

## UNIT II

### INDIAN PRESIDENT POWERS AND FUNCTION

#### INTRODUCTION

- ✓ Part V – Article 52 to 78 deal with the Union executive
- ✓ Head of the Indian State
- ✓ First citizen of India, Act as symbol of unity, integrity and solidarity of the nation
- ✓ ELECTION OF THE PRESIDENT
- ✓ President is not elected directly by the people but by members of electoral college,
- ✓ Nominated & dissolved assembly members do not participate in President election
- ✓ President's election is held in accordance with the system of proportional representation by means of the single transferable vote

#### QUALIFICATIONS OF ELECTION AS PRESIDENT

- ✓ Should be a citizen of India
- ✓ Should have completed 35 years of age
- ✓ Should be qualified for election as a member of the Lok Sabha
- ✓ Should not hold any office of profit
- ✓ Must be subscribed by at least 50 electors as proposers and 50 as second

#### TERM OF PRESIDENT'S OFFICE

- ✓ President holds office for a term of five years
- ✓ Can resign at any time by addressing the resignation letter to the Vice-President
- ✓ Hold office beyond his term of five years until successor assumes charge
- ✓ Also eligible for any number of terms.

#### IMPEACHMENT OF PRESIDENT

- Can be removed from office for 'violation of the constitution
- Initiated by either House of Parliament
- Sign by 1/4<sup>th</sup> members of the House & 14 days notice should be given
- If impeachment resolution passed with majority 2/3<sup>rd</sup> of total membership of that house, it is sent to other house which should investigate the charge

#### POWERS AND FUNCTIONS OF THE PRESIDENT

- ✓ EXECUTIVE POWERS
- ✓ Executive powers
- ✓ Legislative powers
- ✓ Financial Powers
- ✓ Judicial Powers

- ✓ Diplomatic Powers
- ✓ Military Powers
- ✓ Emergency Powers

#### VETO POWER OF THE PRESIDENT

- Bill passed by the President can become an act only if it receives the President's assent
- Three alternative when bill presented to the President ( under Article 111)
- He may give his assent to the bill . He may withhold his assent to the bill He may return the bill ( not a Money bill) for reconsideration, If bill passed again, the president must give his assent to the bill.

#### **PRIME MINISTER POWERS AND FUNCTION**

- ✓ In Parliamentary system of Govt. provided by the Constitution the President is the nominal executive
- ✓ Authority & Prime Minister is the real executive authority
- ✓ President is the head of the state while Prime Minister is the head of the Governor.

#### IN RELATION TO COUNCIL OF MINISTERS

- Prime Minister recommends persons who can be appointed as ministers by the President. President can appoint only those persons as ministers
- He allocates and reshuffles various portfolios among the ministers
- He can ask a ministers to resign or advise the President to dismiss him.
- He presides over the meeting of council of ministers and influences its decisions
- He guides, directs, controls and coordinates the activities of all the ministers
- He can bring about the collapse of the council of ministers by resigning.

#### IN RELATION TO PARLIANMENT

- ✓ Prime Minister is the leader of the Lower House
- ✓ He advices 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

#### OTHER POWERS AND FUNCTION

- Prime Minister is the chairman of Planning commission, National Development council, National Integration council, Inter-State council and National Water Resource council
- He play significant role in shaping the foreign policy of the country
- He is the Chief spokesman of the Union government
- He is the crisis manager-in-chief at the political level during emergency he receivers memoranda from people of different state regarding their problems

- He is leader of the party in power and political head of the services

## **SUPREME COURT**

### INTRODUCTION

#### Part V Article 124 to 147

- ✓ Indian Constitution has established an integrated judicial system with Supreme Court at the top and the high court below it
- ✓ Under a high court, there is a hierarchy of subordinate courts
- ✓ This single system of courts, adopted from the Government of India Act of 1935
- ✓ In USA, there is a double system of courts
- ✓ Supreme Court of India was inaugurated on January 28, 1950
- ✓ Succeeded the Federal Court of India, Replaced British Privy Council
- ✓ ORGANISATION OF SUPREME COURT
- ✓ At present, the Supreme Court consists of 31 judges
- ✓ Originally, the strength of the Supreme Court was fixed at 8
- ✓ Parliament increased this number of other judges count to 10 in 1956 , to 13 in 1960, 17 in 1977 and to 25 in 1986
- ✓ By enactment of the Supreme Court Amendment Act, 2008, Centre notified an increase in the number of Supreme Court judges from 26 in 31 in Feb 2009

### APPOINTMENT OF JUDGES

- Judges of the Supreme Court are appointed by the President
- Chief Justice is appointed by the President after consulting with such judges of the Supreme Court and High Court as he deems necessary
- Other judges are appointed by president after consultation with the chief justice and such other judges of the Supreme Court and High Courts
- Consultation with chief justice is obligatory in the case of appointment of a judge other than Chief justice

### QUALIFICATION OF JUDGES

- ✓ He should be a citizen of India
- ✓ He should have been a judge of a High Court for 5 years or he should have been an advocate of a High Court 10 years or he should be a distinguished jurist in the opinion of the President

- ✓ Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court

#### POWERS AND FUNCTION OF SUPREME COURT

- ✓ Supreme court has been assigned a very significant role in the Indian Democratic political system
- ✓ It is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution
- ✓ Its independence becomes very essential for the effective discharge of the duties assigned to it
- ✓ It should be free from the encroachments, pressures and interferences of the Executive and the Legislature. Allowed to do justice without fear or favor.

#### JUDICIAL REVIEW

- ✓ In Indian the constitution itself confers the power of the judicial review on the judiciary
- ✓ Supreme Court has declared the power of judicial review as a basic feature of the constitution
- ✓ Power of judicial review cannot be curtailed or excluded even by a Constitutional amendment

#### MEANING OF JUDICIAL REVIEW

- Judicial review is the Power of the judiciary to examine the constitutionality of legislative enactments and executive orders of both the Central and State Govt.
- On examination if they found to be violate of the constitution, they can be declared as illegal, unconstitutional and invalid by the judiciary

#### IMPORTANCE OF JUDICIAL REVIEW

- ✓ To uphold the principle of the supremacy of the constitution
- ✓ To maintain federal equilibrium
- ✓ To protect the fundamental rights of the citizens

#### PROVISIONS OR JUDICIAL REVIEW

- Article 13 All laws that are inconsistent with or in derogation of the Fundamental Right shall be null and void
- Article 32 Right to move the supreme court for the enforcement of the fundamental rights & empowers the supreme court to issue directions or orders or writs
- Article 131 Provides for the original jurisdiction of the supreme court in centre-state and inter-stat disputed
- Article 132 Provides for the appellate jurisdiction of the supreme court in constitutional cases
- Article 136 Authorizes the supreme court to grant special leave to appeal from any court
- Article 143 Authorizes the president to seek the opinion of the supreme court on any question of law or fact and on any pre-constitution legal matters

- Article 226 Empowers the high court to issue directions or orders or writs for the enforcement of the fundamental right and for any other purposes
- Article 227 Vests in the high court the power of superintendence over all courts and tribunal within their respective territorial jurisdictions.

## **PUBLIC INTEREST LITIGATION**

### **INTRODUCTION**

- ✓ Public Interest Litigation concept originated & developed in the USA in the 1960s
- ✓ In the USA, it was designed to provide legal representation to previously unrepresented groups and interests
- ✓ minorities and others
- ✓ In India, the PIL is a product of the judicial activism role of the Supreme Court
- ✓ Justice V R Krishna Iyer and PN Bhagwati were the pioneers of the PIL concept
- ✓ PIL is also known as Social Action Litigation, Social Interest and Class Action Litigation

### **MEANING OF PIL**

- Introduction of PIL in India was facilitated by the relaxation of the traditional rule of 'locus standi',
- According to locus standi, only that person whose rights are infringed alone can move the court for the remedies
- Under the PIL, any citizen or a social organization can move to the court for the enforcement of the rights of any person or group of persons who because of their poverty or ignorance or socially or economically disadvantaged person.
- PIL ; a legal action initiated in a court of law for the enforcement of public or general interest
- In which public by which their legal rights are affected.

### **REAL PURPOSE OF PIL**

- ✓ Vindication of the rule of law
- ✓ Facilitating effective access to justice to the socially and economically weaker section of the society
- ✓ Meaningful realization of the fundamental rights

### **FEATURES OF IPL**

- Strategic arm of the legal aid movement & bring justice within the reach of poor
- Totally different kind of litigation from traditional litigation
- PIL is brought to court not for the purpose of enforcing the right of one individual against another but to promote and vindicate public interest
- PIL demands that violations of constitutional and legal rights of large number of poor, ignorant people should not go unnoticed

- Co-operative effort to secure observance of the legal rights, benefits & privileges conferred upon the
- vulnerable community section & to reach social justice to them.