

Session 7: Indian Judiciary

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Indian Judiciary

- The judiciary in India has a **single, unified structure**. In other words, all the courts of the land **interpret and enforce laws** made by the state assemblies as well as the Union Parliament.
- Our judiciary is **said to be independent** because it can neither be influenced by the executive nor by the legislative organs of the government. It functions independently

Why is independence of Judiciary important?

- It is vitally **important** in a democracy that individual judges and the **judiciary** as a whole are impartial and **independent of all external pressures**
- Those who appear before them and the wider **public can have confidence** that their cases will be decided fairly and in accordance with the law.
- When the government is doing unconstitutional things, only hope for the people is Judiciary.
- If judiciary is not impartial, all rights mentioned in the constitution will be only on paper

How is independence of Judiciary achieved?

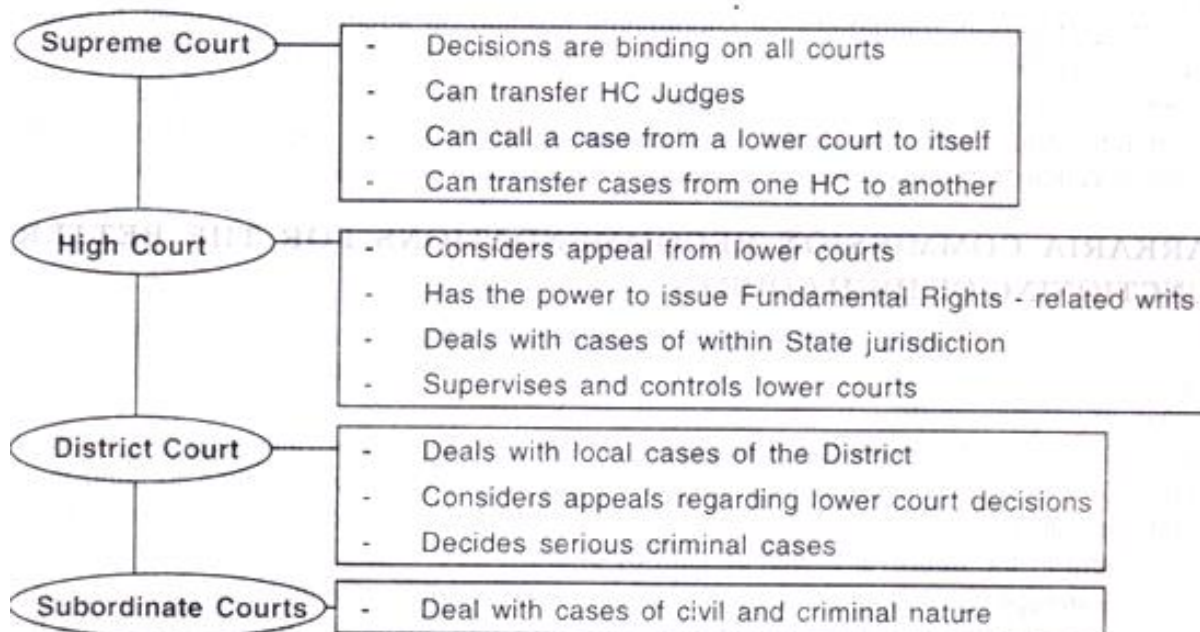
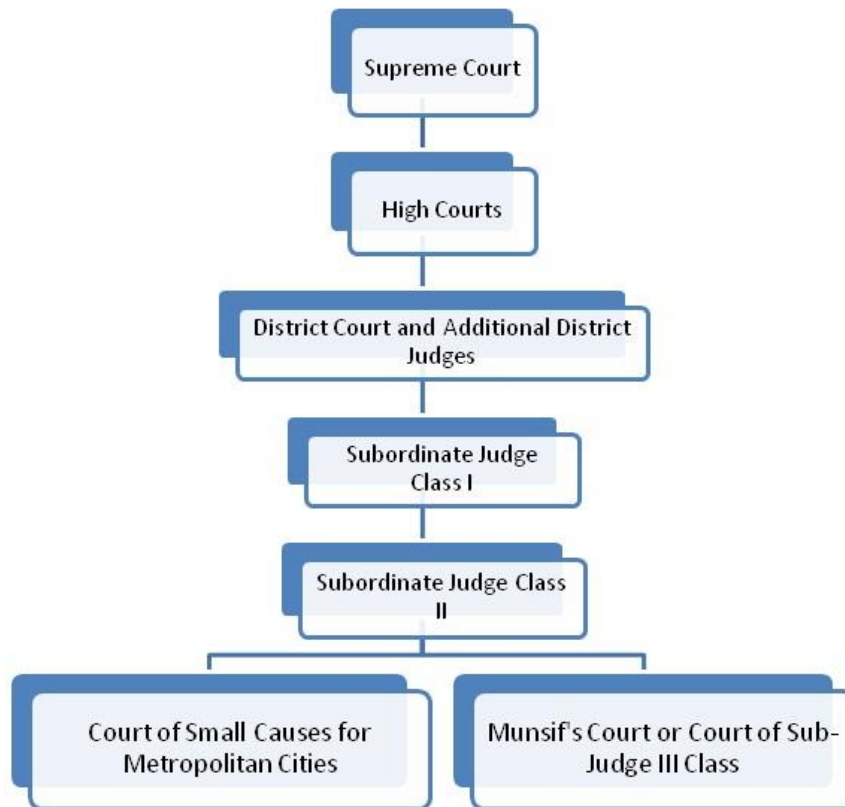
- Judiciary is separate from executive.
- **Consultation of judiciary** has been made must for **appointment of Judges**, so that it curtails arbitrary discretion of executive in appointments.
- **Removal of the judges of Supreme Court** is one of the most difficult processes. Judge can be removed by only impeachment in parliament. This process is such difficult that no judge of Supreme Court has been removed so far.
- **The Salaries, allowances and other privileges** are charged upon consolidated fund of India. They cannot be changed except during a financial emergency.
- The Constitution has put a bar on any discussion in parliament or state legislature regarding conduct of the judges in discharge of their duty except when a motion for their removal is under consideration in parliament.
- Retired judges of Supreme Court are barred from pleading or acting in any court within the territory of India.
- Supreme Court has power to punish for contempt of itself.
- Officers and servants of the Supreme Court are appointed by Supreme Court itself.
- Parliament **can extend but cannot curtail** the jurisdiction of Supreme Court.

Who appoints judges of Supreme court and High courts?

- As per the Constitution, a judge is appointed to the Supreme Court by the President of India on the recommendation of the collegium.
- Government recently passed a law making National Judicial Appointment Commission (NJAC).

- But it was struck down by supreme court under Judicial Review → judicial independence.

Three tier Judiciary in India



The Supreme Court

- The Supreme Court is the **highest court of appeal** in India. It is the **guardian of our Constitution** and interprets the constitution.
- The Supreme Court **protects the fundamental rights** of the citizens.
- It has powers to **issue writs and directions** to the concerned authorities.

Writs

- Anything that is issued under an authority is a writ.
- Orders, warrants, directions etc. issued under authority are examples of writs.

Who can issue writs?

- **Supreme Court** and **High Courts** have been empowered with Writ Jurisdiction.

Five types of writs

1. Habeas corpus
2. Mandamus
3. Prohibition
4. Quo warranto
5. Certiorari

Habeas corpus

- Habeas Corpus literally means '**to have the body of**'.
- Via this writ, the court can cause any person who has been detained or imprisoned **to be physically brought before the court**.
- The court then **examines the reason of his detention** and if there is no **legal justification** of his detention, he can be set free.

When to resort to Habeas corpus

- When the person is detained and not produced before the magistrate within 24 hours
- When the person is arrested without any violation of a law.
- When a person is arrested under a law which is unconstitutional
- When detention is done to harm the person or is mala fide intention.
- So Habeas corpus writ is called bulwark of individual liberty against arbitrary detention.

Who can file Habeas corpus petition?

- A general rule of filing the petition is that a person whose right has been infringed must file a petition.
- But Habeas corpus is an exception.
- Anybody on behalf of the detainee can file a petition.
- Habeas corpus writ is applicable to preventive detention also.
- This writ can be issued against both public authorities as well as individuals.

Mandamus

- Mandamus means “**we command**”.
- This writ is a command issued by court to a public official, public body, corporation, lower court, tribunal or government asking them to perform their duties which they have refused to perform.
- Due to this, Mandamus is called a “**wakening call**” and it awakes the sleeping authorities to perform their duty.
- A petition for writ of mandamus can be **filed by any person** who has a **legal right** to do so.
- Can not be issued against the **President of India** or **Governor** of a state.

Mandamus – Exceptions

Mandamus cannot be issued against the following:

- A private individual or private body.
- If the duty in question is discretionary and not mandatory.
- Against president or governors of state
- Against a working **chief justice**
- To enforce some kind of **private contract**.

Prohibition

- The writ of prohibition means that the Supreme Court and High Courts may prohibit the lower courts.
- such as **special tribunals, magistrates, commissions, and other judiciary officers** who are doing something which exceeds to their jurisdiction or acting contrary to the rule of natural justice.
- **For example, if** a judicial officer has personal interest in a case, it may hamper the decision and the course of natural justice.

Difference between Mandamus and Prohibition

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Certiorari

- Certiorari means to “**certify**”.
- It’s a writ that orders to move a suit from a lower court to superior court.
- It is issued by a higher court to a lower court or tribunal either to transfer a case pending with that to itself or quash its order.
- This is generally done because superior court believes that either the lower court had no jurisdiction or committed an error of law.
- Thus, certiorari is a kind of curative writ.

Quo Warranto

- Quo warranto means “**by what warrant**”?
- This writ is issued to enquire into legality of the claim of a person or public office.
- It restrains the person or authority to act in an office which he / she is not entitled to; and thus, stops usurpation of public office by anyone.
- This writ is applicable to the public offices only and not to private offices.

Judicial review

- The Supreme Court has the powers of **judicial review**. It can declare any law passed by the legislature as null and void, or unconstitutional.
- This is called **ultra-vires**. If any law is based on the light of an ultra vires judgment, it is called **intra vires**.
- The Supreme Court is also called the **court of records**. The proceedings and decisions of the Supreme Court are recorded and preserved. These can be made use of by courts in future cases and judgments.

Contempt of court

- Supreme Court and High Courts have power to **punish for contempt of themselves**.
- While **Supreme Court** has power to **punish for contempt** not only of itself but also of high courts, **subordinate courts** and tribunals of the entire country.

Composition of Supreme Court

- The Supreme Court was inaugurated on **26 January 1950**, with seven judges.
- **At present, there are 31 judges** in the Court. The Parliament of India, through amendments, has the powers to either increase or decrease the number of judges.
- The Chief Justice is known as Chief Justice of India (CJI)

Qualifications to become a judge of Supreme court.

1. Must be a citizen of India.
2. Must have served as a judge in any of the high courts for not less than five years or
3. As an advocate in any of the high courts for not less than 10 years or be a distinguished jurist.

Appointment and removal of a Supreme court judge

- The **chief justice of India is appointed by the president** on the advice of the council of ministers of the Union government.
- The **judges** of the Supreme Court are appointed by the president on the recommendations of the **Collegium**.
- The judges of the Supreme Court **retire at the age of 65** years.
- They can only be removed by the president on proven charges of misuse of office, misbehavior, or incapacity through a process called '**address**' (impeachment). The impeachment motion must be passed by both houses of the parliament separately with a Special majority.
- Retired judges of Supreme Court are not allowed to plead or act in any court of India.

Jurisdictions of Supreme court

Jurisdiction is the **Power that a court** of law exercises to carry out judgments and to enforce laws. The Supreme court has three jurisdictions.

1. Original jurisdiction
2. Appellate jurisdiction
3. Advisory jurisdiction

Original Jurisdiction

1. **As per article 32**, Supreme Court is the **guardian / protector of fundamental rights** and any person whose fundamental rights are violated can directly approach the Supreme Court for remedy.
2. Supreme Court has from time to time **interpreted the fundamental rights** and has **protected the Citizens** of India from any **unconstitutional legislation** which breach their fundamental rights.
3. Any matter regarding the enforcement of Fundamental Rights comes under the Original Jurisdiction of the Supreme Court
4. Supreme Court is the *Highest Interpreter of the Constitution* and tribunal for final settlements of the disputes between **Centre and States** as well as **States and States**.
 1. Supreme Court has **original Jurisdiction** in matters related any dispute between:
 2. Government of India and one or more states
 3. Government of India and State(s) on one side and State(s) in other side
 4. State(s) and State(s)

Appellate jurisdiction

- Supreme Court is the **Highest Court of appeal** and the writs and decrees of Supreme Court run throughout the country.
- The cases come to the Supreme Court in the form of appeals **against the judgments of the lower courts** and this is called appellate jurisdiction.
- Appellate jurisdiction involves the Constitution, Civil and criminal matters.

Advisory jurisdiction

- Article 143 (**Power of President to consult Supreme Court**) discusses the advisory jurisdiction of the Supreme Court.
- If the president feels that a **question of law or fact has arisen** or is likely to arise and the question is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he can refer the same to Supreme Court for its advisory Opinion.
- Such an opinion is **NOT binding on the president**. At the same time, supreme court is also not bound to give its opinion.

High courts

- The **judiciary in every state has a high court** as an apex body. At present, there are 21 high courts in the country.
- Former union territory (now state), Delhi **has a high court**. All the remaining Union territories are under the jurisdiction of the high courts of their adjacent states.
- India has a **single, unified judiciary**. It has resulted in uniformity in the organization of high courts.

Composition of High court.

- Each high court has a **chief justice** and **other judges**.
- The **president appoints** chief justice of high courts in **consultation** with **chief justice** of supreme court.

Qualification to become a High Court Judge

- To be a **high court judge**, one must be a citizen of India and must have worked as an advocate in high court for not less than 10 years and must have held judicial post for not less than 10 years.
- They **retire at the age of 62** and can be removed by a process called “address” by the parliament.

Functions of High Courts

- The powers of the high courts are **limited to the boundaries of the state**. However, some high courts have jurisdictional authority over the **adjoining Union territories** as determined by Parliament.
- courts and has **control over the subordinate** courts.
- It **supervises** the work of the subordinate courts.
- The high court **protects the fundamental rights** of citizens.

Public Interest Litigations (PIL)

- Public Interest Litigations are the litigations filed in a court of law, for the protection of “Public interest”.
- PIL can be filed not by the aggrieved party but by any other private individual or the court itself.
- PIL was the product of Judicial activism of the Supreme Court in the early 1980s.
- **Justice V R Krishna Iyer** and **Justice P N Bhagwati** were the pioneers of the concept of PIL.

Why is PIL used?

- **If there’s abuse of elementary human rights of the underprivileged.**
- **If there’s inappropriate content or conduct of government policy.**
- **To force authorities to accomplish a public duty.**
- **If there’s violation of religious rights or any fundamental rights.**

How can a PIL be filed?

- Sending **registered letter** petitions with relevant facts and documents to the **Chief Justice** of the concerned Court.
- By directly filing the PIL in the court through the **Free Legal Service Committee** of the court.
- Directly filing the case with the **help of any lawyer**.
- Filing the case through **NGOs or PIL firms**

Difference between Writ petitions and PIL.

	Writ Petitions	PIL
1	Filed by aggrieved party (Locus standi enforced)	Filed by anybody in public interest or by court itself
2	As per article 32 & 139 (SC) and 226 (HC)	Not defined in any statute
3	Process is expensive and time consuming	Process is cheap and simplified
4	To protect private interest	To promote national welfare

Subordinate courts

District court

- District courts operate at the **district level**. A district judge is **appointed by the governor** of a particular state and s/he is the head of the district court.
- All the **lower courts** of the district come **under the jurisdiction** of the district court.
- It **supervises** the acts of the lower courts.

Magistrate court

- **Magistrate courts** operate at the **taluk level**. Junior magistrate courts function in bigger towns and also in the taluks.
- The magistrate and junior magistrates and other judicial persons are **selected by the State Public Service Commission (SPSC)** through competitive examinations, and the high courts have the authority to appoint them

Civil courts

- **Civil courts** have jurisdiction in matters relating to **land, property and money** transactions,
- It has jurisdiction over matters such as **arbitration, guardianship, marriages, divorce** and cases involving a will.
- Additional district judges are appointed to assist a district judge in civil courts.

Criminal courts

- The highest criminal court of the district is the **sessions court**, presided over by the **district judge**, who is also called the **sessions judge**.
- It is in these courts that more **serious offences** such as robbery, dacoities and murders are tried.

Revenue courts

- They deal with cases relating to the maintenance of **land record** and the assessment and collection of **land revenue**.
- The **Deputy Commissioner**, at the district level, and the **Tehsildar**, at the taluk level, act as judges.
- Above them are the **commissioner of the revenue division** and revenue board at the state levels.

Lok Adalat

- The Lok Adalat was set up in **1985**. A retired judge is appointed as the head of the Lok Adalat. There are **no advocates or lawyers** here. It was set up to provide **justice at minimum cost**.

Consumer courts

- The objective of the consumer court is to **protect the interest of consumers**. The consumer courts are set up at national, state and district levels. There are no judges or advocates here.
- A consumer forum, constituted by the government, **decides the issues on the basis of the materials and the Bills submitted**.
- Parliament passed the Consumer Protection Act in 1986. As per the Act, **consumer protection councils** have been established at **Central, state and district levels** to promote and protect consumer rights.

Session 6: Union Legislature

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Union Legislature

Our Parliament

- The Parliament of India is the supreme legislative body of the Republic of India.
- The Parliament is composed of the President of India and the houses.
- It is bicameral with two houses: the Rajya Sabha (upper house) and the Lok Sabha (lower house).
- The President in his role as head of legislature has full powers to summon and prorogue either house of Parliament or to dissolve Lok Sabha.
- The president can exercise these powers only upon the advice of the Prime Minister and his Union Council of Ministers.

Lok Sabha – The lower house

Composition: At present **545** members. different states have different number of MPs (Karnataka **28**, UP has highest 80). These **MPs are elected from the people** and administered oath by the speaker.

Term of Lok Sabha

- Normally 5 years
- **May be dissolved** before the expiry of the term by the president under special circumstances.
- **In an emergency**, the term **may be extended** by one year at a time.

Lok Sabha – sessions

Session of the parliament (**at least two** sessions are to be held in a calendar year)

- Budget session – February to May
- Monsoon session – July to September
- Winter session – November to December.

Speaker of Lok Sabha – Presiding officer

- Speaker – Elected by the members along with deputy speaker.
- The speaker is the Head of the house.
- Duty is to conduct the proceedings of the house as per the constitution.
- Must be politically neutral.
- Has a casting vote in case of a tie.

Rajya Sabha – Upper house

- Elected from state legislatures in the system of proportional representation. (12 representatives from Karnataka, 31 representatives from UP)
- Present strength 245 (233 elected and 12 nominated)

Term of Rajya Sabha members

- 6 years
- 1/3 of the members retire every 2 years.
- Retiring members can also contest for the next term.

Presiding official Rajya Sabha

- Vice president is the chairman of the Rajya Sabha by virtue of his position even though he is not a member of either house.
- Deputy chairperson is a member of Rajya Sabha and is elected by the members.
- The term of Chairperson is **5 years**

Powers and functions of parliament

1. Legislative powers

- **Make laws** to maintain peace, law and order in the country, to bring efficiency in administration, and to bring about social and economic changes.
- Can make with respect to subjects in
 - Union List
 - Concurrent list
 - In state list under residuary powers

2. Financial control

- Parliament establishes control over public finance. It discusses estimates of receipts and expenditure of the Government of India, popularly termed as the budget which is presented by the Cabinet. It has powers to impose or change taxes and vote of grants.
- If the budget is not passed or presented in Parliament due to certain circumstances, the consolidated fund is used for expenditure, this is called vote on account.

3. Administrative control

- The governing body, or the government, shares the responsibility of administration with Parliament.
- The party or the parties that are supported by more than half of the members of the Lok Sabha form the government.
- The leader of the majority party/parties becomes the prime minister, and s/he is the real executive.
- She/He is assisted by the council of ministers.

4. Constituent powers

- Parliament has powers to change the provisions of the Constitution.
- The amendments have to be initiated either in the Lok Sabha or in the Rajya Sabha.
- The House later discusses and debates over the proposed amendments before passing a Bill which needs two thirds majority for passing.

5. Authority to secure information

- parliament has powers to **ask for any information** it needs. It is the duty of the government to provide the needed information precisely within the specified time.
- At certain times Parliament gets detailed information about the functioning of certain departments from the governing by demanding a '**white paper**'. A white paper is a detailed report of the functioning of a department or of any particular issue related to a department.

6. Conflict Resolution and National Integration

- Parliament is a representative body of many political parties with different ideologies.
- Tensions and conflicts are common between the parties in Parliament.
- Open debates and discussions on the floor of the House clear suspicion and resolve many of the conflicts.

7. Electoral Function

- The members of Parliament, together with the members of the state legislative assemblies, elect the highest executive of the nation, the president of India.
- The members of the two Houses of Parliament elect the vice-president of India

8. Judicial Function

- The parliament plays the role of judiciary in investigating charges against high constitutional authorities like president, vice-president, Supreme Court and high courts, chief election commissioners, auditor general, and such others.
- If charges are proved, the president of India is removed by the process of impeachment and
- judges of the supreme court and high courts by the process of address

9. Training functions

- Parliament serves as a training institution for political leadership.
- Members acquire considerable knowledge and collect information by participating in debates and discussions of Parliament and also by serving in parliamentary committees.
- Parliament helps the prime minister identify ministers and select the capable personalities to serve as ministers.

Parliament in session

Summoning of the house

- After general elections to the Lok Sabha, the newly elected members are administered the oath by a temporary Speaker who is appointed by the president.
- Later, the newly constituted Lok Sabha members elect the full-term Speaker.

President's Address

- The president addresses the joint session sitting of the two Houses at the commencement of the first session after each general election.
- S/he also addresses both the Houses of Parliament at the commencement of the first session of each year, i.e. the budget session.
- The address of the president is about the policy statements of the government.

Motion of thanks

- After the president's address, both the Houses meet in their respective chambers. Later a **discussion on the president's address** is held in both the Houses. The debate on the president's address takes the form of a **motion thanking** the president for his/her speech.
- It provides an opportunity for the discussion of matters referred to in the address. **At the end** of the discussion, the **prime minister replies** to the debate. Then the motion of thanks is **put to vote**. After the motion is **passed**, it is **conveyed to the president**.

Procedure followed in parliament in making law

A Bill is the draft of a legislative proposal. It has to pass through various stages before it becomes an Act of Parliament.

First Reading

The legislative process starts with the introduction of a Bill in either House of Parliament—Lok Sabha or Rajya Sabha. A Bill can be introduced either by a Minister or by a private member. In the former case it is known as a Government Bill and in the latter case it is known as a Private Member's Bill. It is necessary for a member-in-charge of the Bill to ask for leave to introduce the Bill. If leave is granted by the House, the Bill is introduced. This stage is known as the First Reading of the Bill.

Publication in Gazette

After a Bill has been introduced, it is published in the Official Gazette. Even before introduction, a Bill might, with the permission of the Speaker, be published in the Gazette.

Reference of Bill to Standing Committee

After a Bill has been introduced, the Presiding Officer of the concerned House can refer the Bill to the concerned Standing Committee for examination and make report thereon. If a Bill is referred to the Standing Committee, the Committee shall consider the general principles and clauses of the Bill referred to them and make report thereon.

Second Reading

The Second Reading consists of consideration of the Bill which is in two stages.

First Stage: The first stage consists of general discussion on the Bill as a whole when the principle underlying the Bill is discussed. At this stage it is open to the House to refer the Bill to a Select Committee of the House or a Joint Committee of the two Houses.

Second Stage: The second stage of the Second Reading consists of clause-by-clause consideration of the Bill as introduced or as reported by Select/Joint Committee. Discussion takes place on each clause of the Bill and amendments to clauses can be moved at this stage.

Third Reading

Thereafter, the member-in-charge can move that the Bill be passed. This stage is known as the Third Reading of the Bill. At this stage the debate is confined to arguments either in support or rejection of the Bill without referring to the details. In passing an ordinary Bill, a simple majority of members present and voting is necessary. But in the case of a Bill to amend the Constitution, a majority of the total membership of the House and

a majority of not less than two-thirds of the members present and voting is required in each House of Parliament.

Bill - moved to the other House.

After the Bill is passed by one House, it is sent to the other House for concurrence with a message to that effect, and there also it goes through the stages described above except the introduction stage.

Money Bills

- Money Bills can be introduced only in Lok Sabha.
- **Rajya Sabha cannot make amendments** in a Money Bill passed by Lok Sabha and transmitted to it.
- It can, however, **recommend amendments** in a Money Bill,
- But must **return all Money Bills** to Lok Sabha within **fourteen days** from the date of their receipt.
- It is open to Lok Sabha to accept or reject any or all of the recommendations of Rajya Sabha

Parliamentary committees

Types of committees

1. **Standing Committee:** Permanent committees which function continuously – E.g. Business advisory committee, Committee of privileges
2. **Ad-hoc** – Formed for specific purposes and disbanded after the work is completed. E.g. Ethics committee, enquiry committee

Joint Committee: It is a committee consisting of members of both Lok Sabha and Rajya Sabha. Joint committees can be standing or ad-hoc

Select committee: Committee created by a resolution to conduct investigations on some specific topic. Select committees are usually ad-hoc committees