

NAME : RISHIKESH RAUT

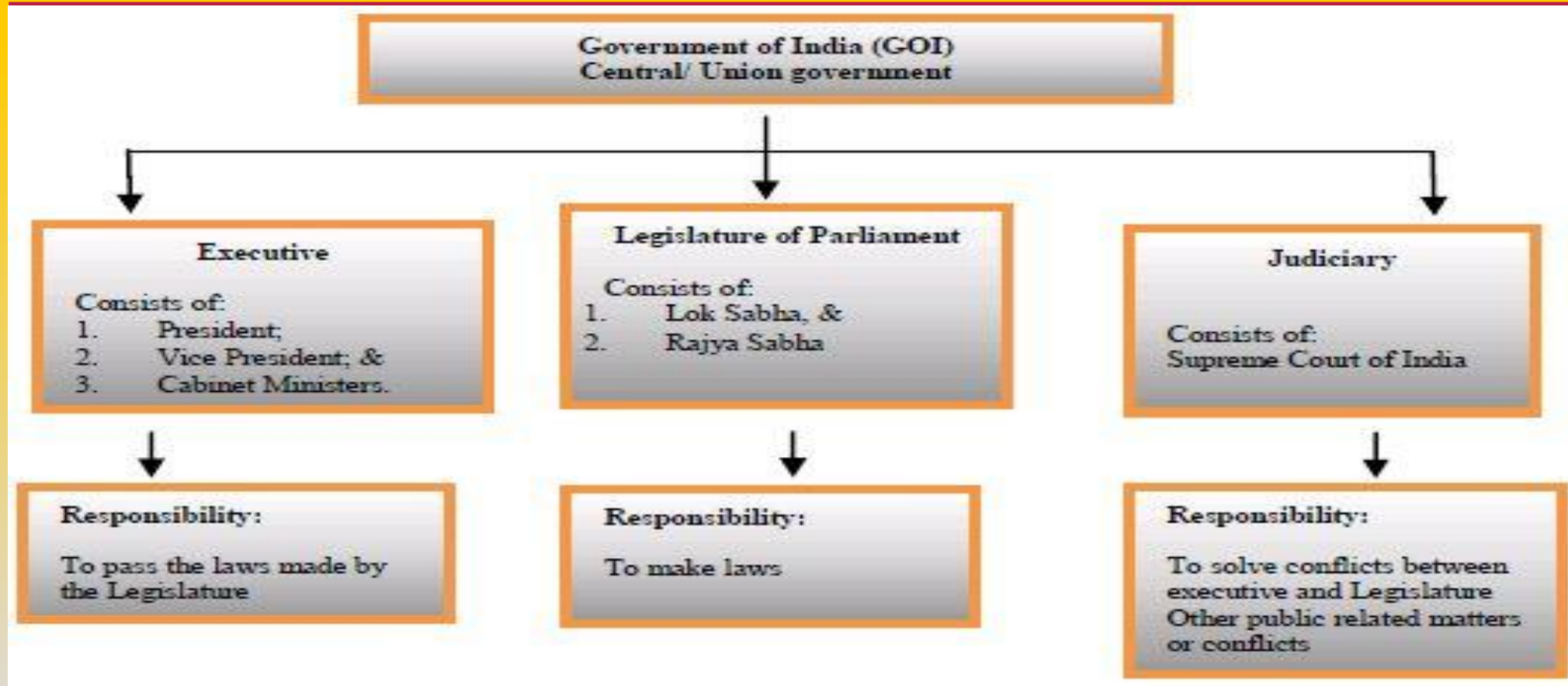
GROUP NO. : 20LL 6 A

TOPIC : THE SYSTEM OF STATE BODIES OF INDIA

CONTENT:

- SYSTEM OF GOVERNMENT
- THE HEAD OF THE STATE :
 - Qualification for the candidate.
 - Manner of election
 - Term of office
 - Functions
- LEGISLATIVE POWER :
 - Parliament
 - Qualification for the candidate
 - Manner of formation/election
 - Functions of parliament
- EXECUTIVE POWER :
 - Government
 - Functions
- JUDICIAL POWER :
 - Court System
 - Civil Court
 - Criminal Court
 - Judicial Authority of Supreme Court

SYSTEM OF GOVERNMENT :

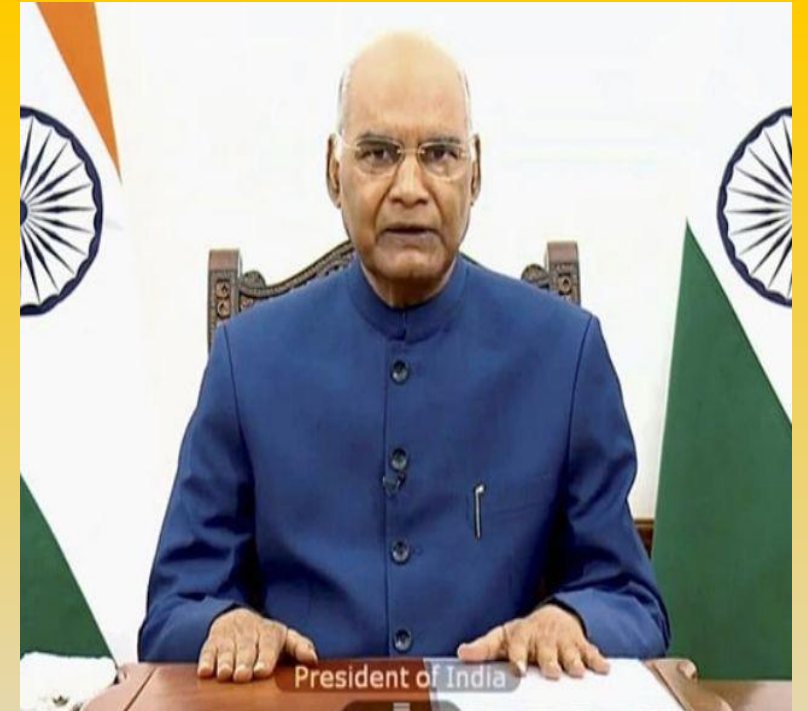


Reference:

https://en.wikipedia.org/wiki/Ram_Nath_Kovind

I. THE HEAD OF THE STATE :

- President- Ram Nath Kovind (born 1 October 1945) is the 14th and current president of India since his inauguration in 2017. He is also the first person from Uttar Pradesh to serve as President of India. Prior to his presidency, he served as the 26th governor of Bihar from 2015 to 2017 and as a member of Parliament, Rajya Sabha from 1994 to 2006. Before entering politics, he was a lawyer for 16 years and practiced in the Delhi High Court and the Supreme Court of India until 1993.
- Ram Nath Kovind was born to Maiku Lal and Kalawati on 1 October 1945, in Paraunkh village in the Kanpur Dehat district of Uttar Pradesh, as the youngest of five brothers and two sisters. His father ran a shop and was also a farmer and a local h vaidya. His mother was a homemaker. Kovind was born in a mud hut, which eventually collapsed. He was only five when his mother died of burns when their thatched dwelling caught fire. Kovind later donated the land to the community. He was born into the Koli family of Kanpur.
- After his elementary school education, he had to walk each day to Kanpur village, 8 km (5.0 mi) away, to attend junior school, as nobody in the village had a bicycle. He holds a bachelor's degree in commerce and an LLB from DAV College (affiliated with Kanpur University).



QUALIFICATION FOR THE CANDIDATE :

- Article 58 of the Indian Constitution says that the presidential candidate must:-
- Be a citizen of India.
- Have completed the age of thirty-five years.
- Be qualified for elections as a member of the Lok Sabha.
- Not hold any office of profit under the Union or any State government, or any local or other authority.

Reference:

https://www.constitutionofindia.net/constitution_of_india/the_union/articles/Article%2055.

MANNER OF ELECTION :

- As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.
- For the purpose of securing such uniformity among the States inter se as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:—
 - ❑ every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;
 - ❑ if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;
 - ❑ each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.
- The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

TERM OF OFFICE :

Reference:

<https://www.advocatekhoj.com/library/bareacts/constitutionofindia/56.php?Title=Constitution%20of%20India,%201949&STitle=Term%20of%20office%20of%20President>

- (1) The President shall hold office for a term of five years from the date on which he enters upon his office:
Provided that -
 - ❖ the President may, by writing under his hand addressed to the Vice-President, resign his office;
 - ❖ the President may, for violation of the constitution, be removed from office by impeachment in the manner provided in Article 61:
 - ❖ the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.
- (2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

FUNCTIONS :

Reference:

<https://www.indiatoday.in/education-today/gk-current-affairs/story/the-president-of-india-powers-and-responsibilities-1880001-2021-11-23>

- The President of the Republic of India is the head of the Indian state, and commander in chief of all the Indian Armed Forces. The President of India is indirectly elected by the directly elected members of both the Rajya Sabha and Lok Sabha, and the legislative assemblies of the states and union territories of India. The President of India has been granted the responsibility and authority to protect the Constitution.
- A. Legislative powers enjoyed by the President of India :
- The President has the power to dissolve the Lok Sabha.
 - A bill that has been passed by both the houses of the parliament can become a law only if it receives the president. (subject to limitations)
 - The President has the power to send a bill back to the parliament unless it is a money bill or constitutional amendment bill.
- B. Executive powers enjoyed by the President :
- The executive powers of the country are vested with the President of India.
 - The parliament can grant additional powers to the President if it deems fit and these powers can be further delegated by the president to state governors.

FUNCTIONS :

C. Appointing powers and duties of the President :

- The President has the power and responsibility to appoint the Prime Minister of India.
- The President of India appoints the Chief Justice.
- The President is the appointing authority for the states and also has the power to dismiss a governor who has violated the constitution in their acts.
- Other than the posts mentioned above, the President has the power to appoint on a number of posts including, Ambassadors to other countries like, IAS, IPS, IFS, Attorney General, etcetera.

D. Military power of the President :

- The President of India is the commander in chief of all the Indian armed forces.
- The President has the power to declare war or conclude peace with any country on the advice of a council of ministers headed by the Prime Minister.
- All the treaties with any foreign countries are signed in the name of the President of India.

E. Power to pardon :

- The President of the Republic of India has the power to grant pardons if the punishment of the crime is an offence against union law, granted by the military court or the punishment is that of death.

TERMINATION OF HIS OFFICE :

Reference:

https://en.wikipedia.org/wiki/President_of_India#:~:text=The%20president%20may%20also%20be,the%20charges%20against%20the%20president

- The president may also be removed before the expiry of the term through impeachment for violating the Constitution of India by the Parliament of India. The process may start in either of the two houses of the parliament. The house initiates the process by levelling the charges against the president. The charges are contained in a notice that has to be signed by at least one-quarter of the total members of that house. The notice is sent up to the president and 14 days later, it is taken up for consideration.
- A resolution to impeach the president has to be passed by a two-thirds majority of the total number of members of the originating house. It is then sent to the other house. The other house investigates the charges that have been made. During this process, the president has the right to defend himself through an authorised counsel. If the second house also approves the charges made by the special majority again, the president stands impeached and is deemed to have vacated their office from the date when such a resolution stands passed. No president has faced impeachment proceedings so the above provisions have never been used.
- Under Article 361 of the constitution, though the president cannot be summoned for questioning except on his voluntary willingness to testify in the court in support of his controversial deeds, the unconstitutional decisions taken by the president would be declared invalid by the courts. The case would be decided by the courts based on the facts furnished by the Union government for the president's role. As clarified by the supreme court in the case *Rameshwar Prasad & Ors vs Union of India & Anr* on 24 January 2006; though the president cannot be prosecuted and imprisoned during his term of office, he can be prosecuted after he/she steps down from the post for any guilt committed during the term of the presidency as declared earlier by the courts. No president has resigned on impropriety to continue in office for declaring and nullifying his unconstitutional decisions by the courts till now. No criminal case at least on the grounds of disrespecting constitution is lodged till now against former presidents to punish them for their unconstitutional acts; though many decisions taken during the term of a president have been declared by the supreme court as unconstitutional, mala fides, void, ultra vires, etc.

2. LEGISLATIVE POWER :

Reference:

https://en.wikipedia.org/wiki/Government_of_India

- Legislature has different powers and its main power can be said to be the power to enact laws. In total the legislature has the power to regulate the rights and obligations of the people, in accordance with the constitutional provisions.
- As already state the legislature in India includes the Parliament at the centre and legislative assembly and legislative councils at the state level. They make laws on the subjects enumerated in their lists concerned. But the Union Parliament has certain powers to enact laws over the subjects stated in the state list under certain circumstances. They include when a national emergency is proclaimed, or in case the Rajya Sabha passes a resolution with 2/3 rd majority that for national interest the parliament should make laws on subjects in state list, or for the reason of implementation of international treaties, and during the period of presidential rule is in force and also in case where the states concerned itself passes such a resolution seeking it.

PARLIAMENT :



- The **Parliament of India** (*Bhāratīya Sansad*) is the supreme legislative body of the Republic of India. It is a bicameral legislature composed of the President of India and two houses: the Rajya Sabha (Council of States) and the Lok Sabha (House of the People). The President in his role as head of legislature has full powers to summon and prorogue either House of Parliament or to dissolve the Lok Sabha. The President can exercise these powers only upon the advice of the Prime Minister and his Union Council of Ministers.
- Those elected or nominated (by the President) to either house of Parliament are referred to as Members of Parliament (MP). The Members of Parliament, Lok Sabha are directly elected by the Indian public voting in single-member districts and the Members of Parliament, Rajya Sabha are elected by the members of all State Legislative Assemblies by proportional representation. The Parliament has a sanctioned strength of 543 in Lok Sabha and 245 in Rajya Sabha including 12 nominees from the expertise of different fields of literature, art, science, and social service. The Parliament meets at Sansad Bhavan in New Delhi.
- History : During British rule, the legislative branch of India was the Imperial Legislative Council, which was created in 1861 via the Indian Councils Act of 1861 and disbanded in 1947, when India gained independence. Following independence, the Constituent Assembly of India was elected to write the Constitution of India, its members serving as the nation's first Parliament. In 1950, because of the new Constitution created, the Constituent Assembly of India was disbanded, and succeeded by the modern Parliament of India, which is active to this day.

Reference:

https://en.wikipedia.org/wiki/Member_of_Parliament,_Lok_Sabha#:~:text=Eligibility%20criteria,-A%20person%20must&text=Must%20be%20a%20citizen%20of,constituency%20for%20his%2Fher%20nomination.

QUALIFICATION FOR THE CANDIDATE :

A person must satisfy all following conditions to be qualified to become a member of parliament;

- Must be a citizen of India.
- Must not be less than 25 years of age.
- Must be a voter for any parliamentary constituency in India.
- Candidate of a recognised political party needs one proposer from his/her constituency for his/her nomination.
- An independent candidate needs ten proposers.
- Candidates are required to make a security deposit of ₹25,000 (US\$330)

Reference:

<https://eci.gov.in/faqs/elections/parliament/faqs-parliament-r7/>

MANNER OF FORMATION/ELECTION :

- Members of Lok Sabha (House of the People) or the lower house of India's Parliament are elected by being voted upon by all adult citizens of India, from a set of candidates who stand in their respective constituencies. Every adult citizen of India can vote only in their constituency. Candidates who win the Lok Sabha elections are called 'Member of Parliament' and hold their seats for five years or until the body is dissolved by the President on the advice of the council of ministers. The house meets in the Lok Sabha Chambers of the Sansad Bhavan in New Delhi, on matters relating to the creation of new laws, removing or improving the existing laws that affect all citizens of India. Elections take place once in 5 years to elect 543 members for the Lok Sabha (Lower house).

FUNCTIONS OF PARLIAMENT :

Reference:

<https://legislativebodiesinindia.nic.in/parliament%20of%20india.htm#:~:text=2%20June%2C%202004.-,Functions,of%20the%20Constitution%20of%20India.>

- The main function of both the Houses is to make laws. Every Bill has to be passed by both the Houses and assented to by the President before it becomes law. The subjects over which Parliament can legislate are the subjects mentioned under the Union List in the Seventh Schedule of the Constitution of India. Broadly speaking, Union subjects are those important subjects which for reasons of convenience, efficiency and security are administered on all-India basis. The principal Union subjects are defence, foreign affairs, railways, insurance, communications, currency and coinage, banking, income tax, customs, excise duties, atomic energy, census, etc.
- Apart from the wide range of subjects allotted to it in the Seventh Schedule of the Constitution, even in normal times Parliament can, under certain circumstances, assume legislative power over a subject falling within the sphere exclusively reserved for the States.
- Further, in times of grave emergency when the security of India or any part thereof is threatened by war or external aggression or armed rebellion, and a Proclamation of Emergency is made by the President, Parliament acquires the power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List. Similarly, in the event of the failure of the constitutional machinery in a State, the powers of the Legislature of that State become exercisable by or under the authority of Parliament. This apart, the Constitution also vests in the Parliament the constituent power or the power to initiate amendment of the Constitution.
- Besides passing laws, Parliament can by means of resolutions, motions for adjournment, discussions, questions addressed by members to Ministers, system of committees, etc., exercise control over the administration of the country and safeguard people's liberties.

3. EXECUTIVE POWER :

Reference:

<https://www.toppr.com/guides/legal-aptitude/indian-constitution/indian-parliament-functions-of-indian-parliament/>

-
- The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
 - Nothing in this article shall-
 - Be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or
 - Prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

Government:

The Prime Minister of India, as addressed in the Constitution of India, is the chief of the government, chief adviser to the president, head of the council of ministers and the leader of the majority party in the parliament. The prime minister leads the executive of the Government of India. The Union Council of Ministers includes the prime minister, Cabinet Ministers and Ministers of State (MOS). Each minister must be a member of one of the houses of the parliament. The cabinet is headed by the prime minister, and is advised by the cabinet secretary, who also acts as the head of the Indian Administrative Service and other civil services. Other members of the council are either union cabinet ministers, who are heads of various ministries; or ministers of state, who are junior members who report directly to one of the cabinet ministers, often overseeing a specific aspect of government; or ministers of state (independent charges), who do not report to a cabinet minister. As per article 88 of the constitution, every minister shall have the right to speak in, and to take part in the proceedings of, either house, any joint sitting of the houses, and any committee of parliament of which he may be named a member, but shall *not* be entitled to a vote in the house where he is not a member.



FUNCTIONS :

Reference:

<https://www.yourarticlelibrary.com/political-science/executive-definition-functions-and-types-of-executive/40360>

-
- **Enforcement of Laws:** The primary function of executive is to enforce laws and to maintain law and order in the state. Whenever a breach of law takes place, it is the responsibility of the executive to plug the breach and bring the offenders to book. Each government department is responsible for the implementation of the laws and policies concerning its work. For maintaining law and order in the state, the executive organises and maintains the police force.
 - **Appointment-making Functions:** All major appointments are made by the chief executive. As for example, the President of India appoints the Chief Justice and other Judges of the Supreme Court and High Courts. Ambassadors, Advocate General of India, Members of Union Public Service Commission, Governors of States etc.
 - **Treaty-making Functions:** It is the responsibility of the executive to decide as to which treaties are to be signed with which other countries. The executive negotiates the treaties in accordance with the procedure defined by international law and also in accordance with the provisions the constitution of the state.
 - **Defence, War and Peace Functions:** One of the key functions of the state is to defend and preserve the unity and integrity of the country and protect it in the event of an external aggression or war. It is the responsibility of the executive to undertake this work. To organise military for the defence of the state, to prepare for and fight the war, if it becomes necessary, and to negotiate and sign peace settlement after every war, are the functions performed by the executive.
 - **Foreign Policy-making and the Conduct of Foreign Relations:** In this age of ever-increasing global interdependence, it has become one of the most important functions of a government to formulate the foreign policy of the state and to conduct foreign relations. This function is also performed by the executive.



4. JUDICIAL POWER :

Reference:

<https://www.thehindubusinessline.com/opinion/the-scope-of-judicial-power/article33357173.ece>



- In India, the judiciary does occupy an important place. An independent judiciary is not doubt required to safeguard the rights of citizen, and protect them from arbitrary exercise of power by the administration. But this does not mean that the judiciary can encroach into the powers of other organs like the legislature and the executive.
- In *Sidheswar Sahakari Sakhar Karkhana Ltd vs. Union of India* , the Supreme Court had ruled, “Normally in such policy matters, a court of law will not interfere unless the policy is shown to be contrary to law, inconsistent with the provisions of the Constitution or otherwise arbitrary or unreasonable.”
- Judicial review is central in dealing with the malignancy in the exercise of power. But unless the administrative action is violative of law or the Constitution, arbitrary or *mala fide* , courts should not interfere in administrative decisions.

Only under the following circumstances, the intervention of judiciary will be justifiable.

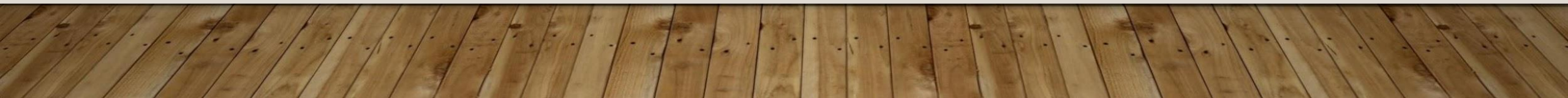
- **Lack of jurisdiction:** When the public official or administrative agency acts without proper or adequate authority.
- **Error of law:** This category of cases arises when the official misconstrues the law and imposes upon the citizen obligations which are absent in law.
- **Error of fact:** This arises when action is initiated by the administration on wrong assumptions.
- **Error of procedure:** This is when due procedure, as prescribed by law, is not followed by the administration.
- **Abuse of authority:** This is malfeasance. This is when the executive acts vindictively to harm a person or uses authority for personal gain.

COURT SYSTEM :

The Indian judiciary is divided into several levels in order to decentralize and address matters at the grassroots levels. The basic structure is as follows:

- **Supreme Court:** It is the Apex court of the country and was constituted on 28th January 1950. It is the highest court of appeal and enjoys both original suits and appeals of High Court judgments. The Supreme Court is comprised of the Chief Justice of India and 25 other judges. Articles 124-147 of the Constitution of India lay down the authority of the Supreme Court.
- **High Courts:** High Courts are the highest judicial body at the State level. Article 214 lays down the authority of High Courts. There are 25 High Courts in India. High Courts exercise civil or criminal jurisdiction only if the subordinate courts in the State are not competent to try the matters. High Courts may even take appeals from lower courts. High Court judges are appointed by the President of India upon consultation with the Chief Justice of India, the Chief Justice of the High Court and the Governor of the State.
- **District Courts:** District Courts are established by the State Governments of India for every district or group of districts based on the caseload and population density. District Courts are under the direct administration of High Courts and are bound by High Court judgments. Every district generally has two kinds of courts:
 - a. **Civil Courts**
 - b. **Criminal Courts**

District Courts are presided over by District Judges. Additional District Judges and Assistant District Judges may be appointed based on the caseload. Appeals against District Court judgments lie in the High Court.

- **Lok Adalats/Village Courts:** these are subordinate courts at the village level which provide a system for alternate dispute resolution in villages.
 - **Tribunals:** the Constitution provides the government with the power to set up special Tribunals for the administration of specific matters such as tax cases, land cases, consumer cases etc.
 - **Appellate jurisdiction** refers to the authority of a court to rehear/review a case decided by a lower court. In India, appellate jurisdiction is vested in both the Supreme Court and High Courts. They may either overrule or uphold the judgments of lower courts.
- 

COURT SYSTEM :

1) Civil Courts:

- Civil courts provide remedies for civil wrongs committed by individuals against other individuals and entities. Civil matters range from property disputes to breaches of contract to divorce cases. Civil courts follow the principle of ubi jus ibi remedium (for every wrong the law provides remedy). Unless expressly or impliedly barred by any other law in force, civil courts have the jurisdiction to try all suits of civil nature.
- The **Code of Civil Procedure (CPC) 1908** governs the procedures to be followed by civil courts in administering civil cases in India.
- As a matter of fact, every suit must be instituted before the court of lowest jurisdiction (the Munsif court). Upon institution, it is decided whether the respective court has competence to try the case.

2) Criminal Courts:

- The power of the various criminal courts is mentioned under the **Code of Criminal Procedure (CrPC)**.
- According to Section 26 of the CrPC, any offence mentioned under the Indian Penal Code may be tried by:
 - High Courts
 - Courts of Session
 - Any other Court as specified in the First Schedule of the Code of Criminal Procedure

COURT SYSTEM :



3) Judicial Authority of the Supreme Court:

- Articles 141 and 144 of the Constitution uphold the authority and jurisdiction given to the Supreme Court to make decisions and uphold the law of the land. These Articles give animal welfare judgments their binding force, ensuring that they are appropriately enforced and implemented by the respective authorities. They allow for the Supreme Court to issue directives and fill gaps in law until the legislature steps in.

Article 141

- Article 141 lays down that *“the law declared by the Supreme Court shall be binding on all courts within the territory of India.”*
- This Article embodies the English principle of stare decisis which holds that law must be definite, fixed, known and consistent. Since the Supreme Court is the Apex court of the country and all courts and tribunals are bound by its decisions, Supreme Court judgments become a source of law in themselves.

Article 144

- Article 144 lays down that *“all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.”*
- The Supreme Court has the power to hold any authority in contempt if they disregard or disobey the order of the court.