

## UNIT II

### Introduction to Indian Constitution

The framing of the Constitution was completed on November 26, 1949 when the Constituent Assembly formally adopted the new Constitution. The Constitution came into force with effect from January 26, 1950.

The Constitution contains the fundamental law of the land. It is the source of all powers of, and limitations on, the three organs of State, viz. the executive, legislature and judiciary. No action of the state would be valid unless it is permissible under the Constitution. Therefore, it is imperative to have a clear understanding of the nature and working of the Constitution.

### Objectives of The Constitution

The Constitution of Independent India was framed in the background of about 200 years of colonial rule, mass-based freedom struggle, the national movement, partition of the country and spread of communal violence. Therefore, the framers of the Constitution were concerned about the aspirations of the people, integrity and unity of the country and establishment of a democratic society. Their main was to give India a 'Constitution' which will fulfill the cherished ideas and ideals of the people of this country.

The Constitution begins with a Preamble which declares India to be a Sovereign, Socialist, Secular, Democratic, Republic. The Preamble also mentions the goals of securing justice, liberty and equality for all its citizens and promotion of national unity and integrity on the basis of fraternity among the people assuring dignity of the individual.

### Salient Features of the Indian Constitution

The main features of Indian Constitution are the following:

1. **A written Constitution:** The Indian Constitution is mainly a written constitution. A written constitution is framed at a given time and comes into force or is adopted on a fixed date as a document. As you have already read that our constitution was framed over a period of 2 years, 11 months and 18 days, it was adopted on 26th November, 1949 and enforced on January 26, 1950. Certain conventions have gradually evolved over a period of time which have proved useful in the working of the constitution.
2. **Federal Policy:** The Constitution of India does not use the term 'federal state'. It says that India is a 'Union of States'. There is a distribution of powers between the Union/Central Government and the State Governments. Since India is a federation, such distribution of functions becomes necessary. There are three lists of powers such as Union List, State List and the Concurrent List.
3. **Parliamentary Democracy:** India has a parliamentary form of democracy. This has been adopted from the British system. In a parliamentary democracy there is a close relationship between the legislature and the executive. The Cabinet is selected from among the members of legislature. The cabinet is responsible to the latter. In fact the Cabinet holds office so long as it enjoys the confidence of the legislature. In this form of democracy, the Head of the State is nominal. In India, the President is the Head of the State. Constitutionally the President enjoys numerous powers but in practice the Council of Ministers headed by the Prime Minister, which really exercises these powers. The President acts on the advice of the Prime Minister and the Council of Ministers.
4. **Fundamental Rights and Duties:** Fundamental Rights are one of the important features of the Indian Constitution. The Constitution provides for six Fundamental Rights about which you will read in the following lesson. Fundamental Rights are justiciable and are protected by the judiciary. In case of violation of any of these rights one can move to the court of law for their protection. Fundamental Duties were added to our Constitution by the 42nd Amendment. It lays down a list of ten Fundamental Duties for all citizens of India. While the rights are given as guarantees to the people, the duties are obligations which every citizen is expected to perform

The **Government of India** (GoI), officially known as the **Union Government**, and also known as the **Central Government**, was established by the [Constitution of India](#), and is the governing authority of the union of 28 states and seven union territories, collectively called the [Republic of India](#). It is based in [New Delhi](#), the capital of India.

The basic [civil](#) and [criminal laws](#) governing the citizens of India are set down in major parliamentary legislation, such as the Civil Procedure Code, the [Indian Penal Code](#), and the Criminal Procedure Code. The union and individual state governments all each consist of executive, legislative and judicial branches. The legal system as applicable to the federal and individual state governments is based on the [English Common](#) and [Statutory Law](#). India accepts [International Court of Justice](#) jurisdiction, albeit with several reservations. By the 73rd and 74th amendments to the constitution, the [Panchayati Raj](#) system has become an institution for local governance. The GoI has recently taken a new initiative by launching a public grievance website, wherein citizens can expect their grievances to be addressed.<sup>[1]</sup> Alternatively, one can also visit the President of India's official website<sup>[2]</sup> and register his/her grievance via the President's Secretariat.<sup>[3]</sup> Hence, twofold paths are provided by the GoI to address citizen's grievances.

## Legislature

The legislature is known as the Assembly, a term inherited from the [Oireachtas](#) of the [Republic of Ireland](#).<sup>[4]</sup> It is [bicameral](#), consisting of two [houses](#):

- the [directly elected](#) 543-member [Lok Sabha](#) ("House of the People"), the [lower house](#), and
- the 245-member [indirectly elected](#) and appointed [Rajya Sabha](#) ("Council of States"), the [upper house](#).<sup>[5]</sup>

The Parliament does not enjoy complete [parliamentary supremacy](#) but its laws are subject to [Judicial review](#). All the [members of the Council of Ministers](#) as well as the Prime Minister must also be members of Parliament (MPs). If they are not, they must be elected within a period of six months from the time they assume their respective office. The Prime Minister and the Council of Ministers are [responsible](#) to the [Lok Sabha](#) collectively.

## Collective responsibility

The [Prime Minister](#) and the [Council of Ministers](#) are jointly accountable to the [Parliament]. If there is a policy failure or lapse on the part of the government, all the members of the council are jointly responsible. If a [vote of no confidence](#) is passed against the government, then the government collapses and a new one must be formed.

## Executive branch[edit]

The [executive branch](#) of government is the one that has sole authority and responsibility for the daily administration of the state bureaucracy. The division of power into separate branches of

government is central to the republican idea of the [separation of powers](#). The separation of powers system is designed to distribute authority away from the executive branch – an attempt to preserve individual liberty in response to tyrannical leadership throughout history.

## PRESIDENT

### [Rashtrapati Bhawan](#), the residence of the President of India

The executive power is vested mainly in the [President of India](#), as per Article 53 (1) of the constitution. The President enjoys all [constitutional](#) powers and exercises them directly or through officers subordinate to him as per the aforesaid Article 53(1). The President is to act in accordance with aid and advice tendered by the [head of government \(Prime Minister of India\)](#) and his or her [Council of Ministers \(the cabinet\)](#) as described in [Article 74 \(Constitution of India\)](#). The Council of Ministers remains in power during the 'pleasure' of the President. However, in practice, the Council of Ministers must retain the support of the Lok Sabha. If a President were to dismiss the Council of Ministers on his or her own initiative, it might trigger a constitutional crisis. Thus, in practice, the Council of Ministers cannot be dismissed as long as it holds the support of a majority in the Lok Sabha. The President is responsible for making a wide variety of appointments. These include:<sup>[6]</sup>

- [Governors of States](#)
- The [Chief Justice](#), other judges of the [Supreme Court](#) and [High Courts of India](#)
- The [Attorney General](#)
- The [Comptroller and Auditor General](#)
- The [Chief Election Commissioner](#) and other Election Commissioners
- The Chairman and other Members of the [Union Public Service Commission](#)
- The President's Officer
- [The Cabinet Secretary](#), whose position is equivalent to the Ministers in Central Government. His work is to facilitate smooth transaction of business in Ministries/ Departments of the Government.<sup>[7]</sup> The Secretariat held by Cabinet Secretary is termed as Cabinet Secretariat and assists in decision-making in Government by ensuring Inter-Ministerial coordination, ironing out differences amongst Ministries/ Departments and evolving consensus through the instrumentality of the standing/ adhoc Committees of Secretaries.
- Ambassadors and [High Commissioners](#) to other countries<sup>[8][9]</sup>

The President, as [Head of State](#) also receives the credentials of Ambassadors from other countries, whilst the Prime Minister, as [Head of Government](#), receives credentials of [High Commissioners](#) from other members of the [Commonwealth](#), in line with historical tradition.

The President is *de jure* the Commander in Chief of the [Indian Armed Forces](#).<sup>[10]</sup>

The President of India can grant a pardon to or reduce the sentence of a convicted person for one time, particularly in cases involving punishment of death. The decisions involving pardoning and other rights by the President are independent of the opinion of the Prime Minister or the Lok Sabha majority. In most other cases, however, the President exercises his or her executive powers on the advice of the Prime Minister.

## Vice President

The Vice-President of India is the and is second-highest ranking government official in the **executive branch** of the Government of India, following the **President**. The Vice-President also has the legislative function of acting as the Chairman of the **Rajya Sabha**.

### Cabinet, executive departments and agencies

The Cabinet of India includes the Prime Minister and 35 Cabinet Ministers.<sup>[11]</sup> Each Minister must be a member of one of the houses of India's Parliament. The Cabinet is headed by the **Prime Minister**, and **Cabinet Secretary** acts as advisor - who is also acting as the head of the **Indian Administrative Service**. Other Ministers are either as Union Cabinet Ministers, who are heads of the various Ministries; Ministers of State, who are junior members who report directly to one of the Cabinet Ministers, often overseeing a specific aspect of government; and Junior Ministers of State (Independent Charges), which do not report to a Cabinet Minister.

### Civil service

The Civil Services of India is the **civil service** and the permanent **bureaucracy** of the Government of India. The **executive** decisions are implemented by the Indian civil servants. Civil servants are employees of the Government of India and not **Parliament of India**. Not all employees of the Government of India are civil servants.

In the **parliamentary democracy** of India, the ultimate responsibility for running the administration rests with the elected representatives of the people which are the ministers. These ministers are accountable to the legislatures which are also elected by the people on the basis of **universal adult suffrage**. The ministers are indirectly responsible to the people themselves. But the handful of ministers are not expected to deal personally with the various problems of modern administration. Thus the ministers lay down the policy and it is for the civil servants to enforce it.

### Cabinet Secretary

The **Cabinet Secretariat** of India

The Cabinet Secretary of India is the most senior civil servant in the country. The Cabinet Secretary is the **ex-officio** Chairman of the Civil Services Board of the Republic of India; the chief of the **Indian Administrative Service** and head of all civil services under the rules of business of the Government of India. The Cabinet Secretary is arguably India's most powerful **bureaucrat** and right hand of **Prime Minister of India**.

The Cabinet Secretariat is responsible for the administration of the [Government](#) of India Transaction of Business Rules, 1961 and the Government of India Allocation of Business Rules 1961, facilitating smooth transaction of business in Ministries/Departments of the Government by ensuring adherence to these rules. The Secretariat assists in decision-making in Government by ensuring Inter-Ministerial coordination, ironing out differences amongst Ministries/Departments and evolving consensus through the instrumentality of the standing/ad hoc Committees of Secretaries. Through this mechanism new policy initiatives are also promoted.

The Cabinet Secretariat ensures that the President of India, the [Vice-President](#) and Ministers are kept informed of the major activities of all Departments by means of a monthly summary report of their activities. Management of major crisis situations in the country and coordinating activities of the various Ministries in such a situation is also one of the functions of the Cabinet Secretariat.

## Judicial branch

### SUPREME COURT OF INDIA

India's independent judicial system began under the [British raj](#), and its concepts and procedures resemble those of [Anglo-Saxon countries](#). The [Supreme Court of India](#) consists of a [Chief Justice](#) and 30 associate justices, all appointed by the President on the advice of the [Chief Justice of India](#). The jury trials were abolished in India in early 1960s, after the famous case [KM Nanavati v State of Maharashtra](#), for reasons of being vulnerable to media and public pressure, as well as to being misled. Unlike its United States counterpart, the Indian justice system consists of a unitary system at both state and federal level. The judiciary consists of the [Supreme Court of India](#), [High Courts of India](#) at the state level, and [District Courts](#) and [Sessions Courts](#) at the district level.

### Supreme Court

The [Supreme Court of India](#) has [original](#), [appellate](#) and advisory jurisdiction. 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 insofar as the dispute involves any question (whether of law or of fact) on which the existence or extent of a legal right depends.

In addition, Article 32 of the Indian 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 and supreme court.

### Public interest litigation (PIL)

Although the proceedings in the Supreme Court arise out of the judgement or orders made by the subordinate courts, of late the Supreme Court has started entertaining matters in which interest of the public at large is involved, and the Court may be moved by any individual or group of persons either by filing a *Writ Petition* at the Filing Counter of the Court, or by addressing a letter to *Hon'ble The Chief Justice of India* highlighting the question of public importance for invoking this jurisdiction.

## Elections and voting

India has a quasi **federal government**, with elected officials at the federal (national), state and local levels. On a national level, the **head of government**, the **Prime Minister**, is elected indirectly by the people,<sup>[citation needed]</sup> through a general election where the leader of the majority winning party is selected to be the Prime Minister. All members of the federal legislature, the **Parliament**, are directly elected. Elections in India take place every five years by **universal adult suffrage**.

## State and local governments

**State governments** in India are the governments ruling **States of India** and the chief minister heads the state government. Power is **divided** between central government and state governments. State government's **legislature** is **bicameral** in **6 states** and **unicameral** in the rest. Lower house is elected with 5 years term, while in upper house 1/3 of the total members in the house gets elected every 2 years with 6 year term.

Local government function at the basic level. It is the third level of government apart from central and state governments. It consists of panchayats in rural areas and municipalities in urban areas. They are elected directly or indirectly by the people.

## Finance

Regional office of the **State Bank of India** (SBI), India's largest bank, in Mumbai. The government of India is the largest shareholder in SBI. India has a three-tier tax structure, wherein the **constitution** empowers the union government to levy **income tax**, tax on capital transactions (**wealth tax**, **inheritance tax**), **sales tax**, service tax, **customs** and **excise** duties and the **state governments** to levy sales tax on intrastate sale of goods, tax on **entertainment** and **professions**, excise duties on manufacture of **alcohol**, **stamp duties** on transfer of property and collect land revenue (levy on land owned). The **local governments** are empowered by the state government to levy **property tax** and charge users for **public utilities** like **water supply**, **sewage** etc.<sup>[12][13]</sup> More than half of the revenues of the union and state governments come from taxes, of which 3/4 come from **direct taxes**. More than a quarter of the union government's tax revenues is shared with the state governments.<sup>[14]</sup>

The tax reforms, initiated in 1991, have sought to rationalise the tax structure and increase compliance by taking steps in the following directions:

- Reducing the rates of individual and corporate income taxes, excises, customs and making it more progressive
- Reducing exemptions and concessions
- Simplification of laws and procedures
- Introduction of [permanent account number \(PAN\)](#) to track monetary transactions
- 21 of the 29 states introduced [value added tax \(VAT\)](#) on 1 April 2005 to replace the complex and multiple sales tax system<sup>[13][15]</sup>

The non-tax revenues of the central government come from [fiscal services](#), interest receipts, public sector dividends, etc., while the non-tax revenues of the States are grants from the central government, interest receipts, dividends and income from general, economic and social services. Inter-state share in the federal tax pool is decided by the recommendations of the [Finance Commission](#) to the President. Total tax receipts of Centre and State amount to approximately 18% of national GDP. This compares to a figure of 37–45% in the OECD.

## Central Board of Direct Taxes

The [Central Board of Direct Taxes](#) (CBDT) is a part of the Department of Revenue in the Ministry of Finance, Government of India. The CBDT provides essential inputs for policy and planning of [direct taxes](#) in India and is also responsible for administration of the direct tax laws through Income Tax Department. The CBDT is a statutory authority functioning under the Central Board of Revenue Act, 1963. It is India's official [Financial Action Task Force on Money Laundering](#) (FATF). The Central Board of Revenue as the Department apex body charged with the administration of taxes came into existence as a result of the Central Board of Revenue Act, 1924. Initially the Board was in charge of both direct and indirect taxes. However, when the administration of taxes became too unwieldy for one Board to handle, the Board was split up into two, namely the Central Board of Direct Taxes and Central Board of Excise and Customs with effect from 1.1.1964. This bifurcation was brought about by constitution of the two Boards u/s 3 of the Central Boards of Revenue Act, 1963.

### Organisational structure of the Central Board of Direct Taxes

The CBDT is headed by Chairman and also comprises six members, all of whom are *ex officio* **Special Secretary to Government of India**. The [Investigation Division of the Central Board of Direct Taxes](#) is also headed by a member of the CBDT.

The Chairman and Members of CBDT are selected from [Indian Revenue Service \(IRS\)](#), a premier civil service of India, whose members constitute the top management of Income Tax Department and other various departments.

### General budget

The [Finance minister of India](#) presents the annual [union budget](#) in the [Parliament](#) on the last [working day](#) of February. The budget has to be passed by the [Lok Sabha](#) before it can come into effect on 1 April, the start of India's [fiscal year](#). The Union budget is preceded by an [economic survey](#) which outlines the broad direction of the budget and the economic performance of the

country for the outgoing financial year. This economic survey involves all the various NGOs, women organisations, business people, old people associations etc.

The 2009 Union budget of India had a total estimated expenditure for 2009–10 was ₹10208.38 billion (US\$156 billion), of which ₹6956.89 billion (US\$106 billion) was towards Non Plan and ₹3251.49 billion (US\$50 billion) towards Plan expenditure. Total estimated revenue was ₹6198.42 billion (US\$95 billion), including revenue receipts of ₹6144.97 billion (US\$94 billion) and capital receipts of ₹53.45 billion (US\$818 million), excluding borrowings. The resulting fiscal deficit was ₹4009.96 billion (US\$61 billion) while revenue deficit was ₹2827.35 billion (US\$43 billion). The gross tax receipts were budgeted at ₹6410.79 billion (US\$98 billion) and non-tax revenue receipts at ₹1402.79 billion (US\$21 billion).

India's non-development revenue expenditure has increased nearly fivefold in 2003–04 since 1990–91 and more than tenfold since 1985–1986. Interest payments are the single largest item of expenditure and accounted for more than 40% of the total non development expenditure in the 2003–04 budget. Defence expenditure increased fourfold during the same period and has been increasing due to India's desire to project its military prowess beyond South Asia. In 2007, India's defence spending stood at US\$26.5 billion.<sup>1</sup>

## Prime Minister of India

The **Prime Minister of India**, as addressed to in the [Constitution of India](#), is the [chief of government](#), chief advisor to the [President of India](#), head of the [Council of Ministers](#) and the leader of the majority party in [parliament](#). The [prime minister](#) leads the [executive branch](#) of the [Government of India](#). The prime minister is the senior member of [cabinet](#) in the [executive](#) branch of government in a [parliamentary system](#). The prime minister selects and can dismiss other members of the cabinet; allocates posts to members within the Government; is the presiding member and chairman of the cabinet and is responsible for bringing proposal of legislation. The resignation or death of the prime minister dissolves the cabinet. The prime minister is appointed by the president to assist the latter in the administration of the affairs of the executive. The incumbent prime minister is [Manmohan Singh](#), in office since 22 May 2004.

## Origins and history

India follows a parliamentary system of government. In parliamentary systems fashioned after the [Westminster system](#), the prime minister is the presiding and actual [head of the government](#) and head of the executive branch. In such systems, the [head of state](#) or the head of state's official representative (i.e., the monarch, president, or governor-general) usually holds a purely ceremonial position. The prime minister is expected to become a member of parliament within six months of beginning their tenure, if they are not a member already. They are expected to work with other ministers to ensure the passage of bills through the legislature.

## Constitutional framework and position of prime minister

The [Constitution](#) envisages a scheme of affairs in which the [President of India](#) is the head of the executive in terms of Article 53 with office of the prime minister as heading the [Council of](#)



**Ministers** to assist and advise the president in the discharge of the executive power. To quote, Article 53 and 74 provide as under;

The executive powers of the Union shall be vested in the president and shall be exercised either directly or through subordinate officers, in accordance with the Constitution.

— Article 53(1), Constitution of India

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.

— Article 74(1), Constitution of India

Like most **parliamentary democracies**, a **head of State's** duties are mostly **ceremonial**, the Prime Minister of India is the **head of government** and has the responsibility for executive power. With India following a parliamentary system of government the prime minister is generally the leader of a party (or coalition of parties) that has a majority in the **Lok Sabha**, the lower house of the Parliament of India. The prime minister, in common with all other ministers at Central & state level, either has to be a current member of one of the houses of Parliament, or be elected within six months of being appointed.<sup>[2]</sup>

## Role and power of the prime minister

The prime minister leads the functioning and exercise of authority of the Government of India. He is invited by the President of India in the Parliament of India as leader of the majority party to form a government at the federal level (known as *Central* or *Union Government* in India) and exercise its powers. In practice the prime minister nominates the members of their **Council of Ministers**<sup>[3][4][5]</sup> to the president. They also work upon to decide a core group of Ministers (known as the Cabinet)<sup>[3]</sup> as in-charge of the important functions and ministries of the **Government of India**.

The prime minister is responsible for aiding and advising the president in distribution of work of the Government to various ministries and offices and in terms of the *Government of India (Allocation of Business) Rules, 1961*.<sup>[6]</sup> The co-ordinating work is generally allocated to the Cabinet Secretariat<sup>[7]</sup> While generally the work of the Government is divided into various Ministries, the prime minister may retain certain portfolios if they are not allocated to any member of the cabinet.

The prime minister, in consultation with the Cabinet, schedules and attends the sessions of the Houses of Parliament and is required to answer the question from the Members of Parliament to them as the in-charge of the portfolios in the capacity as Prime Minister of India.<sup>[8]</sup>

Some specific ministries/department are not allocated to anyone in the cabinet but the prime minister himself. The prime minister is usually always in-charge/head of:

- [Appointments Committee of the Cabinet](#);

- [Ministry of Personnel, Public Grievances and Pensions](#);
- Ministry of Planning;
- [Department of Atomic Energy](#); and
- Department of Space.

The prime minister represents the country in various delegations, high level meetings and international organisations that require the attendance of the highest government office<sup>[9]</sup> and also addresses to the nation on various issues of national or other importance.<sup>[10]</sup>

## Appointment

### Eligibility

According to Article 84 of the Constitution of India, which sets the principal qualifications for member of Parliament, and Article 75 of the Constitution of India, which sets the qualifications for the minister in the Union Council of Minister, and the argument that the position of prime minister has been described as 'first among equals',<sup>[11]</sup> A prime minister must:

- be a citizen of India.
- be a member of the [Lok Sabha](#) or the [Rajya Sabha](#). If the person chosen as the prime minister is neither a member of the Lok Sabha nor the Rajya Sabha at the time of selection, he must become a member of either of the houses within six months.
- be above 25 years of age if he is a member of Lok Sabha or above 30 years of age if he is a member of the Rajya Sabha.
- not hold 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.

### Oath

The Prime Minister is required to make and subscribe in the presence of [President of India](#) before entering office, the oath of office and secrecy, as per the Third Schedule of the Constitution of India.

Oath of office:

I, <name>, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as prime minister for the Union and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

Constitution of India, Third Schedule, Part I

Oath of secrecy:

I, <name>, do swear in the name of God/solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my

consideration or shall become known to me as prime minister for the Union except as may be required for the due discharge of my duties as such Minister.

— Constitution of India, Third Schedule, Part II

## Remuneration

By Article 75 of the constitution of India, remuneration of the prime minister as well as other ministers are to be decided by the Parliament<sup>[12]</sup> and is renewed from time to time. The original remuneration for prime minister and other ministers were specified in the Part B of the second schedule of the constitution, which was later removed by an amendment.

In 2010, the prime minister's office reported that he did not receive a formal salary, but was only entitled to monthly allowances.<sup>[13]</sup> That same year *The Economist* reported that, on a [purchasing-power parity](#) basis, the prime minister received an equivalent of \$4106 per year. As a percentage of the country's per-capita GDP (Gross Domestic Product), this is the lowest of all countries *The Economist* surveyed.<sup>[14]</sup> **Prime Minister monthly pay and allowances**

Salary in Oct 2009	Salary in Oct 2010	Salary in Jul 2012
₹100000 (US\$1,500)	₹135000 (US\$2,100)	₹160000 (US\$2,400)

Sources: <sup>[1]</sup>

## CABINET

In some countries, particularly those that use the [Westminster system](#) (e.g. the [UK](#)), the Cabinet collectively decides the government's direction, especially in regard to legislation passed by the [parliament](#). In countries with a [presidential system](#), such as the [United States](#), the Cabinet does not function as a collective legislative influence; rather, their primary role is as an official advisory council to the [head of government](#). In this way, the [President](#) gets opinions and advice in upcoming decisions. Legally, under both types of systems, the Cabinet "advises" the Head of State: the difference is that, in a parliamentary system, the monarch, viceroy or ceremonial president will almost always follow this advice, whereas in a presidential system, a president who is also head of government and political leader may depart from the Cabinet's advice if he does not agree with the Cabinet.

The second role of cabinet officials is to administer [executive branch government agencies](#) or departments (in the United States, these are the [federal executive departments](#))

In most countries, including those that use the Westminster system, Cabinet ministers are appointed from among sitting members of the [legislature](#) and remain members of the legislature while serving in the cabinet. In other countries, especially countries with a presidential system, the opposite is true - Cabinet members must not be sitting legislators, and legislators who are offered appointments must resign if they wish to accept.

In most governments, members of the Cabinet are given the title of [minister](#), and each holds a different [portfolio](#) of government duties ("Minister for the Environment," etc.). In a few governments, as in the case of the United States, the [Philippines](#), [Mexico](#) and the [United Kingdom](#), the title of [secretary](#) is also used for some Cabinet members ("Secretary of Education," or "Secretary of State" in the UK). [Attorneys general](#) also sit in the cabinet. The day-to-day role of most cabinet members is to serve as the head of one segment of the national [bureaucracy](#) to whom all other employees in that department report.

The size of cabinets varies, although most contain around ten to twenty ministers. Researchers have found an inverse correlation between a country's level of [development](#) and cabinet size: on average, the more developed a country is, the smaller is its cabinet.<sup>[1]</sup>

## Origins of cabinets

Historically, cabinets began as smaller sub-groups of the [English Privy Council](#). The term comes from the name for a [relatively small and private room](#) used as a study or retreat. Phrases such as "cabinet counsel," meaning advice given in private to the monarch, occur from the late 16th century, and, given the non-standardized spelling of the day, it is often hard to distinguish whether "council" or "counsel" is meant.<sup>[2]</sup>

The *Oxford English Dictionary* credits [Francis Bacon](#) in his *Essays* (1605) with the first use of "Cabinet council", where it is described as a foreign habit, of which he disapproves: "For which inconveniences, the doctrine of Italy, and practice of France, in some kings' times, hath introduced cabinet counsels; a remedy worse than the disease".<sup>[3]</sup>

[Charles I](#) began a formal "Cabinet Council" from his accession in 1625, as his Privy Council, or "private council", was evidently not private enough<sup>[citation needed]</sup>, and the first recorded use of "cabinet" by itself for such a body comes from 1644, and is again hostile and associates the term with dubious foreign practices.<sup>[2]</sup> The process has repeated itself in recent times, as leaders have felt the need to have a [Kitchen Cabinet](#) or "sofa government".<sup>[4]</sup>

## Westminster cabinets

Under the [Westminster system](#), members of the cabinet are collectively [responsible](#) for all government policy. All ministers, whether senior and in the cabinet or junior

ministers, must publicly support the policy of the government, regardless of any private reservations. Although, in theory, all cabinet decisions are taken collectively by the cabinet, in practice many decisions are delegated to the various sub-committees of the cabinet, which report to the full cabinet on their findings and recommendations. As these recommendations have already been agreed upon by those in the cabinet who hold affected ministerial portfolios, the recommendations are usually agreed to by the full cabinet with little further discussion. The cabinet may also provide ideas on/if new laws were established, and what they include.

Cabinet deliberations are secret and documents dealt with in cabinet are confidential. Most of the documentation associated with cabinet deliberations will only be publicly released a considerable period after the particular cabinet disbands; for example, *twenty years* after they were discussed.

In theory the *prime minister* or premier is *first among equals*. However, the prime minister is the person from whom the *head of state* will ultimately take *advice* on the exercise of *executive power*, which may include the powers to declare war, use nuclear weapons, expel ministers from the cabinet, and to determine their portfolios in a *cabinet reshuffle*. This position in relation to the executive power means that, in practice, the prime minister has a high degree of control over the cabinet: any spreading of responsibility for the overall direction of the government has usually been done as a matter of preference by the prime minister – either because they are unpopular with their backbenchers, or because they believe that the cabinet should collectively decide things.

The *shadow cabinet* consists of the leading members, or *frontbenchers*, of an *opposition party*, who generally hold critic portfolios "shadowing" cabinet ministers, questioning their decisions and proposing policy alternatives.

The Westminster cabinet system is the foundation of cabinets as they are known at the federal and provincial (or state) jurisdictions of *Australia, Bangladesh, Canada, Pakistan, India, South Africa, New Zealand*, and other *Commonwealth of Nations* countries whose parliamentary model is closely based on that of the United Kingdom

- **President of India** : Pranab Mukherjee

**Vice President of India** : Mohammad Hamid Ansari

**Manmohan Singh** :

- \* Prime Minister of India
- \* Ministry of Planning
- \* Ministry of Personnel, Public Grievances and Pensions
- \* Department of Atomic Energy
- \* Department of Space

**Sushilkumar Shinde** Minister of Home Affairs

**P Chidambaram** : Minister of Finance

**Salman Khurshid** Minister of External Affairs

**A K Antony** : Ministry of Defence

**Jairam Ramesh** Minister of Rural Development

**Sharad Pawar** : Minister of Food Processing Industries , Minister of Agriculture

**Ghulam Nabi Azad** Minister of Health and Family Welfare

**Farooq Abdullah** Minister of New and Renewable Energy

**Kamal Nath** Minister of Urban Development Minister of Parliamentary Affairs

**Vayalar Ravi** Minister of Overseas Indian Affairs

**S. Jaipal Reddy** Minister of Science and Technology Minister of Earth Sciences

**Ajit Singh** Minister of Civil Aviation

**Kapil Sibal** Minister of Communications and Information Technology  
Minister of Law and Justice

**M.M. Pallam Raju** Minister of Human Resource Development

**M. Veerappa Moily** Minister of Petroleum and Natural Gas

**Mallikarjun Kharge** Minister of Railways

**Sis Ram Ola** Minister of Labour and Employment

**Oscar Fernandes** Minister of Road Transport and Highways

**Anand Sharma** Minister of Commerce and Industry

**K. S. Rao** Minister of Textiles

**Praful Patel** Minister of Heavy Industries and Public Enterprises

**Chandresh Kumari Katoch** Minister of Culture

**Girija Vyas** Minister of Housing and Urban Poverty Alleviation

**K Rahman Khan** Minister of Minority Affairs

**G K Vasan** Minister of Shipping

**Harish Rawat** Minister of Water Resources

**Kumari Selja** Minister of Social Justice and Empowerment

**V. Kishore Chandra Deo** Minister of Tribal Affair, Minister of Panchayati Raj

**M. K. Alagiri** Minister of Chemicals and Fertilizers

**Beni Prasad Verma** Minister of Steel

**Shriprakash Jaiswal** Minister of Coal

**Dinsha Patel** Ministry of Mines

=== **Ministers of State with Independent Charge** ===

**Krishna Tirath** Ministry of Women and Child Development

**Jitendra Singh** Ministry of Youth Affairs and Sports

**Srikant Kumar Jena** Ministry of Statistics and Programme Implementation

**Jayanthi Natarajan** Ministry of Environment and Forests

**Manish Tewari** Minister of Information and Broadcasting

**Paban Singh Ghatowar** Ministry of Development of North Eastern Region

**K. Chiranjeevi** Minister of Tourism

**Bharatsinh Madhavsinh Solanki** Ministry of Drinking Water and Sanitation

**Jyotiraditya Scindia** Minister of Power

**K.H. Muniyappa** Minister of Micro, Small and Medium Enterprises

**Sachin Pilot** Minister of Corporate Affairs

=====

**Montek Singh Ahluwalia** Planning Commission

**Nandan Nilekani** Unique Identification Authority of India

## Parliament of India

The **Parliament of India**, also popularly known as **Sansad** (Sanskrit: संसद); is the supreme **legislative body** in India. The Parliament comprises the **President of India** and the two Houses—**Lok Sabha** (House of the People) and **Rajya Sabha** (Council of States). The President has the power to summon and prorogue either House of Parliament or to dissolve Lok Sabha.<sup>[5]</sup>

India's is **bicameral**; Rajya Sabha is the **upper house** and Lok Sabha is the **lower house**. The two Houses meet in separate **chambers** in the **Sansad Bhavan** (located on the **Sansad Marg** or "Parliament Street") in New Delhi. Those elected or nominated (by the President) to either house of Parliament are referred to as members of parliament or MPs. The MPs of Lok Sabha are **directly elected** by the Indian public and the MPs of Rajya Sabha are elected by the members of the **State Legislative Assemblies**, in accordance with **proportional representation**. The Parliament is composed of 790 MPs, who serve the largest democratic electorate in the world; 714 million Indians registered to vote in the **2009 general elections**

The Indian Parliament consists of two houses called as **Lok Sabha** and the **Rajya Sabha** and the **President of India**.

### President of India

Similar to most **Commonwealth countries**, India also includes the **Head of State** (the



**President of India** in India's case) as a component of Parliament. The President of India is elected, from a group of nominees, by the elected members of the Parliament of India (**Lok Sabha** and **Rajya Sabha**) as well as of the state legislatures, and serves for a term of five years. Historically, ruling party (majority in the Lok Sabha) nominees have been elected and run largely uncontested. Incumbents are permitted to stand for re-election, but unlike the president of the United States, who can be elected just twice, incumbents can be elected for any number of terms. A formula is used to allocate votes so there is a balance between the population of each state and the number of votes assembly members from a state can cast, and to give an equal balance between State Assembly members and National Parliament members. If no candidate receives a majority of votes there is a system by which losing candidates are eliminated from the contest and votes for them transferred to other candidates, until one gains a majority. **Pranab Mukherjee** is the present **President of India**.<sup>[6]</sup>

## **Lok Sabha**

Lok Sabha is also known as the "House of the People" or the **lower house**. All of its members are directly elected by citizens of India on the basis of universal adult franchise, except two who are appointed by the **President of India**. Every citizen of **India** who is over 18 years of age, irrespective of gender, caste, religion or race, who is otherwise not disqualified, is eligible to vote for the lok sabha.

The Constitution provides that the maximum strength of the House be 552 members. It has a term of five years. To be eligible for membership in the Lok Sabha, a person must be a citizen of India and must be 25 years of age or older, mentally sound, should not be bankrupt and should not be criminally convicted. At present, the strength of the house is 545 members. 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.<sup>[7]</sup> Up to 530 members represent of the territorial constituencies in States, up to 20 members represent the Union Territories and no more than two members from **Anglo-Indian** community can be nominated by the **President of India** if he or she feels that the community is not adequately represented. House seats are apportioned among the states by population .Several seats are reserved for representatives of **Scheduled Castes** and **Scheduled Tribes**, known as a practice known as **reservation**. The **Women's Reservation Bill** proposes reserving 33% of the seats in Lok Sabha for women.

## **Rajya Sabha**

The **Rajya Sabha** is also known as "Council of States" or the **upper house**. Rajya Sabha is a permanent body and is not subject to dissolution. However, one third of the members retire every second year, and are replaced by newly elected members. Each member is elected for a term of six years.<sup>[8]</sup> Its members are indirectly elected by members of legislative bodies of the States.

The Rajya Sabha can have a maximum of 250 members in all. Elections to it are scheduled and the chamber cannot be dissolved. Each member has a term of 6 years and elections are held for one-third of the seats after every 2 years. 238 members are to be elected from States and Union Territories and 12 are to be nominated by [President of India](#) and shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely literature, science, art and social service. The minimum age for a person to become a member of Rajya Sabha is 30 years.

- Representatives of States are elected by the elected members of the Legislative Assembly of the State in accordance with system of [proportional representation](#) by means of [single transferable vote](#).
- Representatives of Union Territories are indirectly elected by members of an [electoral college](#) for that territory in accordance with system of [proportional representation](#).

The Council of States is designed to maintain the [federal](#) character of the country. The number of members from a state depends on the population of the state (e.g. 31 from [Uttar Pradesh](#) and one from [Nagaland](#)).

## Architecture

The parliament is one of the most magnificent buildings in New Delhi. It was designed by [Edwin Lutyens](#) and [Herbert Baker](#), who were responsible for planning and construction of New Delhi. The construction of buildings took six years and the opening ceremony was performed on 18 January 1927 by the then [Governor-General of India, Lord Irwin](#). The construction costs for the building were Rs. 8.3 million. The parliament is 570 feet (170 meters) in diameter. It covers an area of nearly six acres. The building has twelve gates among which Gate No. 1 on the Sansad Marg is the main gate.

### General layout of the building

The centre and the focus of the building is the Central Hall. It consists of chambers of Lok Sabha, Rajya Sabha and the Library Hall and between them lie garden courts. Surrounding these three chambers is the four storied circular structure providing accommodations for Ministers, Chairmen, Parliamentary committees, Party offices, important offices of Lok Sabha and Rajya Sabha Secretariats and also the offices of the ministry of Parliamentary affairs. The Central Hall is circular in shape and the dome is 98 feet (29.87 meters) in diameter. It is the place of historical importance. The [Indian Constitution](#) was framed in the Central Hall. The Central Hall was originally used in the library of erstwhile Central Legislative Assembly and the Council of States. In 1946, it was converted and refurbished into Constituent Assembly Hall. At present, the Central Hall is used for holding joint sittings of both the houses of parliament and also used for address by the President in the

commencement of first session after each [general election](#).

## Working, procedures and committees

The Parliament consists of the President of Republic of India and both the Chambers. The House and the Council are equal partners in the legislative process; however, the Constitution grants the House of People some unique powers. Revenue-raising or "Money" [bills](#) must originate in the Lok Sabha. The Council of States can only make recommendations suggestions over these bills to the House, within a period of fourteen days – lapse of which the bill is assumed to have been passed by both the Chambers.<sup>[5]</sup>

### Session of parliament

The period during which the House meets to conduct its business is called a session. The Constitution empowers the President to summon each House at such intervals that there should not be more than 6-month's gap between the two sessions. Hence the Parliament must meet at least twice a year. In India, the parliament conducts three sessions each year:<sup>[5]</sup>

- Budget session: In the months of February to May.<sup>[5]</sup>
- Monsoon session: In the months of July to September.<sup>[5]</sup>
- Winter session: In the months of November to December<sup>[5]</sup>

### Lawmaking procedures

Lawmaking procedures in India are modelled after, and are thus very similar to, those followed by the Parliament of the United Kingdom.

### Parliamentary committees

Parliamentary committees play a vital role in the Parliamentary System. They are a vibrant link between the Parliament, the Executive and the general public.

The need for committees arises out of two factors – the first one being the need for vigilance on the part of the Legislature over the actions of the Executive, while the second one is that the modern Legislature these days is over-burdened with heavy volume of work with limited time at its disposal. It thus becomes impossible that every matter should be thoroughly and systematically scrutinised and considered on the floor of the House. If the work is to be done with reasonable care, some Parliamentary responsibility has to be entrusted to an agency in which the whole House has confidence. Entrusting certain functions of the House to the Committees has, therefore, become a normal practice. This has become all the more necessary, as a Committee provides the expertise on a matter which is referred to it. In a committee, the matter is deliberated at length, views are expressed freely, the matter is considered in depth, in a business-like manner and in a calm atmosphere. In most of the

Committees, public is directly or indirectly associated when memoranda containing suggestions and are received, on-the-spot studies are conducted and oral evidence is taken which helps the Committees in arriving at the conclusions.

Parliamentary committees are of two kinds: ad hoc committees and the standing committees most powerful of all is public accounts committee which is headed by the leader of the opposition.

### **Standing committees**

There are 45 standing committees in the Indian Parliament. Each house of Parliament has standing committees like the Business Advisory Committee, the Committee on Petitions, the Committee of Privileges and the Rules Committee, etc.

Standing committees are permanent and regular committees which are constituted from time to time in pursuance of the provisions of an Act of Parliament or Rules of Procedure and Conduct of Business in Parliament. The work of these committees is of a continuing nature. The Financial Committees, DRSCs and some other committees are standing committees.

### **Ad hoc committees**

Ad hoc committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report. The principal ad hoc committees are the Select and Joint Committees on Bills. Others like the Railway Convention Committee, the Committees on the Draft Five Year Plans and the Hindi Equivalents Committee were appointed for specific purposes. Joint Committee on Food Management in Parliament House Complex etc. also come under the category of ad hoc committees

## **SUPREME COURT OF INDIA**

The **Supreme Court of India** is the highest judicial forum and final court of appeal as established by Part V, Chapter IV of the [Constitution of India](#). According to the Constitution, the role of the Supreme Court is guardian of Constitution & that of a federal court. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. The Supreme Court [Original jurisdiction](#) is constitutional system & [Govt of India](#) federal dispute. The Supreme Court is the highest [appellate court](#) which takes up appeals against the verdicts of the [High Courts](#) and other courts of the states and territories. The Supreme court has the power of [Constitutional review](#). The Supreme Court of India held its inaugural sitting on 28 January 1950.

### **History**

The Supreme Court of India came into being on 28 January 1950. It replaced both the

[Federal Court of India](#) and the [Judicial Committee of the Privy Council](#) which were at the apex of the Indian court system. Its initial seat was the [Chamber of Princes](#) in the Parliament building where the previous [Federal Court of India](#) sat from 1937 to 1950. In 1958, the Supreme Court moved to its present premises

## **Constitution of the court**

Supreme Court of India - Central Wing

### **Registry**

The Registry of the Supreme Court is headed by the Secretary General who is assisted in his work by seven Registrars, and twenty one Additional Registrars etc. Article 146 of the Constitution deals with the appointments of officers and servants of the Supreme Court Registry.

### **Supreme Court Advocates**

There are three categories of Advocates who are entitled to practise law before the Supreme Court of India:-

#### **Senior Advocates**

These are Advocates who are designated as [Senior Advocates](#) by the Supreme Court of India or by any High Court. The Court can designate any Advocate, with his consent, as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said Advocate is deserving of such distinction. A Senior Advocate is not entitled to appear without an [Advocate-on-Record](#) in the Supreme Court or without a junior in any other court or tribunal in India. He is also not entitled to accept instructions to draw pleadings or affidavits, advise on evidence or do any drafting work of an analogous kind in any court or tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior

#### **Advocate-on-Record**

Only these Advocates are entitled to file any matter or document before the Supreme Court. They can also file an appearance or act for a party in the Supreme Court.

#### **Other Advocates**

These are Advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 and they can appear and argue any matter on behalf of a party in the Supreme Court but they are not entitled to file any

document or matter before the Court.<sup>[2]</sup>

## The Supreme Court Building and its architecture

The main block of the Supreme Court building was built on a square plot of 22 acres and the building was designed by chief architect [Ganesh Bhikaji Deolalikar](#) who was the first Indian to head [CPWD](#) and designed the Supreme Court Building in an Indo-British architectural style. He was succeeded by [Shridher Krishna Joglekar](#). The Court moved into the present building in 1958. The building is shaped to project the image of scales of justice with the Central Wing of the building corresponding to the centre beam of the Scales. In 1979, two new wings - the East Wing and the West Wing - were added to the complex. In all there are 15<sup>[3]</sup> court rooms in the various wings of the building. The Chief Justice's Court is the largest of the courtrooms located in the centre of the Central Wing.

### Size of the court

As originally enacted, the [Constitution of India](#) provided for a Supreme Court with a Chief Justice and seven lower-ranking Judges-leaving it to [Indian Parliament](#) to increase this number. In the early years, a [full bench](#) of the Supreme Court sat together to hear the cases presented before them. As the work of the Court increased and cases began to accumulate, Parliament increased the number of Judges from the original eight in 1950 to eleven in 1956, fourteen in 1960, eighteen in 1978, twenty-six in 1986 and thirty one in 2008. As the number of the Judges has increased, they have sat in smaller Benches of two or three (referred to as a *Division Bench*) - coming together in larger Benches of five or more (referred to as a *Constitutional Bench*) only when required to settle fundamental questions of law. Any bench may refer the case under consideration up to a larger bench if the need to do so arises.<sup>[4]</sup>

### Eligibility

- The person must be a citizen of India<sup>[5]</sup>
- Judge of a High Court or of two or more such Courts in succession for at least five years,<sup>[5]</sup> or
- An Advocate of a High Court or of two or more such Courts in succession for at least ten years,<sup>[5]</sup> or
- The person must be, in the opinion of the President, a distinguished jurist.<sup>[5]</sup>

A Judge of a High Court or retired Judge of the Supreme Court or High Courts may be appointed as an ad-hoc Judge of the Supreme Court.

### Appointments and the Collegium

Judges of Supreme Court used to be appointed by the [President of India](#), who acted on the advice of the [Union Cabinet](#). Subsequent to the rulings in the [Three Judges Cases](#) (1982, 1993, 1998), the President has to appoint judges who have been chosen

by the Supreme Court's collegium - a closed group comprising the Chief Justice of India and the four senior most associate judges of the court.<sup>[6]</sup> The Union Cabinet and Parliament have almost no role to play in the appointment of judges to the Supreme Court or to any of India's twenty-four High Courts.<sup>[7]</sup> The position of **Chief Justice of India** is attained on the basis of seniority amongst the judges serving on the court.<sup>[4]</sup>

## Tenure

Supreme Court judges retire at the age of 65. A judge of Supreme Court can be removed by the procedure prescribed in Article 124(4) of **Constitution of India** on ground of proved misconduct or incapacity or judge resigning from his office addressed to the **President of India**. The procedure prescribed for removal of Supreme Court judge should not be called an **impeachment** procedure because this procedure is provided only for the removal of the **President of India** under Article 61 of **Constitution of India** on ground of violation of the Constitution.<sup>[4]</sup>

## Salary

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 appointment.<sup>[8]</sup> A judge gets ₹90,000 and the Chief Justice gets a sum of ₹1,00,000.<sup>[9]</sup>

## Court demographics

I am proud to be an Indian. India is the only country where a member of the minority Parsi community with a population of 1,67,000, like myself, can aspire to attain the post of the Chief Justice of India. These things do not happen in our neighbouring countries.

Chief Justice of India, [SH Kapadia](#)<sup>[10][11]</sup>

In 2000 Justice **K. G. Balakrishnan** became the first judge from the *dalit* community. In 2007 he also became the first *dalit* Chief Justice of India. In 2010, Justice **SH Kapadia** coming from a **Parsi** minority community became the Chief Justice of India.<sup>[10][12]</sup> The current Chief Justice, **P Sathasivam**, was sworn in on 1 July 2013 and will hold the office till 2014.

## Rules

The **Constitution of India** under [[s:Constitution of India/Part V#Article 145 {Rules of Court, etc.}|Article 145]] empowers the supreme court to frame its own rules for regulating the practice and procedure of the Court as and when required (with the approval of the **President**). Accordingly, "Supreme Court Rules, 1950" were framed. They were replaced by the present rules called as "**Supreme Court Rules, 1966**".

## Reporting and citation

Supreme Court Reports is the official journal of Reportable Supreme Court Decisions. It is published under the authority of the Supreme Court of India by the Controller of Publications, Government of India, Delhi.<sup>[13]</sup>

## Judicial independence

The Constitution seeks to ensure the independence of Supreme Court Judges in various ways. In **Three Judges Cases**, the court held that a Supreme Court judge can be appointed by the President only on the recommendations of the collegium system as mentioned earlier. A Judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each **House of Parliament** supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same Session for such removal on the ground of proved misbehaviour or incapacity. The salary and allowances of a judge of the Supreme Court cannot be reduced after appointment. A person who has been a Judge of the Supreme Court is debarred from practising in any court of law or before any other authority in India.

## Power to review its own judgements

Under Order XL of the Supreme Court Rules, the Supreme Court may review its judgment or order but no application for review is to be entertained in a civil proceeding except on the grounds mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure.

## Powers to punish contempt

Under Articles 129 and 142 of the Constitution the Supreme Court has been vested with power to punish anyone for **contempt** of any court in India including itself. The Supreme Court performed an unprecedented action when it directed a sitting Minister of the state of Maharashtra, Swaroop Singh Naik,<sup>[14]</sup> to be jailed for 1-month on a charge of **contempt of court** on 12 May 2006. This was the first time that a serving Minister was ever jailed.<sup>[15][16]</sup>

## Landmark judgments: Judiciary-Legislature confrontations

### Land reform (early confrontation)

After some of the courts overturned state laws redistributing land from *zamindar* (landlord) estates on the grounds that the laws violated the zamindars' fundamental rights, the Parliament of India passed the First Amendment to the Constitution in 1951 followed by the Fourth Amendment in 1955 to protect its authority to implement land redistribution. The Supreme Court countered these amendments in



1967 when it ruled in [Golaknath v. State of Punjab](#)<sup>[17]</sup> that Parliament did not have the power to abrogate fundamental rights, including the provisions on private property

## Emergency and Government of India

The independence of judiciary was severely curtailed <sup>[19]</sup> during the **Indian Emergency (1975-1977)** of **Indira Gandhi**. The constitutional rights of imprisoned persons were restricted under Preventive detention laws passed by the parliament. In the case of Shiva Kant Shukla *Additional District Magistrate of Jabalpur v. Shiv Kant Shukla*, popularly known as the *Habeas Corpus case*, a bench of five seniormost judges of Supreme court ruled in favour of state's right for unrestricted powers of detention during emergency. Justices **A.N. Ray**, **P. N. Bhagwati**, **Y. V. Chandrachud**, and **M.H. Beg**, stated in the majority decision:<sup>[20]</sup>

(under the declaration of emergency) no person has any locus to move any writ petition under Art. 226 before a High Court for **habeas corpus** or any other writ or order or direction to challenge the legality of an order of detention.

The only dissenting opinion was from Justice **H. R. Khanna**, who stated:

detention without trial is an anathema to all those who love personal liberty... A dissent is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting Judge believes the court to have been betrayed.<sup>[20]</sup>

It is believed that before delivering his dissenting opinion, Justice Khanna had mentioned to his sister: *I have prepared my judgment, which is going to cost me the Chief Justice-ship of India.*"<sup>[21]</sup> In January 1977, Justice Khanna was superseded despite being the most senior judge at the time and thereby Government broke the convention of appointing only the senior most judge to the position of Chief Justice of India. Justice Khanna remains a legendary figure among the legal fraternity in India for this decision.

The **New York Times**, wrote of this opinion: "The submission of an independent judiciary to absolutist government is virtually the last step in the destruction of a democratic society; and the Indian Supreme Court's decision appears close to utter surrender."

During the emergency period, the government also passed the 39th amendment, which sought to limit judicial review for the election of the Prime Minister; only a body constituted by Parliament could review this election.<sup>[22]</sup> Subsequently, the parliament, with most opposition members in jail during the emergency, passed the **42nd Amendment** which prevented any court from reviewing any amendment to the constitution with the exception of procedural issues concerning ratification. A few

years after the emergency, however, the Supreme court rejected the absoluteness of the 42nd amendment and reaffirmed its power of judicial review in the *Minerva Mills* case (1980).

## Post-1980: an assertive Supreme Court

After Indira Gandhi lost elections in 1977, the new government of [Morarji Desai](#), and especially law minister [Shanti Bhushan](#) (who had earlier argued for the detainees in the *Habeas Corpus case*), introduced a number of amendments making it more difficult to declare and sustain an emergency, and reinstated much of the power to the Supreme Court. It is said that the Basic Structure doctrine, created in *Kesavananda*, was strengthened in *Indira Gandhi's* case and set in stone in *Minerva Mills*.

The Supreme Court's creative and expansive interpretations of Article 21 (Life and Personal Liberty), primarily after the Emergency period, have given rise to a new jurisprudence of [public interest litigation](#) that has vigorously promoted many important economic and social rights (constitutionally protected but not enforceable) including, but not restricted to, the rights to free education, livelihood, a clean environment, food and many others. Civil and political rights (traditionally protected in the Fundamental Rights chapter of the Indian Constitution) have also been expanded and more fiercely protected. These new interpretations have opened the avenue for litigation on a number of important issues. It is interesting to note that the pioneer of the expanded interpretation of Article 21, Chief Justice P N Bhagwati, was also one of the judges who heard the ADM Jabalpur case, and held that the Right to Life could not be claimed during Emergency.

## Recent important cases

Among the important pronouncements of the Supreme Court post 2000 is the Coelho case [I.R. Coelho v. State of Tamil Nadu (Judgment of 11th January 2007)]. A unanimous Bench of 9 judges reaffirmed the basic structure doctrine. It held that a constitutional amendment which entails violation of any fundamental rights which the Court regards as forming part of the basic structure of the Constitution, then the same can be struck down depending upon its impact and consequences. The judgment clearly imposes further limitations on the constituent power of Parliament with respect to the principles underlying certain fundamental rights. The judgment in Coelho has in effect restored the decision in Golak Nath regarding non-amendability of the Constitution on account of infringement of fundamental rights, contrary to the judgment in [Kesavananda Bharati case](#).

Another important decision was of the five-judge Bench in Ashoka Kumara Thakur v. Union of India; where the constitutional validity of Central Educational Institutions (Reservations in Admissions) Act, 2006 was upheld, subject to the "creamy layer" criteria. Importantly, the Court refused to follow the '[strict scrutiny](#)' standards of review followed by the United States Supreme Court. At the same time, the Court has applied the strict scrutiny standards in Anuj Garg v. Hotel Association of India (2007)

([1])

## **2G spectrum scam**

The Supreme Court declared allotment of spectrum as "unconstitutional and arbitrary" and quashed all the 122 licenses issued in 2008 during tenure of [A. Raja](#) (then minister for communications & IT), the main official accused in the 2G scam case.<sup>[23]</sup>

## **Black money**

The government refused to disclose details of about 18 Indians holding accounts in LGT Bank, [Liechtenstein](#), evoking a sharp response from a Bench comprising Justices B Sudershan Reddy and S S Nijjar. The court ordered Special investigation team (SIT) to probe the matter.<sup>[24][25]</sup> Lack of enthusiasm made the court create a special investigative team (SIT).<sup>[26]</sup>

## **Minority reservations**

The SC refused to stay the Andhra High Court judgement quashing 4.5% sub-quota for minorities under OBC reservation quota of 27% .<sup>[27]</sup>

## **Online/Postal Ballot For Indians Citizens Living in Abroad (NRIs)**

Three judge bench presided by Honorable Chief Justice Altamas Kabir issued notice to the Centre and the Election Commission of India (EC) on the PIL filed by a group of NRIs for online/postal ballot for the Indian citizens living in abroad.<sup>[28] [29]</sup>

## **Corruption and misconduct of judges**

2008 saw the Supreme Court embroiled in several controversies, from serious allegations of corruption at the highest level of the judiciary,<sup>[30]</sup> expensive private holidays at the tax payers expense,<sup>[31]</sup> refusal to divulge details of judges' assets to the public,<sup>[32]</sup> secrecy in the appointments of judges',<sup>[33]</sup> to refusal to make information public under the [Right to Information Act](#).<sup>[34]</sup> The Chief Justice [K. G. Balakrishnan](#) invited a lot of criticism for his comments on his post not being that of a public servant, but that of a constitutional authority.<sup>[35]</sup> He later went back on this stand.<sup>[36]</sup> The judiciary has come in for serious criticisms from former Presidents of India [Pratibha Patil](#) and [A. P. J. Abdul Kalam](#) for failure in handling its duties.<sup>[37]</sup> Prime Minister [Manmohan Singh](#), has stated that corruption is one of the major challenges facing the judiciary, and suggested that there is an urgent need to eradicate this menace.<sup>[38]</sup>

The Cabinet Secretary of the Indian government introduced the Judges Inquiry (Amendment) Bill 2008 in Parliament for setting up of a panel called the National Judicial Council, headed by the Chief Justice of India, that will probe into allegations

of corruption and misconduct by High Court and Supreme Court judges.<sup>[39][40]</sup>

### **Pendency of cases**

According to Supreme Court newsletter, there are 58,519 cases pending in the Supreme Court, out of which 37,385 are pending for more than a year, at the end of 2011. Excluding connected cases, there are still 33892 pending cases.<sup>[41]</sup>

### Case Status of Supreme Court of India

It is an information system designed to provide information on pending and disposed cases of Supreme Court of India on Internet for advocates, litigant public and judges of lower courts. The required information is derived from the large databases created in the Supreme Court of India by NIC and maintained by the Registry of Supreme Court.

### Cases can be retrieved through:

1. Case No.
2. Title (Petitioner/Respondent Name)
3. Advocate name
4. Lower Court details

It gives the latest information of a case with respect to the status of the case, which could stand as:

1. Party names
2. Advocate names
3. Subject category
4. Disposed of
5. Adjourned
6. Date on which last listed
7. Waiting Position
8. Next date of hearing
9. Diary No.

## JUDICIAL REVIEW

Judicial review is one of the main characteristics of government in the federal republic of the United States and other democratically elected governments. It can be understood in the context of two distinct—but parallel—legal systems ([civil law](#) and [common law](#)), and also by two distinct theories of democracy regarding the manner in which government should be organized with respect to the principles and doctrines of legislative supremacy and the separation of powers. First, two distinct legal systems, [civil Law](#) and [common law](#), have different views about judicial review. Common-law judges are seen as sources of law, capable of creating new legal rules,

and also capable of rejecting legal rules that are no longer valid. In the civil-law tradition judges are seen as those who apply the law, with no power to create (or destroy) legal rules.

Secondly, the idea of [separation of powers](#) is another theory about how a democratic society's government should be organized. In contrast to legislative supremacy, the idea of [separation of powers](#) was first introduced by Montesquieu;<sup>[1]</sup> it was later institutionalized in the United States by the Supreme Court ruling in *Marbury v. Madison* under the court of John Marshall. [Separation of powers](#) is based on the idea that no branch of government should be able to exert power over any other branch without due process of law; each branch of government should have a check on the powers of the other branches of government, thus creating a regulative balance among all branches of government. The key to this idea is [checks and balances](#). In the United States, judicial review is considered a key check on the powers of the other two branches of government by the judiciary (although the power itself is not granted by the Constitution). Differences in organizing "democratic" societies led to different views regarding judicial review, with societies based on [common law](#) and those stressing a [separation of powers](#) being the most likely to utilize judicial review. Nevertheless, many countries whose legal systems are based on the idea of legislative supremacy have learned the possible dangers and limitations of entrusting power exclusively to the legislative branch of government. Many countries with civil-law systems have adopted a form of judicial review to stem the [tyranny of the majority](#).

Another reason why judicial review should be understood in the context of both the development of two distinct legal systems ([civil law](#) and [common law](#)) and the two theories of democracy (legislative supremacy and separation of powers) is that some countries with common-law systems do not have judicial review of primary legislation. Though a common-law system is present in the United Kingdom, the country still has a strong attachment to the idea of legislative supremacy; consequently, the judicial body in the United Kingdom does not have the power to strike down primary legislation. However, since the United Kingdom became a member of the [European Union](#) there has been tension between the UK's tendency toward legislative supremacy and the EU's legal system (which empowers the [Court of Justice of the European Union](#) with judicial review).

### **Judicial review of administrative acts**

Most modern legal systems allow the courts to review administrative acts (individual decisions of a public body, such as a decision to grant a subsidy or to withdraw a residence permit). In most systems, this also includes review of [secondary legislation](#) (legally-enforceable rules of general applicability adopted by administrative bodies). Some countries (notably France and Germany) have implemented a system of administrative courts which are charged with resolving disputes between members of the public and the administration. In other countries (including the United States, Scotland and the Netherlands), judicial review is carried out by regular civil courts although it may be delegated to specialized panels within these courts (such as the

Administrative Court within the [High Court of England and Wales](#)). The United States employs a mixed system in which some administrative decisions are reviewed by the [United States district courts](#) (which are the general trial courts), some are reviewed directly by the [United States courts of appeals](#) and others are reviewed by specialized tribunals such as the [United States Court of Appeals for Veterans Claims](#) (which, despite its name, is not technically part of the federal judicial branch). It is quite common that before a request for judicial review of an administrative act is filed with a court, certain preliminary conditions (such as a complaint to the authority itself) must be fulfilled. In most countries, the courts apply special procedures in administrative cases.

### Judicial review of primary legislation

There are three broad approaches to judicial review of the constitutionality of [primary legislation](#)—that is, laws passed directly by an elected legislature. Some countries do not permit a review of the validity of primary legislation. In the United Kingdom, statutes cannot be set aside under the doctrine of [parliamentary sovereignty](#). Another example is the Netherlands, where the constitution expressly forbids the courts to rule on the question of constitutionality of primary legislation. [\[2\]](#)<sup>[*dead link*]</sup>

#### Review by general courts

In the United States, federal and state courts (at all levels, both appellate and trial) are able to review and declare the "[constitutionality](#)", or agreement with the Constitution (or lack thereof) of legislation that is relevant to any case properly within their jurisdiction. In American legal language, "judicial review" refers primarily to the adjudication of constitutionality of statutes, especially by the [Supreme Court of the United States](#). This is commonly held to have been established in the case of *Marbury v. Madison*, which was argued before the Supreme Court in 1803. A similar system was also adopted in Australia.

#### Review by a specialized court

In 1920, [Czechoslovakia](#) adopted a system of judicial review by a specialized court, the [Constitutional Court](#) as written by [Hans Kelsen](#), a leading jurist of the time. This system was later adopted by [Austria](#) and became known as the [Austrian System](#), also under the primary authorship of [Hans Kelsen](#), being emulated by a number of other countries. In these systems, other courts are not competent to question the constitutionality of primary legislation; they often may, however, initiate the process of review by the Constitutional Court.

Brazil adopts a mixed model since (as in the US) courts at all levels, both federal and state, are empowered to review primary legislation and declare its constitutionality; as in the Czech Republic, there is a constitutional court in charge of reviewing the constitutionality of primary legislation. The difference is that in the first case, the decision about the laws adequacy to the Brazilian Constitution only binds the parties

to the lawsuit; in the second, the Court's decision must be followed by judges and government officials at all levels