DELEGATED LEGISLATION*

1. Introduction

‘Delegated Legislation’ means the exercise of legislative power by an agency which is subordinate to the legislature.

Delegated legislation is, at times, referred to as “Ancillary”, “Subordinate”, Administrative Legislation or as Quasi-Legislation”.

Delegated legislation is a technique to relieve pressure on legislature’s time so that it can concentrate on principles and formulation of policies.

A statute may be inexact, incomplete, unintelligible and may even be misleading unless it is read with the delegated legislation made there – under.

In no democratic society committed to the establishment of a welfare state, the legislature monopolises the legislative power. It shares the same with the Executive and other administrative organs of the state.

* Lecture delivered as a Resource Person at the National Law School of India University, Bangalore to the I.A.S. Officers on July 26th, 2004.

** B.Sc., L.L.M., S.J.D. (Northwestern U.S.A.) Formerly, Professor, Chairman and Dean, Faculty of Law, Karnataka University, Dharwad, Karnataka.

In India, Rules, Regulations, Orders, Notified Orders, Notifications, Bye-laws .... all these denote Delegated Legislation. Also, the same statute may employ or use different expressions to denote the exercise of the subordinate law-making
power by an administrative body or agency. E.g. ‘Orders’, ‘Notified Orders’, ‘Notification’ under the Essential Commodities Act, 1958. As Prof. Sathe has observed, rightly, “We do not have terminological consistency in the family of delegated legislation” Administrative Law, 1998, (Sixth Edn.), P. 23.

Succinctly stated, the terms, rules, regulations, etc., are used interchangeably in our country.

2. Factors Responsible for the Growth of Delegated Legislation.

a) Lack of time for the legislature to shape legislative details which are technical in nature where administrative expertise is required.


b) The subject-matter of legislation being, technical, complex and unsuitable for debate in the legislature.

c) Democratisation of rule-making process by providing for “consultation with affected interests”.

d) The advantages of Flexibility, Elasticity Expedition and scope for Experimentation when the delegated legislation technique is employed. Further, socio-economic schemes being experimental in the initial stages and the practical difficulties at the stage of implementation cannot be foreseen.

e) Delegated legislation technique has the attribute of adaptation to unknown, future conditions without formal legislative amendments.

3. Restrictions on Delegation of Legislative Power
In theory, the legislature is expected to formulate the legislative policy and formulate the same into a binding rule of conduct. This is known as Essential Legislative Function which the Legislature is supposed to discharge or perform and which is non-delegable. When there is non-performance of the Essential Legislative Function, the challenge in review proceedings revolves around the Abdication by Legislature of its Essential Legislative Function. Thus, in Avinder Singh v. Punjab, AIR 1979 SC 321, the Supreme Court has ruled: “Legislature cannot efface itself. It cannot delegate the plenary or the essential legislative functions; even if there be delegation, parliamentary control over delegated legislation should be a living continuity as a constitutional necessity”. Further, the Court added: “The legislature is the master of policy and if the delegate is free to switch policy it may be usurpation of legislative power itself”. Ibid, at 149.

In practice, however, the Courts have, generally, approved of wide delegation of legislative powers to administrative authorities. But, it would be imprudent to contend that the challenge on the ground of “abdication of essential legislative function” has been totally rejected and would not be entertained by the courts.

Excessive Delegation may be assailed on the ground that excessive legislative power delegated is capable of being used in a discriminatory fashion and thus offending the Equality Clause in Art. 14. For Illustration, see material provided under “Emerging Trends ....”.

4. Nature of Powers Conferred
a) Power of Supplying Details : Skeletal Legislation. E.g. All India Services Act, 1951. see Garewal v. Punjab, AIR 1959 SC 512


c) Power of Modification of Statute. This power, it has to be noted, is limited to bringing about consequential changes and cannot be exercised to subvert the policy laid down by the legislature. No radical changes in the enacted law is permitted.

Case : Rajnarain Singh v. Chairman, Patna Administration Committee, AIR 1954 SC 569.

d) Power to impose tax

5. Judicial Control of Delegated Legislation

Challenge on two grounds : a) Substantive Ultravires

b) Procedural Ultravires

Substantive Ultravires : Where the delegating statute itself is unconstitutional, for example, being violative of a fundamental right.

Sometimes, the Parent Statute may be constitutional but the rules made there under may suffer from the vice of unconstitutionality. Then, the rules, when challenged, cannot survive.

The rules made may be ultravires the delegating statute. E.g. Parent Law permitting the delegate to exempt tax upto 10%. But, the rule granting exemption to the extent of 15% or rules creating new offences.
Procedural Ultravires

Where the rule-making authority does not abide by the procedural requirements which the parent law lays down like, for example, 'consultation with affected interests”. Procedural requirement may also relate to ‘previous publication’ or ‘laying the rules’ made before parliament.

Non-compliance with the Procedural Requirement may not always lead to invalidation since judiciary has carved out to a distinction between mandatory and directory procedural provisions.

Illustrations:

a) State Government required to make rules with the concurrence of the Central Government – Failure – Rules Ultravires.
b) Age of a High Court Judge – President of India to decide after consultation with the Chief Justice of India – No consultation – Decision void.


Supreme Court – No procedural irregularity

Parliamentary control – Laying procedure.

Mere compliance with the laying procedure will not authenticate the rules when the rules are ultravirus the constitution or the parent statute.
Broadly speaking, in India, ‘Laying in procedure’ is regarded as Directory and failure to lay may not affect the validity of the rules.

- Lok Sabha and Rajya Saha committees on Sub-ordinate Legislation function as the Watch Dogs over Delegated Legislation made by administrative agencies to ensure that the delegate in making rules, etc. shall act intravires.
EMERGING TRENDS IN ADMINISTRATIVE LAW*

Prof. S.S. Vishweshwaraiah**

Administrative law is basically concerned with the powers of administrative authorities, the extent of such powers, the procedures prescribed for the exercise of such powers, the remedies available to the aggrieved citizens when such powers are abused or misused. Broadly speaking, the actions and at times, the non-actions of administrative bodies are impugned in Judicial Review Proceedings. Administrative action includes rule-making, adjudication inquiry, inspection, supervision, imposition of conditions while granting leases, licences, to mention a few. Non-action relates to non-performance of a statutory duty.

With the advent of LPG, we have often heard pleas for deregulation, dereservation, abolition of permits and licences and the necessary freedom and independence for enterpreneurs to engage effectively in their economic activities in an open market economy. Do all these suggest or indicate that administrative action would be minimal in nature in the future and market forces would determine what shall be or shall not be done or undertaken. To answer this question, we should advert to our Constitution and its commands.

* Lecture delivered as a Resource Person at the National Law School of India University, Bangalore to the I.A.S. Officers on July 26th, 2004.

** B.Sc., LL.M., (S.J.D.) (Northwestern, U.S.A.) Formerly, Professor, Chairman and Dean, Faculty of Law, Karnataka University, Dharwad, Karnataka.
Justice Krishna Iyer has averred that the signature tune or the ideological signature of our constitution is ‘Social Justice’. Here, the Preamble to the Constitution and Directive Principles, in Part IV, need be referred to. According to Prof. Upendra Baxi, a Constitution cannot be a rigid, static document. It has to “look to the future and should not archive the dead past”. It should be a life-giving force and not a death-besowing entity”. “Further, our Apex Court has observed; ‘A constitutional provision is never static, it is ever-evolving and ever-changing and therefore, does not admit of a narrow, pedantic or syllogistic approach. Secretary Ministry of I & B v. Cricket Association, Bengal, AIR 1995 S.C. 1236, at 1250.

If the protective umbrella of the Constitution has to be unfurled to protect and secure the interests and rights of the exploitable workers, women and children, gullible investors, uninformed and indebted consumers and citizens against activities resulting in environmental degradation, then state control over numerous activities in our society would be indispensable.

With the fore-going preface, we may now take a look at the Emerging Trends in Administrative Law.

1. In the area of Delegated Legislation, the central injunction of the Apex Court that the legislature cannot delegate its essential legislative function still holds the field despite the demonstrable judicial acquiescence in the delegation of rule-making power in very broad terms. So, when the delegation is excessive and the delegating statute prescribes no norms or standards, the reviewing Court may strike the statute down on the ground of “abdication of essential legislative

Excessive Delegation of legislative power paving way for discrimination exercises can now be assailed on the group that it offends the Equality Doctrine under Act 14.

Illustration:

Law enacted to revise pension for judges and the parent law leaving it to the discretion of the states to fix the dates on which the revised pension scheme becomes effective.

It should be noted that the rules, regulations, etc., issued by the administrative authority in the exercise of its subordinate law-making power should supplement the parent law through “filling details”. They can never supplant the delegating statute. St. John’s Teachers’ Training Institute v. Regional Director, National Council for Teachers’ ‘Education’, (2003) 2ACE 249.

2. The dividing line between administrative function and quasi-judicial function has been almost obliterated in the light of Kraipak v. Union of India, AIR, 1970 S.C. 150. The Supreme Court has expanded the frontier of Natural Justice by insisting that fair play in action must be manifest in administrative action also. Thus, in Maneka Gandhi, AIR, 1978, the Supreme Court has ruled that since the aim of both administrative and quasi-judicial inquiry is to arrive at a just decision and “if a rule of natural justice is calculated to secure justice or … to prevent
miscarriage of justice it is difficult to see why it should be applicable to quasi-judicial inquiry and not to administrative inquiry. It must apply logically to both”. See Style (Dress Land) v. Union Territory, Chandigarh, (1999) 7SCC 89, at 99.

It is now well-established that any administrative action which involves civil consequences must be made in consonance with the principles of natural justice. Further, right to counsel, right to reasoned decision, and the Doctrine of Legitimate Expectation have been injected into the concept of Natural Justice.

3. The Doctrine of ultravires evolved as a technique of Judicial review to ensure that administrative authorities do not transgress their statutorily ordained limits stands affected, at times, through the development of the Doctrine of Promissory Estoppel. Thus, an administrative authority in the exercise of discretion may give an assurance that it would not impose Sales Tax on a particular group of persons. It may turn out that such an assurance is without statutory authority. But, in equity, the persons who have acted upon the assurance to their prejudice cannot be left in the lurch. If the Court rules that the administrative is estopped from going back on its assurances, the ultravires Doctrine is eclipsed, Motilal Padampat Sugar Mills, AIR 1979, S.C. 621: Cf, Jit Ram Shiv Kumar v. Haryana, AIR, 1980, S.C. 1285. It should, however, be pointed out that in Jit Ram, the apex court has laid down, inter alia, the following principles:

i. Estoppel plea not available to prevent the government from discharging its statutory functions.

ii. When the public servant acts outside its statutory authority, Estoppel Plea would not be available.
iii. However, if the public servant, while acting within its authority, enters into an agreement, makes a representation, the Court can command it to abide by the agreement when the party acting on the promise or representation has got into a disadvantageous position.

iv. On grounds of General interests of the state, public servants can alter conditions which may prejudicially affect persons or groups.

4. The *locus-standi* rule has been liberalised with the advent of Public interest Litigation. The Supreme Court has reiterated that “in the case of Public Interest Litigation, it is not necessary that the petitioner should himself have a personal interest in the matter” E.g. M/s J. Mohapatra & Co., v. Orissa, AIR, 1984, S.C. 1572.


The Supreme Court has, in *Nelabati Behera v. State of Orissa*, A.I.R. 1993 S.C. 746, observed : “The citizen complaining of the infringement of an indefeasible right under article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life he cannot get any relief under the public law by the courts exercising writ jurisdiction”. However, in *Rabindra Nath Ghosal, v. University of Calcutta*, (2002)4 SJC 505, while declaring that the above proposition of law is not disputed, the Supreme Court has observed : “It would
not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 226 and 32 by applying the public law proceeding. The Court in exercise of extraordinary power under Article 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultravires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse. Before exemplary damages can be awarded, it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of the act.

6. Judiciary, with a view to promote good governance and fair-dealing in government’s actions involving distribution of largesse, has emphasised that the government’s procedure should be transparent, just, fair and non-arbitrary”. Further, state cannot act as it pleases in the matter of giving largesse, like awarding contracts, selling or leasing out its property. Contractual power conferred on the government should be exercised properly, reasonably and in a principled manner. The public authority must bear in mind the public good and be guided by public interest.


However, the Apex Court’s observation in Tata Cellular v. India, (1996) 6 SCC 651 that “Fair play in action in public matters is an essential element; (also), fair play in joints of the administrative authority is also necessary”, may become an established norm in review proceedings.
7. Transparency in administrative action would dissuade the Court to annul it when challenged. Common Cause v. India, (1996) 6 SCC 530 (Government’s procedures should be transparent, just, fair and non-arbitrary”.

8. It is possible that our Courts may emulate the English Decisions and award exemplary damages against public servants who have improperly exercised their power to search or arrest without warrant or on account of their arbitrary, outrageous and malafide exercise of public power or malicious, deliberate, injurious wrong doing. See Lucknow Development Authority v. M.K. Gupta, (1994) 1 SCC 243 (“Judicial recognition of misfeasance in public office as a part of the Law of Tort”)
DELEGATED LEGISLATION*

Prof. Vishweshwaraiah**

1. Introduction

‘Delegated Legislation’ means the exercise of legislative power by an agency which is subordinate to the legislature.

Delegated legislation is, at times, referred to as “Ancillary”, “Subordinate”, Administrative Legislation or as Quasi-Legislation”.

Delegated legislation is a technique to relieve pressure on legislature’s time so that it can concentrate on principles and formulation of policies.

A statute may be inexact, incomplete, unintelligible and may even be misleading unless it is read with the delegated legislation made there – under.

In no democratic society committed to the establishment of a welfare state, the legislature monopolises the legislative power. It shares the same with the Executive and other administrative organs of the state.

* Lecture delivered as a Resource Person at the National Law School of India University, Bangalore to the I.A.S. Officers on July 26th, 2004.

** B.Sc., LL.M., S.J.D. (Northwestern U.S.A.) Formerly, Professor, Chairman and Dean, Faculty of Law, Karnataka University, Dharwad, Karnataka.
In India, Rules, Regulations, Orders, Notified Orders, Notifications, Bye-laws .... all these denote Delegated Legislation. Also, the same statute may employ or use different expressions to denote the exercise of the subordinate law-making power by an administrative body or agency. E.g. ‘Orders’, ‘Notified Orders’, ‘Notification’ under the Essential Commodities Act, 1958. As Prof. Sathe has observed, rightly, “We do not have terminological consistency in the family of delegated legislation” Administrative Law, 1998, (Sixth Edn.), P. 23.

Succinctly stated, the terms, rules, regulations, etc., are used interchangeably in our country.

2. Factors Responsible for the Growth of Delegated Legislation.

f) Lack of time for the legislature to shape legislative details which are technical in nature where administrative expertise is required.


g) The subject-matter of legislation being, technical, complex and unsuitable for debate in the legislature.

h) Democratisation of rule-making process by providing for “consultation with affected interests”.

i) The advantages of Flexibility, Elasticity Expedition and scope for Experimentation when the delegated legislation technique is employed. Further, socio-economic schemes being experimental in the initial stages and the practical difficulties at the stage of implementation cannot be foreseen.
j) Delegated legislation technique has the attribute of adaptation to unknown, future conditions without formal legislative amendments.

3. Restrictions on Delegation of Legislative Power

In theory, the legislature is expected to formulate the legislative policy and formulate the same into a binding rule of conduct. This is known as Essential Legislative Function which the Legislature is supposed to discharge or perform and which is non-delegable. When there is non-performance of the Essential Legislative Function, the challenge in review proceedings revolves around the Abdication by Legislature of its Essential Legislative Function. Thus, in Avinder Singh v. Punjab, AIR 1979 SC 321, the Supreme Court has ruled: “Legislature cannot efface itself. It cannot delegate the plenary or the essential legislative functions; even if there be delegation, parliamentary control over delegated legislation should be a living continuity as a constitutional necessity”. Further, the Court added: “The legislature is the master of policy and if the delegate is free to switch policy it may be usurpation of legislative power itself”. Ibid, at 149.

In practice, however, the Courts have, generally, approved of wide delegation of legislative powers to administrative authorities. But, it would be imprudent to contend that the challenge on the ground of “abdication of essential legislative function” has been totally rejected and would not be entertained by the courts.

Excessive Delegation may be assailed on the ground that excessive legislative power delegated is capable of being used in a discriminatory fashion and
thus offending the Equality Clause in Art. 14. For Illustration, see material provided under “Emerging Trends ....”.

4. Nature of Powers Conferred

   e) Power of Supplying Details : Skeletal Legislation. E.g. All India Services Act, 1951. see Garewal v. Punjab, AIR 1959 SC 512


   g) Power of Modification of Statute. This power, it has to be noted, is limited to bringing about consequential changes and cannot be exercised to subvert the policy laid down by the legislature. No radical changes in the enacted law is permitted.

   Case : Rajnarain Singh v. Chairman, Patna Administration Committee, AIR 1954 SC 569.

   h) Power to impose tax

5. Judicial Control of Delegated Legislation

Challenge on two grounds : a) Substantive Ultravires

                     b) Procedural Ultravires

Substantive Ultravires : Where the delegating statute itself is unconstitutional, for example, being violative of a fundamental right.

   Sometimes, the Parent Statute may be constitutional but the rules made there under may suffer from the vice of unconstitutionality. Then, the rules, when challenged, cannot survive.
The rules made may be ultravires the delegating statute. E.g. Parent Law permitting the delegate to exempt tax upto 10%. But, the rule granting exemption to the extent of 15% or rules creating new offences.

**Procedural Ultravires**

Where the rule-making authority does not abide by the procedural requirements which the parent law lays down like, for example, ‘consultation with affected interests”. Procedural requirement may also relate to ‘previous publication’ or ‘laying the rules’ made before parliament.

Non-compliance with the Procedural Requirement may not always lead to invalidation since judiciary has carved out to a distinction between mandatory and directory procedural provisions.

**Illustrations :**

- d) Age of a High Court Judge – President of India to decide after consultation with the Chief Justice of India – No consultation – Decision void.


- Rules being published in Local News Paper.
- Supreme Court – No procedural irregularity
Parliamentary control – Laying procedure.

Mere compliance with the laying procedure will not authenticate the rules when the rules are ultravirous the constitution or the parent statute.

Broadly speaking, in India, ‘Laying in procedure’ is regarded as Directory and failure to lay may not affect the validity of the rules.

- Lok Sabha and Rajya Saha committees on Sub-ordinate Legislation function as the Watch Dogs over Delegated Legislation made by administrative agencies to ensure that the delegate in making rules, etc. shall act intravires.
President of India: Qualifications; Manner of Election; Term of office; Powers and Functions; Position of the President under the Constitution; Impeachment.*

Prof. S.S. Vishweshwaraih**

In this Lecture, I shall endeavor to provide you with the Constitutional Perspectives relating to the Exalted Offices of the President and Vice-President of India and also the Governors of States. The Primary object of this lecture is to spell out the Manner of appointment of these functionaries, the Qualifications they need to possess, the Disqualifications that would render them ineligible to hold these high profile offices, their powers and functions, the immunities they enjoy and the Constitutional mechanisms or methods employed to remove them from their offices when the situations so warrant.

Initially, I have to make some prefatory observations.

Law and Society are intimately connected. A Civilized society cannot exist, grow and develop without Law. Law can be a catalytic agent to bring about social transformation and for establishing a wel-fare state. As you are, probably, aware, ‘low’ is a word very commonly used in our environs. For example, your university Rules ‘dictate’ or ‘require’ you to do certain

*Lectures prepared for e-Learning Centre, Visveswaraya Technological University.

**B.Sc., LL.M., S.J.D. (U.S.A) Formerly, Dean, Faculty of law, Karnataka University, Dharwad.

things and ‘forbid’ you from doing certain other things. Your parents file
Income Tax Returns because law commands so. A child’s birth or a person’s death is required to be registered because that is demanded by law. Thus, law governs a person’s life from the cradle to the grave. But, what is ‘law’? It is difficult to capture the essence of law in a simple, understandable language. For our purpose, we may say that ‘law’ is a set of formal rules which regulate human conduct and their violation may lead to imposition of punishment.

Let us now find out what is ‘Constitutional Law’? Because, it is this Document which provides for the offices of the President, Vice-President, the Governors, etc.

In a country governed by a written Constitution, the law embodied in the Constitution is accorded supremacy. It is the paramount law. It is the fundamental law of the Land. In the words of Dr.B.R.Ambedkar;

The Constitution is a fundamental document. It is a document which defines the position and power of the three organs of the State the Executive, the Judiciary and the Legislature. In fact, the purpose of a Constitution is not merely to create the organs of the state but to limit their authority, because if no limitation was imposed upon the authority of organs, there will be complete tyranny and complete oppression.

Shiva Rao, The Framing of India’s Constitution, A study, p.832.

Further, a Constitution may also declare the fundamental principles on which the Government is established or founded. For example, our Constitution seeks to secure for our citizens, justice-social, economic and political; liberty of
thought, expression, belief, faith and worship, Equality of status and of opportunity and also seeks to promote fraternity among them.

On nationally important days, like, the Republic Day, the Independence Day or whenever the Newspapers or Television Channels report about the visits of foreign Sovereigns or Dignitaries to the Rashtrapathi Bhawan, we get a glimpse of our President. But many of us do not know how he has got into Rashtrapathi Bhawan, what qualifications he should possess, what is his Term of office, what are his duties, functions, immunities and, more importantly, what is his position under the Constitution. Let us now try to find out.

In our Constitutional scheme, the Union Executive or the Parliament cannot be conceived of without there being a President. Because, Article 52 mandates that “there shall be a President of India” Again, Art 79 Provides: “There shall be a Parliament for the union which shall consist of the President and Rajya Sabha and Lok Sabha. Rajya Sabha is the Council of states, the “Upper House” and Lok Sabha is the House of People, the “Lower House”.

Qualification: A person contesting in the election to the office of president must possess the following Qualifications:

-4-

i) He must be an Indian Citizen;

ii) He must have completed the age of Thirty Five Years;

iii) He must have the necessary qualification to be a Member of Lok Sabha

iv) He must not hold any Office of profit under the Government of India or under any state Government or any Local or other Authority under the control of said Governments. (Art 58),
If the person contesting is already a Member of Parliament or State Legislature, he shall be deemed to have vacated his Seat on the date on which he assumes the office of the President. (Art 59),

**Election:** The President holds an Elective office, He is to be elected from an Electoral College which comprises of the elected members of the Lok Sabha, Rajya Sabha and Legislative Assemblies of the States (Art 54)

Here, a few important points have to be noted First, the Constitution has designed an Indirect Election to the office of the President. Secondly, since reference is only to elected members of Lok Sabha, etc., by necessary implication, the nominated members cannot participate and vote in the Presidential Election. Thirdly, Elected Members of Legislative Councils also cannot participate and vote.

Since the various states in India are unequal, population wise or as respects the strength in their respective Legislative Assemblies, Constitution has devised an Election Procedure for securing uniformity in the scale of representation of different States as well as parity between the States as a whole and the Union. (Art 55)

Voting shall be by secret Ballot held in accordance with the System of Proportional Representation by means of the Single Transferable Vote.

**Oath:** Before entering upon his office, the President-Elect shall take an Oath in the name of God or shall solemnly affirm that he would, inter alia, (among other things), endeavor ”to Preserve, Protect and Defend the Constitution and the law” (Art 60)
Term of office: The President shall hold office for a term of 5 Years from the date on which he enters upon his office. Even after the expiration of this term, the President shall continue to hold office until his successor enters upon his office.

The President, through a letter written by him, addressed to the vice President may resign from his office. When this is done, the Vice-President shall immediately communicate the same to the Speaker of the Lok Sabha (Art 61).

The President can be removed from his office for the violation of the Constitution through the Process of Impeachment.

The President may seek reelection. Art 57.

Powers & Functions: The President is the Head of the Union Executive. The Executive Power of the union is vested in him and he shall exercise the same in accordance with the Constitution either directly or through officers subordinate to him. Art. 53.

The Constitution Provides for a Council of Ministers to aid and advise the President in the exercise of his functions. (Art 74).

The President appoints the Prime Minister and the other Ministers are appointed by him on the advice of the Prime Minister.(Art 75)

Some of the important appointments made in the name of the President or under his authority are: Chief Justices of the High Courts and the Chief Justice of India, Judges of High Courts and the supreme Court (Art. 124); the Attorney-General (Art.76); the Comptroller and Auditor General of India (Art. 148); the Governors of Stares (Art 155); the Chairman, Members of U.P.S.C.,
Chairman, Vice-Chairman, Members of the National Commissions for Scheduled Castes and Tribes (Arts. 338, 338A)

The President is the Supreme Commander of the Defense Forces. Art. 53(2).

**Legislative Powers:** When both Houses of Parliament are not in session and the President is satisfied that the circumstances prevailing warrant immediate action, he may promulgate such ordinances as are required. These ordinances have the same force and effect as on Act of Parliament. Art 123.

The promulgated Ordinances should be laid before Lok Sabha and Rajya Sabha. They cease to operate on the expiry of six weeks from the reassembly of Parliament. They are rendered inoperative if before the expiry of six weeks Resolutions disapproving them are passed by both Houses.

If the Ordinances contain provisions which Parliament is incompetent to enact under the Constitution, then the Ordinance is void.

**Legislative Powers:** Incidentally, it may be noted that the President is an integral part of Parliament and the Legislative Processes there of. Unless he assents, no Bill passed by Parliament can become law. He can Prorogue the Houses of Parliament and when the situation so warrants may order the dissolution of Lok Sabha.

The President may address the Houses of Parliament and may send messages to either House whether with respect to a Bill pending or other wise
and on receipt of the message the House concerned shall soon thereafter consider the matter contained in the massage. Art 86.

After each General Election to the Lok Sabha, at the first Session and at the commencement of the first session each year, the President shall address both Houses assembled together and inform the Parliament of the causes of its Summons. Art 87.

-8-

Emergency Powers:

The Constitution contemplates three kinds of Emergencies which the President may proclaim in different critical situations. Notional Emergency due to war, external aggression or internal disturbance, Art. 352,

Emergency due to failure of constitutional machinery in States, Art. 356, and Financial Emergency, when financial Stability of India or any Part there-of is threatened. (Art 360).

President’s Pardoning Power:

A pardon is an act of mercy, forgiveness, clemency. The age of the accused, his impeccable past, the circumstances surrounding the commission of the crime, the number of years he has spent in Jail as an under-trial, his present physical condition are some of the factors which may guide the Executive Head while considering the request for pardon which when granted may be conditional or unconditional.

At this Juncture, the learned Seervai’s observations are apt:
Judges must enforce the laws, whatever they be, and decide according to the best of their lights; but the laws are not always just and the lights are not always luminous. Nor, again are Judicial methods always adequate to secure Justice. The Power of pardon exists to prevent injustice whether from harsh, unjust laws or from judgments which result in injustice; hence the necessity of vesting that power in an authority other than the judiciary has always been recognized.

Seervai, Constitutional law of India, p.2004

The Power to Pardon includes the power to commute (when death sentence is commuted to one of life imprisonment), the power to reprieve (withdrawal of a sentence for a while thus postponing the execution of the sentence), Power to Remit the punishment, in whole or in part.

Under Art.72(1), the President has power to grant Pardons, Reprieves, Respites, Remissions of Punishments or to suspend, remit or commute sentence of my person convicted of an offence where punishment or sentence is by a court martial, is for an offence against any law relating to a matter to which the executive power of the union extends, in where the sentence is a sentence of death, Art. 72.

Protection of President: Art 361 declares that the President is not personally answerable to any court for anything done by him in the discharge of duties or functions under the Constitution. The rationale being that the President, underArt.74(1), must act on the advice of his Council of Ministers. However, any person aggrieved by executive action taken in the name of the President can institute appropriate proceedings against the Government of India.
Further, no criminal proceedings shall be instituted or continued against the President in any court during his term of office. Nor any process for arrest or imprisonment shall issue against him during his term.

However, the personal liability of the President for any act done by him in his personal capacity either before or after assuming office remains and Civil proceedings can be instituted. But, there are certain conditions precedent. The person initiating the process must serve a written notice and two months must have expired. Further the Notice should mention nature of proceedings, Cause of action therefore, name, description place of residence of the person instituting the proceedings.

**Position of President under the Constitution:**

“Constitutional Head”, “Figure Head” are some of the expressions used when the Executive Head of the Union of India is referred to.

We have noticed the President’s power to appoint important constitutional functionaries like the Attorney-General, Judges of the Supreme Court…, his power to promulgate Ordinances, declare Emergencies, grant Pardons, etc. Do all these, prima facie, suggest that the President who holds an elective office, though through an indirect election, is Constitutionally authorized to act independently.? Does this view get reinforced when we notice expressions like “when the president is ‘satisfied’ is of the ‘opinion’, “thinks fit”, in the provisions of the Constitution? Don’t we get the impression that the President’s action is the result of his personal satisfaction, opinion, etc.? But we have learnt that the Council of Ministers has to aid and advise the President in the exercise of his functions and the President, under Art.75, must ultimately act upon such advice, Would this not establish that the President is just a Figure Head’ or “Constitutional Head”?.?
The Supreme Court has ruled; ... Although the Ordinance is promulgated in the name of the President and in a constitutional sense on his satisfaction, it is in truth promulgated on the advice of his council of ministers and on their satisfaction.”

It is now established that the President is a Constitutional Head and is obliged to act on the advice of his Council of Ministers.

Normally, the President is Constitutionally obliged to act on the advice of his Council of Ministers. But in exceptional circumstances, for example in his choice of prime Minister or when in a multi-party democracy, no single party or even the coalition has secured a clear majority, or, when the prime minister appointed by him loses the confidence of the House and refuses to resign but asks for the dissolution of Lok Sabha, the President has to, probably, act independently.

**Impeachment of the President:** Article 61 Provides for the Impeachment of the President. The President can be impeached for the violation of the Constitution. But the constitution does not spell out what acts and omissions on the part of the President would constitute “the violation of the Constitution”

Under the Constitution, the charge can be preferred by either House. The proposal to prefer such charge must be contained in a resolution moved after at least fourteen days written notice, signed by not less the one-fourth of the total number of members expressing their intention to move such a resolution. Such a resolution must be passed by a majority of not less than two-thirds of the total membership of the House. If the charge has been preferred, say, by Lok sabha, then, Rajya Sabha will investigate or cause the charge to be investigated. The President is entitled to appear or be represented at such an investigation.
Consequently, if in the House that has investigated the charge, a resolution is passed by a majority of not less than 

12

two-thirds of the total membership of the House declaring that the charge preferred is sustained, then the date on which the Resolution is passed is the date on which the President is removed from his office.

A few pertinent questions do arise when one reads the Impeachment Article 61 carefully.

It has been pointed out that in the Indirect Presidential Election, the Members of the Legislative Assemblies of States do participate and vote. Do they have no voice in the Impeachment Process?

Only elected Members of Parliament and Legislative Assemblies have the right to participate and vote in the Presidential Election. How come the nominated members who had no role in the Presidential Election acquire a voice during the President’s Impeachment Process?

Are there any guidelines for the President in office as to when his act or omission would constitute the violation of the constitution?

In this coalition era, also, in the era of mushrooming political parties, what are the chances of a party with two-thirds of majority coming to power? Does this imply that any President in office need not bother about the Impeachment Article and worry constantly as to what acts or omissions on his part would fall under the rubric of “violation of the constitution?”
The Vice-President of India

Art. 63 declares: “There shall be a Vice-President of India. The Vice-President is the ex-officio Chairman of Rajya Sabha. Art 64.

Should any vacancy occur in the office of the President by reason of death, resignation or removal or otherwise, the Vice-President shall act as President until a newly elected President assumes office. Art 65(1)

Again, when the President cannot discharge his functions on account of absence from office, illness, on other causes, the Vice-President shall discharge his function until the President resumes office. Art 65(2)

While acting as or discharging the functions of the President, the Vice-President would have all the powers and immunities of the President.

Qualifications: To be eligible for election as Vice-President, a person should be a Citizen of India, should have completed the age of thirty five years and must be qualified for election as a member of the Council of States. Under Article. 102, a person cannot become a Member of Lok Sabha or Rajya Sabha if he is, inter alia (among other things), of unsound mind and a competent court has declared so, an undischarged insolvent, has voluntarily acquired the citizenship of a foreign state or if he has been disqualified under any parliamentary legislation.

A person shall not be eligible for election as Vice-President if he holds any office of profit Under the union or State, Local or other Authority subject to the control of the said Governments. Art 66 (4)
Manner of Election: The Vice-President is elected by the Members of an Electoral College which Comprises or the members of Lok Sabha and Rajya Sabha. The election, where voting would be by secret ballot, would be in accordance with the system of proportional representations by means of a single transferable vote Art.66.

If a member of either House of Parliament or of a House of state legislature gets elected as Vice-President, he shall be deemed to have vacated his seat in that House on the day he enters upon his office Art.66(2).

Term of office: It is five years from the date of assumption of office. Art. 67.

Even after the expiration of the term, the vice-President shall continue in office until his successor assumes office. Art 67(c)

The Vice-President may resign his office by writing to the President.

Removal: In so far as the removal of the Vice-President is concerned, the elaborate Impeachment Process as under Art.61, is not contemplated. His removal is through a resolution in the Rajya Sabha passed by a majority of all the members of Rajya Sabha and agreed to by Lok Sabha. The Resolution, referred to, cannot be moved unless fourteen days’ notice has been given of the Intention to move the resolution.

You may note that the Vice-President, like the President, has no executive powers, no power to make appointment for High offices, to promulgate Ordnances or declare Emergencies, grant Pardons.

Comments: The Constitution itself specifies the situations in which the Vice-President can act as President. While so acting, the Constitution declares that
the Vice-President would enjoy all the powers and Immunities of the President. It would have been better if the same Electoral College that elects the President were to be commissioned for the election of the Vice-President also.

It may also be noted that for Impeachment of the President, the cause or reason is “violation of the Constitution”. But for the removal of Vice-President, no cause or reason has been mentioned in the Constitution.
we would invariably notice many similarities. But a careful study would establish that the Governor’s discretionary actions in pursuance of certain constitutional provisions would enable him to act without or inspite of the aid and advice of his Council of Ministers, for example, when the ‘Governor makes a Report to the President that the constitutional machinery in the state has failed, the Report need not, rather, ought not to be based on the advice tendered by his Council of Ministers, We may first refer to the Manner of Appointment of Governors, Qualifications prescribed, Term of his office, manner of Removal. Later, we will refer to the similarities and also, differences, is any, in respect of the powers and functions conferred on the President and Governor. Finally, we will examine Position of the Governor under the Constitution.

Art. 153 mandates that there shall be a Governor for each State. The proviso thereto declares that the same person may be appointed as Governor for two or more States.

The Governor’s appointment is not the result of any electoral process. There is no direct or indirect election involved. He is appointed by the President and holds office during the President’s pleasure. During the pleasure of the President, the maximum period for which the Governor can remain in office is five years. However, notwithstanding the expiration of his term, a Governor may continue in office until his successor enters upon his office A Governor may resign by writing to the President. Art.156

For appointment as Governor, a person must be a Citizen of India and must have completed the age of Thirty-Five years. Art. 157 He Shall not be a member of Parliament or of a House of the legislature. If, at the time of appointment, he is already an M.P, M.L.A., M.L.C., he shall be
deemed to have vacated his seat on the day on which he enters upon his office. He shall also not hold any office of profit. Art. 158.

Before assuming office, the Governor-Designate shall subscribe to an oath similar to the one administered to the President-Designate. Obviously, the name of the State would be substituted for “India” since the Governor is the Executive Head of a State and not the Union. Art. 159

More importantly, what has to be particularly noted is the Governor, while taking an oath, would declare that he also *inter alia* (among other things) would endeavour” to preserve, protect and defend the Constitution and the law”. This should not create an impression that the Governor can also be impeached for the violation of the Constitution. The Governor’s removal, as already stated, is dependent upon the loss of President’s pleasure and is not the result of a successful impeachment.

**Similarities as regards the Powers & Functions of the Governor and the President:**

As the Executive power of the union is vested in the President, the Executive power of the State is vested in the Governor. This power can be exercised by him either directly or through officers subordinate to him. It should, however, be exercised in accordance with the Constitution. Art.154

The Executive power of the Governor extends to matters in respect of which the State’s Legislature has power to make laws. Art.162.

As the President appoints the Prime Minister, the Governor appoints the Chief Minister of the State and other Ministers are appointed by the Governor on the advice of the Chief Minister. Art.164
A Council of Ministers with the Chief Minister as Head has to aid and advise the Governor in the exercise of his functions. It should be noted here that in the discharge of his discretionary functions under the constitution, the Governor is not constitutionally obliged to rely or act on the aid and advice of his Council of Ministers. Art.163

Like the President, the Governor has the right to address and send messages to the House/Houses with respect to Bill/Bills pending there or otherwise (Art.175), to make a special address at the commencement of the First Session after every General Election to the Legislative Assembly and at the commencement of the First session every year (Arts. 175, 176), can promulgate Ordinance (Art.213) and has the power to Grant Pardons, Reprives, Respites or Remissions (Art.161) (to be noted is the Governor’s power of pardon cannot be exercised in respect of punishment orders passed by Court Martials). Immunities available to the President are also available to the Governors (Art.361). As the President appoints the Attorney- General, the Governor Appoints the Advocate- General (Art.165), As the president appoints the chairman and members of the union public service Commission, the Governor appoints the Chairman and Members of the State Public Service Commission (Art 316). It may be noted that the references to similarities are illustrative and not exhaustive.

**Governor’s Position under the constitution:**

Initially, it has to be emphasised that the Governor’s exercise of power and discharge of functions under the Constitution are ordinarily or normally would be in pursuance of the advice tendered by his Council of Ministers. Just because the Governor is entitled to act in his discretion in certain situations provided for in the Constitution and his discretionary actions are unassailable or
unchallengeable, no conclusion to the effect that the Governor, (under all circumstances, would not be found) or, is not bound by the advice tendered by the council of Ministers or not obliged to adhere to such advice should be drawn. The underlying rationale behind the Constitution of a Council of Ministers is to aid and advise the Governor in the exercise of his functions. The Governor, like the President is “a formal or constitutional head of the executive and the real executive powers are vested in the Ministers and – virtually it is the Council of Ministers in each state that carries on the executive Government”. Ram Jawaya v.Punjab A.I.R. 1956 S.c. 549. Generally speaking, the Governor (also President) “must act with the aid and advice of the Council of Ministers except where a contrary provision is made in the constitution.” Samsher Singh v.Punjab, AIR 1974 S.C2192,2198. Neither the President nor Governor exercises the executive function individually or personally. Executive action taken, in the name of the President or Governor, is the action of the union or the state Id., at 2197-98. When a constitutional provision requires the satisfaction of the Governor for the exercise of any power or function, it is the satisfaction of the council of ministers on whose aid and advice the Governor generally exercises all his powers.

Having said that normally the Governor is obliged to act with the aid and advice of his Council of Ministers as the President is required to, we should note that under the Constitution the Governor’s Position is a bit different from that of the President in the light of some the express provisions therein. where “conferment of specified discretionary powers would be obvious”.

Under the proviso to Art.74, the President may require the , Council of Ministers to reconsider (the advice tendered), either generally or otherwise, and the President shall act in accordance with the advice tendered after such
reconsideration”. (Emphasis added). Let us contrast the above proviso with Art.163 which reads; There shall be a Council of Ministers--- to aid and advise the Governor in the exercise of his functions, except in to far as he is … under the constition required to exercise his functions” … in his discretion…(Emphasis supplied) Further, the above article provides that if any question arises as to whether the matter in respect of which the Governor has chosen to exercise his discretion is or is not the one in respect of which he is constitutionally required to act in his discretion, the Governor’s discretionary decision is final and the validity of any thing done by the Governor shall not be questioned on the ground that the Governor ought or ought not to have acted in his discretion.

-6-

Under Article 356, the Governor can report to the President about the breakdown of constitutional machinery in his state. Such a report can be made in the exercise of Governor’s discretion even against the advice of his council of ministers because the breakdown may be attributable to the conduct of the council of ministers itself.

Art.163 makes the Governor the sole and final judge as regards the question whether any function is to be exercised in his discretion or on the advice of his Council of Ministers. Seervai, p.2036.

Again, Art.200 requires the Governor to reserve (for the consideration of the President) any Bill which, in his opinion, if it became law would so derogate from the power of the High court as to endanger the position which the High court is designed to fill under the constitution… Another instance where the Governor may act irrespective of the advice from the Council of Ministers Seervai, 2036
When a Bill passed by the state legislature is presented to the Governor for his assent, he has four options:

i) to assent,

ii) to withhold assent,

iii) reserve the Bill for the consideration of the President

iv) return the Bill, if it is not a Money Bill, along with his message, for reconsideration of the Bill, or any specified provision there-in or for introducing some amendments. But if the Bill is passed again with or without amendments and presented to the Governor, he shall not withhold his assent.

---7---

As Sarkaria Commission on ‘Centre-state Relations” has observed in its Report, a Governor is a ‘bridge’ between the union and the state and “can foster better understanding between them” and eliminate misapprehensions” which have strained their relationship. As a “live link”, it is the Governor’s duty “to keep the union informed of the affairs of the state Administration, whenever he feels that matters are not going in accordance with the constitution, or there are developments endangering the security or integrity of the county”. In this fashion, the centre’s appointee, the Governor, assists and enables the union to discharge its responsibilities towards the State.

---0---
Prime Minister-Manner of Appointment

The Council of Ministers

In our Constitutional Scheme, “the formulation of the Governmental Policy and its transmission into law” is the primary responsibility of the Executive. The Union cabinet that enjoys or commands the support of the majority in Lok Sabha “concentrates in itself the virtual control of both legislative and executive functions.” Ram Jawaya v. Punjab, AIR 1955 S.C. 549. The Constitution, of course, declares that the Executive Power of the union is vested in the President. Art.53(1). But, while examining the position of the President, we have learnt that barring a few extra-ordinary situations, he has to exercise his functions with the aid and advice of his Council of Ministers. Can there be a Council of Ministers without there being a Prime Minister? Art.74 provides the answer. It says: 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.”

How is this Prime Minister appointed and who appoints him? Let us refer to Art-75 (“Other Provisions as to Ministers”)
The President appoints the Prime Minister. Other Ministers are appointed by the President on the advice of the Prime Minister. The Ministers hold office during the pleasure of the President. The President shall administer to these Ministers before they assume charge, the Oaths of Office and Secrecy. Importantly, The Council of Ministers shall be collectively responsible to the House of People. That is, at the Stage of formulation of a policy or during its adoption, they may express their views, apprehensions differences, criticisms, But, once the policy is formally adopted by the Cabinet and when it is to be transformed into law through the introduction of a Bill in Parliament, they are required to put up a united front because it is regarded as a Collective decision. And the Constitution requires that the Council of Ministers shall be collectively responsible to the Lok Sabha.

Although the Constitution says that the President appoints the Prime Minister, it does not say what factors do or should guide him in making such an appointment, whether the President should choose a Member of Lok Sabha or Rajya Sabha, whether he can appoint even a non-member as Prime Minister?

Taking into account the enormous expenditure incurred at General Elections, the voters’ mandate, the need for a Stable Government, the concern for national interest and the Parliamentary Conventions, the President would be justified in appointing the Leader of the Political Party commanding Majority support in Lok Sabha as Prime Minister It is only after the Prime Minister is appointed, the other Ministers would come into picture. Because, the other Ministers are appointed by the President on the advice of the Prime Minister. The implication is, if a Minister appointed by the President on the advice of the Prime Minister has to be removed or dismissed on account of inefficiency, non-performance, illness, disability developed, whatever, the Prime Minister’s
suggestion should be heeded by the President. It is the Prime Minister that has to run the show in Parliament

and outside. The further implication is a Minister can remain in office or retain his portfolio during the pleasure of the Prime Minister.

Although it would be a strange act on the part of the President to appoint a person who is not a Member of Lok Sabha as Prime Minister, this is possible provided the person being invited is a former Prime Minister who has been defeated or who did not contest in the General Elections and the Party which is in Majority in Lok Sabha requests the President to appoint him as the Prime Minister. But such a person when appointed as Prime Minister must, within six months after his appointment, get elected to Lok Sabha.

It is the Prime Minister’s Prerogative to allocate portfolios. The Senior most members are assigned Cabinet ranks. These Cabinet Ministers formulate the Governmental policies, coordinate the activities of different Ministries, resolve differences between or among Ministers, play the role of Conciliators or Mediators. Then, there are Ministers of State, Deputy Ministers, Parliamentary secretaries (who have no independent charge and are appointed to assist Ministers). Rathod, P.B,  Indian Constitution, Government and Political System Japan, A.B.D. Publishers, 2004).

The real Executive Head is not the President but the Council of Ministers. At Crucial moments during the deliberative processes, that is Debates in Parliament, it is for the Council of Ministers to think and decide whether they should “swim or sink together”.

To advise the President or a Governor, the Council of Ministers should exist. Consequently, when the Lok Sabha or the Legislative Assembly is
dissolved, the dissolution cannot cause the disappearance of the Council of Ministers because the President or Governor can always ask the Council of Ministers to continue until its successor assumes office.

The Role of the Prime Minister

The first principle deducible from the Constitutional Provisions is No Prime Minister - No Council of Ministers. In the formation of the Council of Ministers, the primary task of the President is the appointment of the Prime Minister. Once the Prime Minister is appointed, the President’s subsequent tasks are mechanical in the sense that he has to appoint the other Ministers on the advice of the Prime Minister or drop these appointed on his advice.

The Prime Minister is referred to as Primus inter pares, “the first among equals”. This is contested on the ground that the usage of the phrase would be non-sensical “as applied to a potentate who appoints and can dismiss his Colleagues.” Rathod, supra, quoting Ramsay Muir.

The Prime Minister is the “Live Link” between the President and Parliament and Parliament. He is the one who is constitutionally obliged to communicate to the President the decisions of his Council as regards the administration of the affairs the Union and proposals for legislation, to furnish the same when the president calls for it and to submit at the instance of the President, to the consideration of the Council of Ministers any matter on which a Minister has taken decision but which has not been considered by the Council. Art.78

Here, a Constitutional Issue may arise. The Issue being, can the President dismiss the Prime Minister because of the breach of duties
imposed upon him under Art.78? The Constitution does not provide an answer. On the contrary, the Constitutional Conventions command that the Leader of Majority Party be appointed as Prime Minister. Only when such Prime Minister loses the Confidence of the House of People and other Parties coming together can form a stable Government, can the President get rid of the Prime Minister who commits a breach of his constitutionally assigned Duties.

**Conclusion:**

The Prime Minister has been described as “the pivot of the whole system of Government”, by Harold Laski, “As the Sun around which the other planets revolve” by Jennings, “A moon among lesser stars,” by William Harcourt. A devout Democrat who has a firm grasp of the Constitutional ethos, dictates, who has genuine concern for the upliftment of the down-trodden, who has masses marching along and behind him would be an Ideal Prime Minister.

--0--

-1-

Chief Minister; Manner of Appointment; Council of Ministers; Role of the Chief Minister Under the Constitution.
As the President appoints the Prime Minister, the Chief Minister of a State is appointed by the Executive Head of the State, namely, the Governor.  

Art 163

The Governor, by Parliamentary Conventions would have to invite the Leader of the single largest party in the Legislative Assembly or if a coalition of Political Parties have contested in the General Election by subscribing to a Common Minimum Programme and secured the largest number of seats, then the Leader of such a Coalition to be the Chief Minister. The primary factor that should guide the Governor in the appointment of a Chief Minister is whether the person being appointed enjoys the confidence of the majority in Legislative Assembly and his party can provide a Stable Government. The Invitee may be the Leader of the single largest party or Leader of Coalition or a Leader of a pre-poll alliance.

After the Chief Minister’s appointment, the other Ministers are appointed by the Governor on the advice of the Chief Minister. These Ministers will hold office during the pleasure of the Governor which, in reality, means during the pleasure of the Chief Minister. Art 164. They are also administered Oaths of office and Secrecy by the Governor before they enter upon their offices. Art 164(3).

In the past, the Councils of Ministers, both at the Centre and in the States, used to be quite large and appeared unwieldy because the person appointed as Prime Minister or Chief Minister had to acknowledge the interests of various representative groups in the Assembly and accommodate their leaders by providing berths in the Council of Ministers, Unscrupulous members of various Political parties would jump over the band wagon of a Ruling Party to gain a ministerial berth. The Defections indulged in by MLAS who were in search of Power and Position and encouraged by a party in power to consolidate
its position and perpetuate itself in power cast a pernicious effect upon the stability of political parties and posed a formidable threat to established democratic norms and practices. Now, the Constitution (Ninety-first Amendment) Act, 2003 which came into effect from 01-01-2004 forbids both the Prime Minister at the Centre and the Chief Ministers of States from having as many Ministers as they please in their Councils of Ministers. That is, the Prime Minister or the Chief Ministers have to heed the ceiling imposed under Arts. 75(1A)(1B) and 164 (1A)(1B). Provisions under Art 75 (1A) & Art.164(1A) are worded almost in identical terms.

The total number of Ministers, including the Prime Minister/the Chief Minister, in the Council of Ministers… shall not exceed fifteen percent of the total number of members of the House of People or the Legislative Assembly.

There is a proviso to Art 164 (1A) which says that the number of Ministers including the Chief Minister in a State shall not be less than twelve.

In may be noted that Arts. 75 (1A) (1B) and 164(1A)(1B) seek to eliminate the menace of defections.

The State Council of Ministers is Collectively responsible to the Legislative Assembly. Art.164(2).

Like Art.78, which requires the Prime Minister to furnish certain information to the President, Art.167 requires the Chief Minister of communciCate to the Governor, Decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for Legislation, etc. Provisions in Art.78 & Art 167 are identical. The only difference being the Prime Minister’s Duty to Commnicate to the President under Art 78 and the Chief Minister’s Duty to the Governor under Art.167.
Most of the points dealt with under Art 78 retain their relevance here too.

---0---

Parliament: Composition, Powers and Functions*
And
State Legislatures: Composition, Powers and Functions*

Prof. S.S. Vishweshwaraiah**

Introduction:-
Ours is a representative Democracy. Parliament and the President are our Representatives at the Centre. They are constitutionally obliged to mirror the ambitions, aspirations and the dreams of the people of India. They should endeavor to secure for our citizens, Justice - social, economic and political; Liberty of thought, expression, faith, belief and worship, Equality of status and opportunity and foster fraternity through constitutionally valid measures.

Indian Parliament is a creature of our Constitution. So, its powers and functions are those which the Constitution prescribes or has provided for. Therefore, it is wrong to describe our Parliament as ‘Sovereign’. In its own sphere of activity, it may be supreme. But, its counter- part in England is fully sovereign and the Doctrine of Sovereignty of Parliament operates there. It may be noted that England does not have a written Constitution as we do have. In theory, the English Parliament’s Powers are quite great. In the absence of a written Constitution, the limitations the British Parliament suffers from cannot be easily nor exhaustively catalogued, So, it is argued

*Lectures prepared for e-Learning Centre, Visveswaraya Technological University.
**B.Sc., LL.M., S.J.D. (U.S.A) Formerly, Dean, Faculty of law, Karntak University, Dharwad.

that it can make or unmake any law. The stale joke, to depict the British Parliament’s enormous law-making power, is that the only thing it cannot do is to convert a man into a woman or a woman into a man. But, our Parliament can exercise its powers subject to the limitations our Constitution imposes and by following the procedure prescribed in the Constitution. For example, it cannot make a law which imposes unreasonable restrictions on citizens’ Fundamental Rights, like, Freedom of Speech and Expression, Freedom of Assembly, Freedom of Association, to mention a few, guaranteed under Art.19. Again, in
the exercise of its power to amend the Constitution, our Parliament cannot
destroy the basic or ‘the fundamental’ or ‘the essential’ or ‘the paramount’
features of our Constitution. Some of the Basic or Fundamental Features
pointed out by our Supreme Court are; “The Fundamental Rights” “The
“Rule of Law”, “Judicial Review”… (for illustrative purposes only). Thus, the
Constitutional limitations on our Parliament’s Powers can be easily seen or
1461; (1973) 4SCC225.

In our Democratic Polity, our Parliament is “the pivotal institution.” But,
as the National Commission to Review the Working of the Constitution has
rightly remarked: “It has to be remembered that in parliamentary democracy,
just as the Government is responsible to Parliament, Parliament is also
responsible to the people who are the supreme sovereign.” p.105  (Emphasis
Supplied). You may have read in Newspapers or seen on T.V. “the furore and
uproar” in our Legislatures on some occasions, the Dharnas staged by our
elected representatives in the “well of the House” and the stalling of
proceedings, too, by our agitated MPS or MLAS or MLCs and wondered
whether such acts should accompany the law-making Process. Well, they
should not. Unparliamentary conduct demeans or lowers the dignity of a
central, primary constitutional organ, Of course, the National Commission,
referred to earlier, has also lamented thus: “There is increasing concern about
the decline of Parliament, falling standards of debate, erosion of the moral
authority and prestige of the supreme tribune of the people.” p.105.

Our Founding Fathers preferred the Parliamentary System to the
Presidential Form of Government with a fond hope that although the
Presidential system would provide the needed stability to the Government for
the formulation and implementation of its policies, Executive’s continuous
accountability to the Legislature and Legislature’s continuous monitoring and
supervision over executive actions would not be possible. Of course, our
experience may have underlined that the virtual concentration of Executive and
Legislative Functions in the Executive has rendered Executive’s accountability
to the Legislature more a myth than a reality.

Parliament:- Article 79 declares: “There shall be a Parliament for the union
which shall consist of the President and two Houses known as the Council of
States and the House of the People”.

It has to be noted that the Council of States is also referred to as “Rajya
Sabha” or the Upper House” or “House of Elders”. And, the House of People
is referred to as Lok Sabha” or the “Lower House”. [ Henceforth, the two
Houses of Parliament will be referred to as Rajya Sabha and Lok Sabha.] While
Rajya Sabha represents the States, Lok Sabha represents the People. The foregoing establish that the Indian Parliament is Bicameral. Further, the point that the President of India is an integral part of Parliament needs no reiteration. [Students may refer to the material on “President of India: …Powers and Functions”]

**Composition of Rajya Sabha:** [Art.80 to be read with Fourth Schedule wherein the first column mentions the name of the State or union Territory and the second specifies the number of seats allotted.]

a) Rajya Sabha shall consist of **Twelve Members** nominated by the President from amongst citizens possessing special knowledge or practical experience in the areas of Literature, science, Art or social Service. The object underlying this provision is to utilize the expertise, experience of eminent men and women, and

b) not more than **Two Hundred and Thirty Eight Representatives** of States and Union Territories.

Representatives of States in the Rajya Sabha shall be elected by the elected members of the Legislative Assemblies of the States in accordance with the System of Proportional Representation by means of the Single Transferable Vote.

Representatives of Union Territories shall be chosen as prescribed in the law enacted by Parliament.

A State’s population determines the number of Representatives it can send to Rajya Sabha. Consequently, States that are small cannot be represented by a large number of its Representatives in the Rajya Sabha.

Lok Sabha’s composition is as under:(Art.81):

a) Not more then **Five Hundred and Thirty Members** chosen through direct election from the territorial constituencies of the States,

b) Not more than **Twenty Members** to represent Union Territories who shall be chosen in such manner as prescribed in a Parliamentary Legislation.

Elections to Lok Sabha and to the State Legislative Assemblies are on the basis of adult franchise/suffrage. That is, an Indian citizen who is not less than eighteen years of age and who does not suffer from any disqualification under the Constitution or law made by State Legislatures on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal Practice can get registered as a voter & vote. Voting will be by Secret Ballot at the General Elections.
Further, the President on forming an opinion that the Anglo-Indian Community is inadequately represented in the Lok Sabha can nominate not more than two Members of that community to Lok Sabha. Art.331.

**Qualification for Membership of Parliament:**

i) Should be a Citizen of India;

ii) Should subscribe to Oath…set out in Schedule Three of the Constitution;

iii) Should possess such other qualifications as Parliament may prescribe by law;

iv) For a seat in Rajya Sabha, should not be less than thirty years of age.

v) For a seat in Lok Sabha, should not be less than twenty five years of age.

**Disqualifications: Art.102**

A Citizen cannot become a Member of either House,

i) if he holds any office of profit under Government of India or State(Please note” Local or other Authority” not mentioned. Compare Art.58(2), Art.66(4);

ii) if he is of unsound mind and a court of competent jurisdiction has so declared;

iii) if he is an undischarged insolvent;

iv) if has voluntarily acquired the citizenship of a foreign State or “acknowledges allegiance or adherence to a foreign State”… (Seervai, Constitutional Law of India, P.1814.

v) if he is disqualified by or under any law made by Parliament.

A discerning student would find out that no educational qualifications have been prescribed for contesting in the elections to either House. In fact, in the Constituent Assembly some members did plead that some educational qualifications be prescribed. The plea was not heeded, probably, because, great public men who did not have much education and who had devoted themselves to the freedom struggle and suffered a lot might not get a chance to serve the country further.

**Oath of Office and Secrecy:** Every Member of Parliament shall before taking his seat in the House make an oath or solemnly affirm as conforming to the format set out in the Third Schedule.

**No Dual Membership:** The Constitution forbids Dual Membership. That is, if a citizen is elected to Lok Sabha, Rajya Sabha, or a House of the Legislature
of a State, he has to decide which seat he wants to hold. He cannot be a Member of all Legislative Bodies at the Centre or in the States. He should choose only one. It is the command of Art 101 that no person can be a member of both Houses of Parliament or of a House of the Legislature at the same time. It he has not made any choice before the expiration of the period prescribed in the Rules made by the President, his seat in a House of Parliament shall become vacant if he has not previously resigned his seat in the Legislature of the State and in one of the Houses of Parliament.

An elected member can resign by writing to the Chairman of Rajya Sabha or Speaker of Lok Sabha.

Ordinarily, when the resignation is accepted, the seat falls vacant. This is the ordinary practice. But, because of resignations made under duress, coercion, etc., the, Constitution now provides that when an elected member resigns, his resignation shall not be immediately accepted.

After the receipt of the letter of resignation, the Chairman of Rajya Sabha or the Speaker of Lok Sabha may conduct such inquiry as they think fit and after being satisfied that “such resignation is voluntary and genuine” may accept the resignation.

If a member of Parliament is absent from all Meetings for a period of sixty days without the permission of the Speaker of Chairman, his seat in the House may be declared “vacant”.

In reckonning the period of sixty days, any period for which the House was prorogued or adjourned for more than four consecutive days shall not be taken into account.

If a person sits and votes without taking the prescribed oaths, or when he knows that he is not qualified or disqualified for membership of the House or that he is prohibited from so doing by any parliamentary enactment, he shall be liable to be punished. Art.104.

**Decision on Disqualification:** Decision on the question whether a member of Parliament suffers from any disqualification has to be arrived at by the President and it shall be final. But, before giving his decision, the President shall obtain the opinion of the Election Commission and shall act according to such opinion. Art 103.

**Duration of House of Parliament (Art.83):** Rajya sabha is a permanent body and, therefore, is not subject to dissolution, That is, it cannot be dissolved. Nearly one-third of its Members retire on the expiration of every second year as per provisions in the law made by Parliament.
The House of People can be dissolved in certain situations. For example, when the ruling party loses the confidence of Lok Sabha and no other Party stakes its claim to form a Government. Dissolution brings to an end the life of Lok Sabha. But, prorogation ends or terminates a session.

If not dissolved earlier, Lok Sabha shall continue for five years from the date appointed for its first meeting.

However, when a Proclamation of Emergency is in operation, the aforementioned period of five years may be extended for such periods as Proviso to clause 2 of Art.83 provides.

**Officers of Parliament.**

Chairman & Deputy Chairman: As stated earlier, the Vice-President of India is the ex officio Chairman of Rajya Sabha. He presides over the Meetings,

The Constitution provides that Rajya Sabha, shall as soon as possible choose one of its Members as Deputy Chairman who shall discharge the duties whenever the office of the Chairman is vacant or during his absence. (Articles.89,91)

The Deputy Chairman has to vacate his office when his Membership of Rajya Sabha ceases. He can also be removed through a Resolution passed by a majority of the Members.

The Speaker and the Deputy Speaker: The Presiding officer of Lok Sabha is the Speaker. The Constitution ordains under Art.93 that the Lok Sabha shall choose, as soon as possible, Two of its Members as Speaker and Deputy Speaker.

Dignity, Prestige and Authority accompany the office of the Speaker of Lok Sabha. He presides over the Meetings, adjourns the House if there be no quorum at a given point of time. It may be noted that the quorum required to conduct a Meeting of either House is One-Tenth of the total number of Members of the House. Art 100(3).

It is the Speaker who has to ensure that the Debates, Deliberations in Lok Sabha are conducted with decorum and in a dignified manner. So he can command a Member not to use unparliamentary language, can order expunction of unparliamentary remarks made by a Member, can suspend a Member, ask an unruly member to withdraw from the House. He is the final authority to decide whether a Bill is a Money Bill Art-110 (3). At the Joint Sessions of Lok Sabha and Rajya Sabha, it is the Speaker who presides. He is the preserver, protector of the Rights and privileges of the Members of Lok Sabha, has the authority to punish Members, Non-Members for the breach of the privileges. He signs
the Bills passed by Lok Sabha before they are transmitted to Rajya Sabha or to
the President for his assent. He continues in office even after the Dissolution of
Lok Sabha until immediately before the first meeting of the House of people
(Lok Sabha) after the dissolution. (Art.94, the last proviso)

The business of the Houses when in session is pre-scheduled so that the
members know the agenda before hand and can prepare and effectively
participate in the deliberations. However, there may be times when a definite
matter of public importance may crop up and a party or a member would wish
that the matter be taken up and discussed immediately so that the Government’s
stand in respect of the matter and the steps it is contemplating to address the
issue would become known to the House. But, the time table already
announced cannot be departed from in ordinary circumstances. So, the Rules of
procedure of the Lok Sabha do permit a Member to move an adjournment
motion, that is, a motion to adjourn the business of the House for discussing a
definite matter of urgent public importance. When such an Adjournment Motion
supported by fifty members of Lok Sabha is moved, it is the Speaker who
determines that the motion is in order and can suspend the scheduled business
to facilitate a Debate on the subject matter of the motion. Incidentally, it may be
noted that an Adjournment motion cannot be moved in the Rajya Sabha.

Before we take up the Powers and Functions of Parliament, it is necessary
to recall that the President of India is an integral part of Parliament. He
summons, prorogues both Houses and can dissolve the Lok Sabha. He
addresses the Houses when they meet in their first session every year. Can
communicate Messages for their consideration. Can call for information from
the Prime Minister relating to proposals for legislation. Can promulgate
Ordinances when the Houses are not in session.

Legislative Procedure and Parliament’s Powers and Functions
Legislation:

One of the major and primary functions of Parliament is Legislation or
the enactment of laws. The precepts in the Preamble to our Constitution,
the injunctions in the Directive Principles of State policy, public demands for
new laws or amendments to the existing laws in respect of sociol-economic
problems, in the area of Environmental Pollution, Labour-Management
Relations make law-making a pre-eminent activity of Parliament. Further,
Parliament may also engage in effecting amendments to the Constitution when
certain situations so demand. But, the power to amend the Constitution, as
already pointed out, cannot be exercised to destroy the Fundamental or the
Basic Features of the Constitution.
Enactment of a Statute or Law is preceded by the introduction of a Bill in either House of Parliament. A Bill contains the Draft provisions of the Law being proposed. It originates in the Ministry concerned. It goes over to the Law Ministry for its legal opinion in respect of the Draft Provisions. Then the cabinet has to consider it. In the light of consultations with the Law Ministry, discussions and deliberations over the Provisions in the Bill, deletions, alterations, amendments may be effected. Finally, the Law Ministry, drafts the provisions and the Bill will be introduced in either House. In respect of ordinary legislation, the two Houses enjoy coordinate jurisdiction. However, a Financial Bill or a Money Bill can be introduced only in the Lok Sabha.

After the Bill is passed by both Houses it shall be presented to the President for his Assent. Only after the presidential Assent is accorded, it becomes Law.

When a Bill passed by Lok Sabha is transmitted to Rajya Sabha, the latter, may effect some amendments and pass it. It has to then go back to Lok Sabha. Lok Sabha may concur and pass the Bill. The Bill so passed is sent to the President for his Assent.

Sometimes, the Bill as such or some of its provisions may not find acceptance in the House to which it is transmitted. It may have been passed by the House where it originated. When a Bill passed by one House is rejected by the other or when the Houses do not agree to amendments effected or if the House to which the Bill is sent sits over it for more then six months, then, the President may summon a joint session of both Houses. (See Articles. 107,108,111).

The Speaker of Lok Sabha presides over the joint session. If the Bill is passed with or without amendments by a majority of all the members present and voting at the joint session, then it is deemed to have been passed by both Houses. Art.118.

After the President has notified his intention to summon a Joint Session and if Lok Sabha is dissolved such dissolution would not prevent the holding of the Joint session. Art.108. (5)

It may be noted when a Bill passed by both Houses is presented to the President for Assent, he may either give his Assent or withhold his Assent. Art.111. Or, he may return it for reconsideration or for examining the amendments he has proposed and the desirability for their inclusion. However, if the Bill is passed again, with or without amendments, and presented, “the President shall not withhold assent therefrom”. Proviso to Art.111.

Money Bill: A ‘Money Bill’ is a Bill which contains provisions dealing with the following matters only:
i) imposition, abolition, remission, alteration or reduction of any tax,

ii) the regulation to the borrowing of money or the giving of any guarantee by Government of India

iii) the custody of the Consolidated Fund or the Contingency fund of India, the payments of moneys therein or withdrawal of moneys therefrom;

v) the appropriation of money out of Consolidated Fund of India---- see Art.110 (1) for more details.

A Bill that makes provisions for any of the above matters and additionally for another matter is called a Financial Bill. Art.117(1). So, a Financial Bill has all the ingredients of a Money Bill plus some other matter tagged on to it.

A Money Bill can be introduced in Lok Sabha only. Art.109(1). It can be introduced only on the recommendation of the President. Art.117(1). President’s recommendation is not required when an amendment is moved for reducing or abolishing any tax.

After it is passed by Lok Sabha, it will be sent to Rajya Sabha for its consideration and recommendation. Rajya Sabha is allowed 14 days from the date of the receipt of the Bill to offer its recommendation. If Rajya Sabha does not return the Bill with its recommendation within 14 days, the Bill is deemed to have been passed by both House on the expiry of 14 days. Art.109(5). Even if Rajya Sabha returns the Money Bill within 14Days with its recommendation, such recommendation does not bind Lok Sabha, That is, it may accept or reject the recommendation. If Lok Sabha accepts the recommendation, the Bill is deemed to have been passed by both Houses in its modified form. It Lok Sabha rejects the recommendation, the Bill is deemed to have been passed by both Houses in its original form. Art.100(3). So, Lok Sabha has the final say in respect of financial matters.

It may be noted that the speaker’s decision that a Bill is a money Bill is final. When the Bill is being sent to Rajya Sabha for consideration …or to the President for his assent, the Speaker endorses through a certificate that it is a Money Bill. Such certificate establishes conclusively that the Bill is a Money Bill.

Presidential Assent is necessary after the money Bill is passed by both Houses. When such Assent is being sought, President enjoys no power to send the Bill back to the Houses for reconsideration. Art.111.

**Law Making Power of the Union Legislature:**
‘India’ is a Union of States. So States also have powers to make laws. Parliament, under our Constitution, does not enjoy the monopoly of law-making power. Legislative power is conferred both upon the Central Government, that is, the Union and the States. Both the Union Legislature and the State Legislatures are to exercise their law-making powers subject to constitutional limitations. These limitations would be obvious if we bear in mind the distribution of legislative powers under the Constitution, for example the Doctrine that requires that the Legislature shall not abdicate its essential legislative function. (that is, the Legislature cannot delegate the function of formulating the policy and enacting it into a binding rule of conduct), that a State cannot make a law extra-territorially, and the injunction under Art.19 that the Legislature shall not impose unreasonable restrictions on certain Fundamental Rights like Freedom of Speech and Expression, Freedom of Assembly, Freedom of Association, to mention a few.

Now, the questions are: Over what matters can Parliament and the State Legislatures legislate? Can both legislate in respect of the same subject matter? If so, which law shall prevail over the other? Under what circumstances can Parliament enact a legislation covering matters which fall within the legislative jurisdiction of States? We may now examine the foregoing.

Art 245 declares that Parliament may make laws for the whole or any part of the territory of India and a State Legislature can make laws for the whole or any part of the State.

A central legislation won’t be invalid if it has extra-territorial operation. Art.245(2). It has to be noted that a state is incompetent to make a law which would have extra-territorial operation.

In order to understand the distribution of legislative powers between the union and the states, we should refer to the Seventh Schedule of the Constitution where-in There Lists, namely, ‘Union List’ (List1, ‘State List’ (List 11) and ‘Concurrent List’ (List 111) are mentioned. These three Lists spell out various items of Legislation.

Parliament enjoys the exclusive power to make laws in respect of items mentioned in the union List. Similarly, States’ legislative power is exclusive as regards items in State List. As regards matters specified in the Concurrent List, both the Union and the States can make laws.

A careful reading of Art.246 suggests that ultimately “the overriding power of the union legislature …the union power prevails.”

While examining the exercise of legislative power by the Union and States in cases presented to the Courts, the principles of interpretation upheld by the Courts are:
The power of the Legislature to enact laws within its competence is plenary, subject, of course, of constitutional limitations.

Power to make law includes the power to make laws prospectively or retrospectively.

A Legislature can also pass validation Acts provided it has legislative competence over the subject matter. Such validation Acts can be given retrospective effect. But, the power to make retrospective laws is subject to constitutional limitations. For example, Art.20 (1) prohibits creation of offences and enhancement of penalty for any offence retrospectively. Further, this power “cannot be used to justify the arbitrary, illegal or unconstitutional acts of the Executive....”

Union power shall prevail in case of conflict between List 11 & List 111

Natural Justice has no application in respect of the exercise of legislative power.

Power to legislate on a topic carries with it the power to make laws on matters ancillary to it. Illustration: Power to make laws with respect to collection of rent includes the power to legislate with respect to remission of rent.

Parliament’s Legislative Power to Make Laws for the States:

If Rajya Sabha passes a resolution supported by two-thirds of the members present and voting declaring that it is necessary and expedient in national interest that Parliament should make laws with respect to any matter in the State List specified in the resolution, Parliament can make laws ...with respect to that matter. Art.249

When a Proclamation of Emergency is in operation, Parliament shall have power to make laws for the whole or any part of the territory of India with respect to any of the matters in the State list. Art.250

Parliament can make a law in respect of a matter mentioned in the State List at the instance of two or more states. But such state’s Legislature must have passed a resolution that such matter must be regulated by an Act of Parliament. If the State’s Legislature is bicameral, then both Houses should have passed the resolution. Any other State which desires to adopt the Act made by Parliament can do so by passing a resolution to that effect in its Legislature, Art.252
A law made by Parliament to implement any international treaty, agreement or convention cannot be invalidated on the ground that it intrudes into the domain of State Legislature. Art.253. But, such law made in pursuance of Art.253 cannot override, for example, the Fundamental Rights.

In respect of matters contained in the Concurrent List, both the union and the States can exercise concurrent legislative power. The question then would be: If there be conflict between the Central law and the State law, which law should prevail? To seek the answer, we should turn to Art.254- “Inconsistency between laws made by Parliament and the laws made by the Legislature of States”. To invoke Art.254, it must be shown that both the Central law and the State Law occupy the same field with respect to the some matter enumerated in the concurrent list. Or, the repugnancy is between the provisions of subsequent law and those of an existing law in respect of a specified matter in the Concurrent List. Art.256(1) declares that in case of conflict between Union law and State Law, the former prevails. Clause (2) of Art.256 carves out an exception to the rule laid down in clause (1). If any provision of the State made law with respect to a matter specified in the Concurrent List is repugnant to the provision of an earlier law made by Parliament or an existing law with respect to that matter, then the State law shall prevail in the state if it has been reserved for the consideration of the President and has received his assent. But, in the light of the Proviso to clause(2), referred to above, the State’s victory may be a temporary one because the proviso enables Parliament to supersede a state Legislation which has received the President’s assent by enacting a law on the same subject matter.

Parliament, under Art.247, is invested with power to establish additional courts for the better administration of laws made by Parliament or any existing laws with respect to matter enumerated in the union list.

Parliament also enjoys ‘Residuary Powers of Legislation’. Art.248 declares; Parliament has exclusive power to make any law with respect to any matter not enumerated in the concurrent List or State List.

**Financial Powers:** In the Financial Sphere, Parliament enjoys the supreme authority. No tax can be imposed without the authority of law. Executive cannot spend any money without Parliament sanction. Executive has to prepare Annual Budgets and seek Parliament’s approval. As stated earlier, Money Bills can originate only in Lok Sabha. Two Standing Committees namely the public accounts committee and the Estimates committee keep a watch over the ways the Executive spends the money sanctioned by Parliament.

**Control over the Executive:** Through Questions, Supplementary Questions, Adjournment Motions, No-confidence Motions, Parliament seeks to
exercise control over the Executive. Committee on Ministerial Assurances constituted by Parliament seeks to ensure that the assurances made by the Ministries to Parliament are fulfilled.

**Judicial Functions:** Parliament has the power to impeach the President, Judges of High Courts and the Supreme Court, Comptroller and Auditor-General.

Parliament also has the power to punish Members and Non-Members for the breaching the Privileges of the House.

**Elections to the Office of President, Vice-President:**
Elected Members of Both Rajya Sabha and Lok Sabha participate in the process of electing the President and the Vice-President.

**Delegated Legislation:** In Democratic Society committed to the establishment of a welfare State, no Legislature exercises a monopoly over the law-making activity, It has to necessarily share its Legislative power with the Executive and other administrative organs of the State.

Delegated Legislation is a technique to relieve pressure on legislature’s time so that it can concentrate on principles and formulation of policies.

Delegated Legislation, also referred to as Subordinate Legislation, means the exercise of law-making power by a body which is subordinate to the Legislature.

In India, Rules, Regulations, Notifications, Notified Orders, Orders, Bye-Laws—all denote Delegated Legislation.

**Restrictions on Delegation of Legislative Power:**

In theory, the Legislature is expected to lay down the legislative policy and formulate the same into a binding rule of conduct. This is known as the Essential Legislative Function which the Legislature is supposed to discharge and is non-delegable. When there is failure to discharge this Essential Legislative Function, the challenge revolves around the “Abdication by Legislature of its Essential Legislative Function. Thus, in *Avinder Singh v.Punjab*, Air 1979 SC 321, the supreme Court has ruled: “Legislature cannot efface itself. It cannot delegate the plenary or the essential legislative functions…” The Court added: The Legislature is the master of policy and if the delegate is free to switch policy it may be usurpation of legislative power itself.” p.149.
In practice, however, Courts have generally approved of wide delegations of legislative powers to administrative authorities.

Power to modify the legislative policy underlying the parent statute, power to repeal the parent statute cannot be delegated.

In would be better if the Legislature lays down the principles, standards, guidelines for the exercise of subordinate law-making power by administrative authorities.

Rules, Regulations…made by the Administrative Authority should not violate the parent statute or the Constitution.

The Statute enacted by a Legislature must be in conformity with the Constitution of India. Further, the Rules,… should not only be in conformity with the parent statute but also with the Constitution.

**Conclusion:** Inspite of the elaborate procedures laid out for making laws, it has to be pointed out that the laws enacted by Legislatures provide a fertile ground for numerous legal controversies and the accomplishment of the objects underlying the socio-economic legislations gets postponed indefinitely on account of challenges against the statutes enacted before the Courts of Law. In this context it would suffice to quote the following observations of the National Commission which advocate “a more systematic approach” for making laws.

**Planning of Legislation and Improving its Quality**

5.10 Our legislative enactments betray clear marks of hasty drafting and absence of parliamentary scrutiny from the point of view of both the implementers and the affected persons and groups. It is as true of the taxation Bill whose intent and exact implications are sometimes not clear even to those who pilot the legislation, as it is of other categories of laws. The bills are often rushed through parliament with unbelievable speed and then found wanting in one respect or another. A more systematic approach to the planning of legislation is needed to provide adequate time for consideration in committees and on the floor of the house as also to subject the drafts to thorough and rigorous examination by experts and laymen alike. It is important to ensure that all major social and economic legislation should be circulated for public discussion by professional bodies, business organisations, trade unions, academics and other interested persons.

5.10.2 The Commission recommends (a) streamlining the functions of the Parliamentary and Legal Affairs Committee of the Cabinet; (b) making more focused use of the Law Commission; (c) setting up of a new Legislation Committee of Parliament to oversee and coordinate legislative Planning: and
referring all Bills to the Departmental Related Parliamentary Standing Committees for consideration and scrutiny after public opinion has been elicited and all comments, suggestions and memoranda are in. The Committees may schedule public hearing, if necessary, and finalise with the help of experts the second reading stage in the relaxed Committee atmosphere. The time of the House will be saved thereby without impinging on any of its rights, The quality of drafting and the content of legislation will necessarily be improved as a result of following these steps. National Commission to Review the Working of the Constitution, p.109.

Parliamentary Privileges:
Art.105 deals with the “Powers, Privileges, etc; of the Houses of Parliament and of the Members and Committees thereof.”

In the words of Sir Thomas Erskine May, ‘Parliamentary Privilege’ is: “The sum of the peculiar rights enjoyed by each House collectively,…, And by members of each House individually without which they could not discharge their functions…”

Privileges are enjoyed by individual M.Ps because the House cannot discharge its functions without the unimpeded services of its Members and by each House for the protection of its Members and the vindication of its own authority and dignity. (Sir T.E. May). Clause (1) of Art.105, while holding out an assurance to M.Ps that “there shall be freedom of speech in Parliament” limits that freedom by “subjecting it to the provisions of this constitution and to the rules and standing orders regulating the procedure of Parliament”. Therefore, an M.P. cannot exercise his freedom of speech to discuss the conduct of a judge of the Supreme Court or the High Court. (See Art. 107,121) Further, an M.P cannot, in the exercise of the above right use unparliamentary language.

Clauses (1) and (2) of Art. accord protection to an M.P in respect of what is said within the House. That is, even a defamatory statement made in the House or before its Committees. But, if the M.P. publishes such a defamatory speech outside Parliament, he will be held liable.

The Freedom of Speech extends to voting’, raising questions, moving of resolution,….

The immunity against proceedings in any court would be “In respect of anything said or any vote given by him in Parliament or any committee thereof--” To be noted is “anything” is of widest import. Further, to avail of the immunity, it should be established that freedom of speech was exercised in parliament, that is, when it was in session and in the course of its deliberations.
In. P.V.Narasimha Rao v. State, AIR 1998 SC 2120, the charge was certain MPs had conspired to bribe certain other MPs to vote against a No-confidence Motion in Parliament. The majority ruled that while bribe-givers who were MPs could not claim immunity under Art.105, the bribe-takers, who were also MPs could claim immunity if they had actually spoken or voted in the House as dictated by the bribe-givers. National Commission, p.112. Do you think that the intention of the Framers of the Constitution was to immunize corrupt acts? Other Privileges are: freedom from arrest in civil cases, Freedom of the House to exclude strangers for imperative reasons since voters should know what their representatives are doing in the House; Right to prohibit publication of debates (now, confined to secret sittings, which are rare.) True and faithful reporting of the proceedings would not expose the reporter to civil or criminal Proceedings. A malicious Report would amount to breach of Privilege); Right to regulate internal proceedings. Art. 122 provides expressly that the validity of any proceedings shall not be questioned on the ground of any alleged irregularity of procedure…); Right to punish Members and outsiders for contempt.

[Interested Students may read the following cases: Keshav Singh v. Speaker Legislative Assembly, AIR 1965 All 349; Pandit M.S.S.Sharma v Sri. Krishna Sinha, Air 1959 SC 395. In Powers Privileges & Immunities of State Legislatives Re, Air 1965 SC.745]

**Conclusion:** ‘Rule of Law’ is a basic structure of the Indian Constitution. The MPs who have to subscribe to the Constitution are Constitutionally obliged to codify Parliamentary Privileges. This hope, I am sure, they would not fulfill in the near future.

**State Legislatures: Composition, Powers and Functions**

Article 168 ordains that every State shall have a Legislature. It shall consist of the Governor and one House or the Governor and Two Houses. The Two Hoses are known as the Legislative Assembly and the Legislative Council. If there be only one House, it is known as the Legislative Assembly. What is discernible is, it not is necessary that every State Legislature must be bicameral. A State’s Legislature may be unicameral. In fact, barring very few States, many states in the union do not have legislative Councils.

The Constitution provides for the abolition of Legislative Councils where they exist and also for their creation where they are non-existent. For creation or abolition, the Legislative Assembly of the state must pass a Resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting. Art.169.
Composition of legislative Assemblies: The Legislative Assembly of a State shall consist of not more than five hundred and not less than sixty members chosen by direct election from the territorial constituencies in the state. Art.170.

If the Governor of a State is of the opinion that the Anglo-Indian community needs representation in the Assembly and is not adequately represented therein, he may nominate one member of that community. Art 333.

Composition of the Legislative Council: The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of the State. However, in no case, the strength of the Legislative Council shall be less than Forty. Art.171

The composition of Legislative Council is partly through indirect election (one-third of the total numbers of the Council being elected by members of the Legislative Assembly), partly through special constituencies (e.g., Graduates’ Constituency, Teachers’, Constituency) and partly by nomination. (The Governor nominating persons having special knowledge on experience in the fields of Literature, Science, Art, Co.Operative Movement and Social Service) Art.171 (2) (e), (5).

Duration of State Legislatures: The provisions for the duration of the Legislatures is mutatis mutandis the same as those for the duration of the Houses of Parliament. See Arts.172 and 83.

Qualification for Membership: Qualifications are mutatis mutandis the same as those provided under Art.84 for members of Parliament.

Sessions of the State Legislature, Prorogation, Dissolution:
Governor is an integral part of the State Legislature as President is of Parliament. Like the President at the Centre, the Governor of a State can summon, address, prorogue the State Legislature, can dissolve the State Assembly, The Legislative Council is not subject to dissolution. Art.174,175,176

The Speaker, Deputy Speaker of the Legislative Assembly; Vacation, Resignation, Removal, other Anallary Provisions:- Previsions are mutatis mutandis the same as those for the Speaker and Deputy Speaker of Lok Sabha. Art.178,179,180,181

The Chairman & Deputy Chairman of he Legislative Council: Art.182:
Legislative Council to choose both as soon as it can. To be noted is the Vice-President of India is the ex officio Chairman of the Council of States, i.e., Rajya Sabha,

Vacation, Resignation, Removal & other Ancillary Provisions:- The Vice-President is the ex officio Chairman of the Council of States. The provisions for vacating his office or for his removal have been dealt with earlier.

The other provisions relating to the Chairman, Deputy Chairman of the Legislative Council are mutatis mutandis the same as those relating to the Speaker, Deputy Speaker of the Lok Sabha and the Legislative Assembly. (Art.89 to 92 & 182 to 185)

Provisions for conducting business are the same for both Parliament and State Legislatures. (e.g., oaths, votes, Quorum. Arts. 99 & 188; 100 & 189;)

So also, for vacation of stats (Arts. 101 & 190; Disqualification (Arts.102 *191); No Dual Membership (Arts.102 (1) and 190 (3); Disputes as to disqualification of members to be decided by the Governor acting according to the opinion of the Election Commission. (Art.192).

The provisions under Art.194 deal with the Powers, privileges and immunities of the Members of Legislatures. Compare materials on Art.105.

The Procedures of the State Legislature in respect of Money Bills and financial and other matters are mutatis mutandis the same except for the following:

i) No provision for joint session of Legislative Assembly & Legislative Council even if a state Legislature has two Houses.

ii) “Items charged on the Consolidation Fund are some what different.”

iii) “Although Art.200, exclusive of the proviso, corresponds to Art.111. The proviso requires the Governor to reserve for the consideration of the President any Bill which in his opinion, if it became law, would so derogate from the powers of the High court as to endanger the position which the High Court is designed to fill under the Constitution.

iv) When a Bill is reserved by the Governor for the Assent of the President, the President may either give his assent or declare that he withholds his assent. Where the Bill is not a Money Bill, the President may direct the Governor to return the Bill together with the message (see proviso to Art.200,) requesting the Legislature to reconsider two Bill or parts of it in the light of the message, The House or Houses must then consider the Bill within six months & if it is passed without
amendment, it must be submitted to the President for his consideration. Seervai, op.cit., 1818.