief Minister can advise the Governor to dismiss the concerned minister or straightward he can ask the minister to re-sign from his post.
- The Chief Minister presides over the meetings of the council of minister. He influences the decision of the council of ministers' meeting.
- The activities of all the ministers are guided, directed, controlled and coordinated by the Chief Minister.
- As the Chief Minister is the head of the council of ministers, his resignation or death automatically lead to the dissolution of the council of ministers. Thus he can bring about the collapse of the council of ministers by resigning from his office.

### **Chief Minister's Powers in Relation to the Governor**

- The Chief Minister is the main channel of communication between the Governor and the council of ministers regarding the proposals for legislation and regarding the administration of the affairs of the state.
- He furnishes the information relating to the administration of the affairs of the state and proposals for legislation as the Governor may call for. And if Governor requires the information 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, the Chief Minister is to furnish information.
- While appointing the important officials like the Advocate-General of the State, the Chairman and members of the State Public Service Commission, State Election Commissioner and the like by the Governor, the Governor is advised by the Chief Minister of the concerned state.

### **Power In Relation to State Legislature**

Regarding the Governor's summon any prorogue of the sessions of the state legislature, the Chief Minister of the State advises the Governor.

He can any time recommend the Governor for the dissolution of the State Legislative Assembly. On the floor of the house of the State Assembly, the Chief Minister of the State announces the government policies.

In addition to the above mentioned powers and functions, the Chief Minister enjoys some other powers and functions also. They are mentioned below –

- The Chief Minister is the chairman of the State Planning Board just as the Prime Minister is the chairman of the Planning Commission in the central level.
- He acts as a Vice-Chairman of the concerned Zonal Council by rotation, holding office for a period of one

year at a time.

- The Chief Minister is a member of the Inter-State Council and the National Development Council, both are headed by the Prime Minister. He is the chief spokesperson of the state government.
- He is the political head of the services, he is the leader of the party in power. As the leader of the state, he meets various sections of people and receives memoranda from them regarding all their problems, and so on.
- During the emergency period, the Chief Minister acts as the crisis-manager-in-chief at the political level. Even though the Chief Minister plays very important role in the state administration, the Governor's discretionary powers reduce to some extent the power, authority, influence, prestige and role of the Chief Minister in the state administration.

## The Judiciary and development of judiciary in India

The Indian Constitution provides a single integrated system of courts for the Union and the States to administer both Union and State Laws. The provisions regarding the judiciary in India are contained in Part V on The Union under chapter IV, titled The Union Judiciary and Part IV on The States under chapter V and VI, titled The High Court in the States and Subordinate Courts respectively. Unlike the distribution of legislative and executive powers between the States and the Union, the Constitution of India does not adopt a similar division of judicial power; the judicial system in India is unified and integrated for the entire republic of India. Unlike the other federal systems, like that of the United States the Indian Judicial system does not have separate hierarchies of federal and States Courts. It has one hierarchy of courts - with the Supreme Court as the higher or the apex court and as the only arbiter in matters of relations between the Union and the States and between the States. Generally the Judiciary is separate from the Executive. Among the three organs of the state the Legislative, the Executive and the Judiciary, the Judiciary enjoys supreme position in the Constitution of India.

- Under various names like Nyaya Panchayata, panchayat Adalat etc., the Panchayat Courts function in some States to decide civil and criminal disputes of a petty and local nature.
- Different State laws provide for different kinds of jurisdiction of courts.
- All the states are divided into judicial districts which are the principal civil court of original jurisdiction and can try all offences including those offences which are punishable with death. These judicial districts are presided over by a district and session judge. He is the highest judicial authority in a district.
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side and one or more states on the other side (3) disputes between two or more states. However this jurisdiction does not extend to a dispute arising out of a treaty agreement etc. which is in operation and excludes such judicial jurisdiction.

For any such cases no other courts in India is empowered to deal with. So, the Supreme Court is a federal court. The Supreme Court jurisdiction also excludes such cases of inter-state water disputes, matters referred to the Finance Commission, adjustment of certain expenses as between the Union and the States. When disputes regarding the Fundamental Rights are to be dealt with, most scholars suggest for the Supreme Court's original jurisdiction. It is original in the sense that the aggrieved party has the right to directly to move the Supreme Court by presenting a petition. However according to some other constitutional experts, the writ jurisdiction of the Supreme Court is treated separately, as the dispute in such cases is not between the units of the Union but an aggrieved individual and the Government.

### (2) Appellate Jurisdiction

- The Supreme Court is the highest court of appeal from all courts in India. It deals with the hearing of the cases regarding - (1) interpretation of the Constitution - civil, criminal or otherwise (Article 132), (2) it deals with the hearing of the cases involving the civil cases irrespective of all constitutional issue (Article 133) and (3) it deals with the criminal matters irrespective of all constitutional issue (Article 134). In addition to all these, the Supreme Court is empowered to grant special leave to appeal in certain cases (Article 136).
- Regarding the constitutional matters as appeal can be made if the High Court certifies that the case involves a substantial question of law regarding the interpretation of the constitution. Even if the High Court does not grant any certificate, the Supreme Court can grant special leave if it is satisfied with the substantial law regarding the interpretation of the constitution.
- Regarding the civil cases, an appeal against a judgement depends on a Certificate of the High Court that the case involves a substantial question of law or general importance, or that in its opinion the question needs to be decided by the Supreme Court.
- With the High Court's certificate, that the case is fit for appeal, appeals in criminal cases lie to the Supreme Court. But if the High Court reverses an order of acquittal of the accused and sentenced him to death on an appeal, or if the High Court withdraws a case from the lower court conducted the trial itself and awarded the accused the death sentence or

more than 10 years' imprisonment, an appeal can be made in all these cases without the High Courts certificate.

- The Supreme Court is empowered to entertain appeal by special leave in any cause or matter determined by any court or tribunal (except a military tribunal) unlimitedly. This power is totally discretionary to the Supreme Court. But this power is enjoyed only under exceptional circumstances where substantial question of law or general public interest is involved, where grave injustice is involved or where a tribunal exceeds its jurisdiction or runs counter to natural justice.

### **(3) Advisory Jurisdiction**

- The Supreme Court gives advice on any question of law or fact of public importance as may be referred to it for the consideration by the President of India. But the Supreme Court's opinion is not considered as judgement, it does not have any litigation also. The President is bound by the advice of the Supreme Court. It only ensures the Government to get an authoritative opinion as to the legal validity of a matter before action is taken upon it. However, the court is bound to give its opinions on matters regarding the disputes arising out of a treaty or agreement entered into before the commencement of the constitution.

### **Some other powers enjoyed by the Supreme Court**

- The Supreme Court's decision is binding on all courts within the territory of India. But the Supreme Court is not bound by either of its own decision or by any other subordinate courts decision. Whenever the Supreme Court is convinced that it has made an error or it has harmed public interest, it can come to a different decision.
- Supreme Court is a court of record, its records can not be questioned in any court of law. It has the power to punish by fine or imprisonment and anybody guilty of contempt of Supreme Court's authority. Supreme Court issues orders and decrees, and they are enforceable all over India in the manner that they can be prescribed by any law made by the Parliament.
- The Supreme Court is empowered to make laws with the President's approval regarding the practice and procedure of the Court.
- With consultation with the UPSC, the Supreme Court can appoint its officers and servants and can also determine their conditions of service.
- Only the Supreme Court is empowered to decide the disputes over the Presidents' and Vice-Presidents' election.
- The Chairman and members of the UPSC can be removed with the recommendation of the Supreme Court.
- The Supreme Court may transfer to itself cases from one or more High Courts if these involve questions of law or of great significance. In the interest of justice, the Supreme Court may transfer cases from one High Court to another. In addition to the above