

Module-3

The Union and State Executive

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3.1 Introduction:

The rules and regulations formulated by the Legislature will be of little use, if they are not implemented properly. That task of implementing the Laws enacted by the Legislature is done by Executive. As the name itself suggests Executive brings the laws into execution.

India is Republic. The head of the Indian State is an elected President. All the executive and several other powers of the Union are vested in him. But, they are exercised by the Council of Ministers. The President is the Constitutional head. This is because we have parliamentary form of government. The real executive is the Prime Minister and his Council of Ministers. The President is bound to act on the advice of the Council of Ministers. He may refer back to the Council of Ministers any advice that he does not wish to accept, for reconsideration. But if the council of ministers again gives the same advice the President is bound to act accordingly. Thus our President is only a nominal

executive. The constitution does not describe him as head of State. He is simply referred to as the President. Actually, he is the symbol of the unity of India.

3.2 Learning objectives:

This Module deals with:

- President of India – details of the position
- Vice-President of India
- Prime Minister of India – the real executive
- The Union Council of Ministers,
- The State Executive – Governor
- Chief Minister
- The State Council of Ministers.
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3.3 President of India

President is the supreme authority in the Indian Parliamentary system. The importance of the President could be understood under the following heads;

- i) He is the first citizen of India
- ii) He is the supreme commander of all armed forces
- iii) He is the head of the state
- iv) All rules and regulations are to be passed by him

But President is only a nominal executive. Prime Minister and his cabinet will function on behalf of him and will exercise the powers in reality.

The 12th President of India is Her Excellency Pratibha Devisingh Patil, the first woman to serve in the office, who was sworn in on 25 July 2007.

3.3.(i) Qualifications:

Article 58 of the Constitution lays down the qualification as follows:

- i) He must be the citizen of India
- ii) He must have attained 35 years of age
- iii) He should not possess the office of profit
- iv) He should possess all other qualifications required to become a member of Lok Sabha

Certain office-holders, however, are permitted to stand as Presidential candidates.

These are:

- The current Vice President.
- The Governor of any State.
- A Minister of the Union or of any State.

In the event that the Vice President, a State Governor or a Minister is elected President, he is considered to have vacated his previous office on the date he begins serving as President.

Conditions for Presidency

Certain conditions, as per Article 59 of the Constitution, debar any eligible citizen from contesting the presidential elections. The conditions are:

- The President shall **not** be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.
- The President shall **not** hold any other office of profit.
- The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and until provision on that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.
- The emoluments and allowances of the President shall **not** be diminished during his term of office.

3.3.(ii). Elections:

President is elected by an Electoral College, which comprises of

- i) All the **Elected members** of Lok Sabha and Rajya Sabha
- ii) All the **Elected members** of State Legislative Assemblies.

In these elections two principles are being followed. They are;

- I) Secret Ballot
- II) Single transferable voting system (Voting in the order to preference)

The actual calculation for votes cast by a particular state is calculated by dividing the state's population by 1000, which is divided again by the number of legislators from the State voting in the electoral college. This number is the number of votes per legislator in a given state. For votes cast by those in Parliament, the total number of votes cast by all state legislators is divided by the number of members of both Houses of Parliament. This is the number of votes per member of either house of Parliament.

If no candidate receives a majority of votes there is a system by which losing candidates are eliminated from the contest and votes for them transferred to other candidates, until one gains a majority.

3.3.(iii). Election process:

- i) Whenever the President seat falls vacant, it is the responsibility of the election Commission to appoint a new President.
- ii) For the appointment of the President, Election commission appoints a Returning Officer

- iii) Returning Officer fixes dates for various activities like filing nominations, voting, counting, etc.
 - iv) The candidate must deposit a sum of Rs.15,000/- along with application and 50 signatures of the members of Electoral College must support his nomination.
 - v) Returning officer will fix the polling date and he will announce the date for counting votes.
 - vi) Counting is carried out on the pre-decided date and results are declared.
- New President's name will be announced and while occupying the office he has to take an Oath before the "chief justice of India".

3.3.(iv). Duration: The duration is normally for 5 years and he may be re-elected for the 2 terms (Dr. Rajendra Prasad was the President for 10 years). Out of convention it has been established that no person can become the President for more than 2 times.

3.3. (v) Removal:

- i) By submitting Resignation to Vice President
- ii) By natural or unnatural death
- iii) By impeachment: It refers to a process of removing the President from the position on the grounds of proved mis-conduct or misbehaviour. It involves several steps. They are:
 - a) charges or allegation of misconduct could be made by any of the member of either house and 1/4th of members should accept and pass a resolution
 - b) 14 days prior notice to be given to the President
 - c) The other house makes an investigation
 - d) President is given a fair chance to defend himself
 - e) If the misbehavior is proved and approved by 2/3rd majority of the investigating house then a seven days notice is given to the President and he will be removed.

3.3. (vi) Presidential Succession: If the office of the President falls vacant due to death or due to impeachment Vice-President becomes the acting President. If The Vice-President seat is also vacant then the Chief Justice of India takes over the charge. New President has to be elected within a period of 6 months.

3.3.(vii) Salary and Allowances:

- i) Rs.1,50,000/- per month
- ii) Rent free accommodation in Rashtrapathi Bhavan
- iii) Pension Rs.50,000/- per month
- iv) Rs.30,000/- per annum for secretarial maintenance
- v) Air India, which is also known as Rajdoot is the official aircraft for the President of India.

His salary is paid from the consolidated fund of India. No person can sue the President in the court of law during his tenure. He cannot be arrested or detained. President is not answerable to any court of law.

3.4. POWERS AND FUNCTIONS

3.4.a. Legislative Functions:

He is an integral part of the union parliament. He is not a member of both houses, but an inseparable part of the parliament. And any bill passed by the parliament will become law only if President signs. Some of the legislative functions performed by him are:

- i) He will address the first session of the newly formulated government after the general elections. Usually it will be a joint session and "his address" outlines the policies of the government. The Prime Minister and his council of ministers will prepare the speech.
- ii) The President summons the parliament atleast twice a year and the time gap between these two sessions will not be more than 6 months. In case of any dead locks between the houses he will call for a joint session
- iii) Any bill passed by both houses will become law after President's signature. In this case he may exercise his veto power
- iv) He may dissolve Lok Sabha before the completion of its term.
- v) Money bill may be introduced in Lok Sabha only with the prior permission of the President.
- vi) All government orders has to be issued in his name.
- vii) A bill relating to change of boundaries of the state or change of name of the state can be introduced in the parliament only with the prior consent of President.
- viii) When the Parliament is not in session and the government considers it necessary to have a law, then the President can promulgate ordinances. These ordinances are submitted to the Parliament at its next session. They remain valid for not more than six weeks from the date the Parliament is convened unless approved by it earlier.
- ix) In the event of a hung parliament, where no party has absolute majority in the Lok Sabha, the President invites parties to command the required support and form the government. If the majority is still not achieved he can call for a new election.

3.4.b. Executive Powers:

- i) President appoints Prime Minister and his council of minister. Theoretically speaking President may appoint any person as the Prime Minister.
- ii) All the administrative actions are taken in his name.
- iii) All major appointments are made by the President (attorney general, finance commission, chief justice, election commissioner, auditor general and governors to state)

- iv) He has special powers in matters of external affairs and foreign relations. (foreign ambassadors are appointed by him) and all bilateral treaties are signed on his behalf
- v) He also has the power to remove any of the higher functionaries of Indian Government

3.4.c. Financial Powers:

- i) Money bill cannot be presented in Lok Sabha without his approval
- ii) It neither can be implemented without his approval
- iii) Contingency fund of India is under his control
- iv) Finance commission is formulated by him
- v) President supervises whether budget is prepared and presented in time
- vi) **Financial emergency:** If the President is satisfied that there is an economic situation in which the financial stability or credit of India is threatened, he/she can proclaim financial emergency as per the Constitutional Article 360. Such an emergency must be approved by the Parliament within two months. It has never been declared. On a previous occasion, the financial stability or credit of India has indeed been threatened, but a financial emergency was avoided through the selling off of India's gold reserves. A state of financial emergency remains in force indefinitely until revoked by the President. In case of a financial emergency, the President can reduce the salaries of all government officials, including judges of the Supreme Court and High Courts. All money bills passed by the State legislatures are submitted to the President for his approval. He can direct the state to observe certain principles (economy measures) relating to financial matters.

3.4.d. Judicial Powers:

- i) The president appoints the Chief Justice of the Union Judiciary and other judges on the advice of the Chief Justice. The President dismisses the judges if and only if the two Houses of the Parliament pass resolutions to that effect by two-thirds majority of the members present.
- ii) If they consider a question of law or a matter of public importance has arisen they can ask for the advisory opinion of the Supreme Court. They may or may not accept that opinion.
- iii) He/ She enjoys the judicial immunity:
 - (a) No criminal proceedings can be initiated against him/her during his/ her term in office.
 - (b) He/She is not answerable for the exercise of his duties.
- iv) He appoints the attorney general of India to give legal assistance
- v) He/ She has the right to grant pardon. He/ She can suspend, remit or commute the death sentence of any person. The President of India can grant a pardon to

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

{1. Pardon - completely absolve the offender 2. Reprieve- temporary suspension of the sentence 3. Respite-awarding a lesser sentence on special ground 4. Remission- reducing the amount of sentence without changing its character 5. Commutation- substitution of one form of punishment for another form which is of a lighter character}

3.4.e. Military Powers:

- i) He appoints the commander in chief of Army, Navy, Airforce
- ii) He has the power to declare war and call for peace.
- iii) All important treaties and contracts are made in president's name.

3.4.f. DIPLOMATIC POWERS:

All international treaties and agreements are negotiated and concluded on behalf of the President. However, in practice, such negotiations are usually carried out by the Prime Minister along with his Cabinet (especially the Foreign Minister). Also, such treaties are subject to the approval of the Parliament. The President represents India in the international forums and affairs where such a function is chiefly ceremonial. The President may also send and receive diplomats like Ambassadors and High Commissioners.

3.4.g. STATE EMERGENCY

State emergency, also known as President's rule, is declared due to breakdown of constitutional machinery in a state.

If the President is satisfied, on the basis of the report of the Governor of the concerned state or from other sources that the governance in a state cannot be carried out according to the provisions in the Constitution, he/she can declare a state of emergency in the state. Such an emergency must be approved by the Parliament within a period of six months.

Under Article 356 of the Indian Constitution, it can be imposed from six months to a maximum period of three years with repeated parliamentary approval every six months. If emergency needs to be extended for more than three years, this can be achieved by a constitutional amendment, as has happened in Punjab and Jammu and Kashmir.

During such an emergency, the President can take over the entire work of the executive, and the Governor administers the state in the name of the President. The Legislative Assembly can be dissolved or may remain in suspended animation. The Parliament makes laws on 66 subjects of the state list. All money bills have to be referred to the Parliament for approval.

A State Emergency can be imposed via the following:

1. By Article 356:-If that state failed to run constitutionally i.e. constitutional machinery has failed
2. By Article 365:-If that state is not working according to the given direction of the Union Government.

This type of emergency needs the approval of the parliament within 2 months. This type of emergency can last up to a maximum of 3 years via extensions after each 6 month period. However, after one year it can be extended only if

1. A state of National Emergency has been declared in the country or in the particular state.
2. The Election Commission finds it difficult to organize an election in that state.

3.4.h. Other Functions:

During normal times we will have federal form of government, but during emergencies it will converted into unitary form of government. During emergencies President will issue ordinances. He can even suspend fundamental rights and can reduce the salaries and allowances of the civil servants without prior intimation.

3.5 The Vice President

Article 63 of the constitution provides for the office of the Vice-President. While providing for this office, the constitution framers were influenced by the US constitution. In the absence of the President, Vice President becomes the 'Acting President'.

3.5.a. Eligibility:

- i) He must be the citizen of India
- ii) He must have attained 35 years of age
- iii) He should not possess the office of profit in the Union or State Government. However, the office of President, Vice-President, a Governor or a Minister of Union or State stand exempted from this provision.
- iv) He should not be a member of either House of Parliament or of any State Legislature. In case a member of the State Legislature or Union parliament is elected as Vice-President, he must resign his membership before assuming office.
- v) He should possess all other qualifications required to become a member of Rajya Sabha

3.5.b. Election:

The Vice-President is elected by the members of both the Houses of Parliament (Lok Sabha and Rajya Sabha).

In these elections two principles will be followed. They are: (a) Secret Ballot and (b) Single Transferable Voting System.

The Methodology of election is similar to that of President's election.

3.5.c. Term:

The Vice-President is elected for five years. He is eligible for re-election. While assuming office he has to take an Oath before the President of India.

3.5.d. Removal:

- By submitting Resignation to President.
- In case of Natural or Unnatural death.
- The Vice-President can be removed from his office by a resolution passed in Rajya Sabha with 2/3 majority and it must be approved by Lok Sabha. However, a notice of 14 days is required to be given to the incumbent against whom the proceedings of removal are to be initiated.

3.5.e. Salary:

Vice President gets a salary of Rs. 1,40,000/- per month. The Vice-President lives in a rent-free furnished official bungalow in New Delhi. Apart from this he gets a daily allowance of Rs. 1,000.

3.5.f. Functions:

The Vice-President is the Ex-officio chairman of Rajya Sabha. He presides over the proceedings of Rajya Sabha. He maintains the discipline and decorum of the house while the proceedings are going on. Since Vice President is not a member of the house, he cannot vote, but in case of tie, he may cast his vote.

In case of President seat falls vacant – due to death, illness, impeachment, resignation – The Vice President holds the place of 'Acting President', till the new President is elected. He may function as 'Acting President' only for duration of 6 months.

3.6. Prime Minister

Prime minister is the most powerful person in the Indian Political system. Following points substantiate this.

- Prime Minister is the real executive. All powers and privileges which belongs to the President are exercised by the Prime Minister.
- In terms of functions, Prime Minister may be compared to the President of U.S.A.
- He is the leader of the government and performs the role of a captain of a team.
- He is the official spokesperson of the government.
- Prime minister formulates the government. The process of ministry making begins with him.

Hence Prime minister is the key stone in the cabinet arch.

3.6.a Appointment:

Theoretically, Prime minister is appointed by the President of India. But in Practice, after the general elections, the party having won the majority will elect or select its leader and in turn President invites that leader to form the government and that leader becomes the prime minister. However, in case no party gets a majority, some parties join together to form a coalition government and elect or select a common candidate and that candidate becomes the Prime Minister.

Conventionally only a member of Lok Sabha could become the prime minister. This convention was broken by Mr. H. D. Deve Gowda. He became the Prime Minister even when he was not a member of either house of parliament. Later on, he secured a seat in the Rajya Sabha. Following the same way in 1997, Mr. Inder Kumar Gujral became the Prime Minister and he was also a member of Rajya Sabha.

3.6.b Qualifications:

By virtue, there are no formal qualifications for the office of the Prime Minister. Since Prime Minister should be a member of either Rajya Sabha or Lok Sabha, the qualifications to obtain the membership of either the house also holds good over here. Even a non member can also become prime minister under a condition that within 6 months of him assuming office, he/she should be elected or selected to either the house.

3.6.c Tenure:

Prime Minister holds office at the pleasure of the President, which means, as long as he enjoys the confidence of the Lok Sabha i.e., majority support in Lok Sabha. Lok Sabha may pass a vote of no-confidence against Prime Minister and in such a case the President asks the Prime Minister to prove his majority, failing which, the Prime Minister either submits his resignation to the President or gets dismissed by the President.

3.6.d Salary and Allowances:

Prime Minister receives such salary (as of now 1,00,000 per month). Allowances, including the constituency allowance, which every member of Parliament receives.

3.7. Powers and Functions of the Prime Minister

- 1. Formation of the Council of Ministers:** The task of formation of the ministry begins with the appointment of the Prime Minister by the President. After assuming the office of Prime ministership, Prime Minister prepares a list of persons, who are to be appointed as ministers in the council of ministers. Prime Minister is free to determine the strength of his Ministry and also to select the ministers as per his choice. Prime Minister decides, who amongst them shall be his cabinet ministers, ministers of cabinet rank, state ministers and deputy ministers.
- 2. Allocation of Portfolios:** It is an undisputed privilege of the Prime Minister to allocate portfolios to his ministers. Which particular department shall be entrusted

to which minister is determined by him.

3. **Reshuffling of Portfolios:** The Prime Minister has the power to shuffle his ministry. It is his privilege to shuffle and reshuffle his ministry any time and as many times as he likes. Prime Minister will review the allocation of portfolios and effect the changes where desirable.
4. **Chairman of the Cabinet:** The Prime Minister is the leader of the Cabinet. He presides over its meetings. He decides the agenda of its meetings. In fact all matters are discussed in Cabinet with the approval and consent of the Prime Minister. It is up to him to accept or reject proposals for cabinet discussion. Any minister, not finding the policy acceptable, has no choice except to submit his resignation. The ministers have to accept the leadership of Prime Minister.
5. **Removal of Ministers:** Prime Minister can demand resignation from any minister at any time. If any minister doesn't resign even on the asking of Prime Minister, the Prime Minister can either get him dismissed by the President or can submit his own resignation, which in fact means the resignation of his whole council of ministers. No one can remain a minister without the consent of the Prime Minister.
6. **Chief Link between the President and the Cabinet:** Prime Minister is the main channel of communication between the President and the Cabinet. He communicates to the President all decisions arrived at in the Cabinet and puts before the Cabinet the views of the President. Prime Minister keeps the President informed of all affairs of the government. This is the sole privilege of the Prime Minister and no other minister can, on his own, convey the decisions or reveal to the President.
7. **Leader of the Parliament:** All major policies of the nation are announced by him on the floor of the parliament. He can address each house of the Parliament but can vote only in the House to which he belongs.
8. **Power of Dissolution of the Parliament:** Prime Minister has an ultimate power of dissolution of Lok Sabha, which means, all members hold their seats in the House at the mercy of the Prime Minister. No member likes to contest frequent elections as they involve huge expenditure and no certainty of winning every time.
9. **Director of Foreign Affairs:** As a powerful and the real head of the government, the Prime Minister always plays a key role in determining the foreign policy of the country and India's relations with other countries. He may or may not hold the portfolio of foreign affairs but he always influences rather determines India's foreign policy. He participates in international relations. He represents the country in all important international conferences.
10. **Prime minister is the ex-officio chairman of the planning commission.** Prime Minister is the main spirit behind all economic planning. He plays a leading role in all fiscal and developmental planning. It was Prime Minister Pandit Jawaharlal Nehru who introduced five year plans and initiated the building of major multi-purpose projects. Prime Minister is the ex-officio chairman of the Planning Commission. President always accepts the advice of the Prime Minister.

3.8. The Union Council of Ministers

The Prime Minister of India is the Head of the Union (Federal) Government, as distinct from the President of India, who is the Head of State. Since India has adopted the Westminster model of constitutional democracy, it is the Prime Minister who oversees the day-to-day functioning of the Union (Federal) Government of India. The Prime Minister is assisted in this task by his Council of Ministers.

Article 75 lays down six rules regarding the organisation of the Council of Ministers.

They are:

- The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the President upon the advice of the Prime Minister.
- The ministers shall hold office during the pleasure of the President.
- The council of ministers shall be collectively responsible to Lok Sabha.
- Before a minister enters upon his office, the President shall administer to him the oath of office and secrecy.
- A minister, who for any period of six months is not attending the sessions, will lose his candidature.
- The salaries and allowances of ministers shall be such that Parliament may from time to time determine by law.

There are four categories of ministers, in descending order of rank:

3.8.a. Union Cabinet Minister

Senior minister in-charge of a ministry. A cabinet minister may also hold additional charges of other Ministries, where no other Cabinet minister is appointed.

3.8.b. Minister of State

a Minister of State either holds an independent charge of a small department or is attached to a Cabinet Minister, whereas the departments like Home, External affairs, Defence, Finance, Agriculture have 2 or 3 Ministers of State. Such ministers attend the meetings of the Cabinet only when they are invited to do so by the Prime Minister or the cabinet.

3.8.c. Deputy Ministers

They are helping ministers attached to the Cabinet Ministers or the Ministers of State. No Deputy Minister holds an independent charge of any department. His function is to help the minister under whom he works. They are mainly, given the responsibility to prepare answers to the parliamentary questions pertaining to their respective departments and to help the process of getting the Government Bills passed by the Parliament.

3.8.a. Parliamentary Secretaries

these are neither ministers nor are assigned any administrative work. Their sole function is to help the ministers in the Parliament. These do not draw salaries. The office of a

Parliamentary Secretary is an office used for training 'future ministers'.

As head of the Council of Ministers, the Prime Minister oversees the work of all the Ministries. He presides over Cabinet meetings, which are normally held in the Cabinet room of the Prime Minister's Office. The Union Cabinet functions on the principle of "collective responsibility".

3.8.(i) Individual responsibility

Every individual minister is in charge of a specific ministry or ministries (or specific other portfolio). He is responsible for any act of failure in all the policies relating to his department. In case of any lapse, he is individually responsible to the Parliament. If a vote of no confidence is passed against the individual minister, he has to resign. Individual responsibility can amount to collective responsibility. Therefore, the Prime Minister, in order to save his government, can ask for the resignation of such a minister and the people have a say. A recent example is Shashi Tharoor been forced to resign by Prime Minister Dr. Manmohan Singh because of the Indian Premier League issue.

3.8. (ii) Collective responsibility

The Prime Minister and the Council of Ministers are jointly accountable to the Lok Sabha. If there is a policy failure or lapse on the part of the government, all the members of the council are jointly responsible. If a vote of no confidence is passed against the government, then all the ministers headed by the Prime Minister have to resign.

3.9. Powers and functions of Union Council of Ministers:

1. Executive Powers: The Council of Ministers are the real executive. The executive powers enjoyed by the President of India are in reality exercised by Council of Ministers. In discharging of his executive powers, the President always acts upon the advice of Council of Ministers. The Cabinet, formulates the policies which are to be submitted to the Parliament for approval, gets the policies approved by the Parliament, runs the administration of the Union in accordance with the policies approved by the Parliament and co-ordinates the working of different departments of the government. The cabinet plays a pivotal role in framing economic policies. The planning commission works in close collaboration with the Cabinet and the Prime Minister is the Chairman of the Planning commission. All development plans are formulated by the Planning Commission. Cabinet runs the administration in accordance with the laws and policies and is responsible to maintain law and order in the country. Various departments are headed by the Ministers. The day to day decisions are taken up by the departments in accordance with the declared and accepted policies of the Council of Ministers. Each Minister is individually responsible before Lok Sabha for the day to day working of the department under him. Any lapse can cause his exit from the Council of Ministers. All higher appointments are made by the President, in consultation with the Council of Ministers. Hence Council of Ministers are the real executives.

2. Legislative Powers: Council of Ministers are both the executive heads of government departments and the members of the Parliament. They take full and active part in the deliberative legislative, financial, electoral, constitutional functions of the Parliament. Ministers take full part in Parliamentary debates. A bill not supported by the Council of Ministers cannot get passed in the Parliament because the ministry enjoys the support of the majority.

3. Financial Powers: Parliament is the custodian of national finances and in this respect exercises all the powers in the financial sphere. However, in practice, the Cabinet plays a leading role in this sphere also. The budget is prepared by the Cabinet (Finance Minister). Besides providing estimated income and expenditure of the government in the coming financial year, it lays down the fiscal policies of the government. All proposals for additional taxes emanate from the Cabinet.

State Executive

3.10 Governor

3.10.a. Importance:

- Governor functions as an agent of the central government in the state.
- Every state has a Governor. Governor is the executive head of the state.
- He is considered as the 1st citizen of the state.
- He exercises same powers and privileges in the state, which the President has in the union.

Article 153 of the Constitution of India provides that “There shall be a Governor for each State”. However, one person can function as a Governor for two or more States.

3.10.b. Eligibility:

- i) He must be the citizen of India
- ii) He must have attained 35 years of age
- iii) He should not possess the office of profit either under Central government or under State Government.
- iv) The Governor shall not be a member of either house of Parliament or of the Legislature of any state.

3.10.c. Appointment:

Article 155 says that “Governor of the State shall be appointed by the President”.

Governors are appointed by the President. Theoretically President has the full powers regarding the choice and appointment of the Governors. President seeks the advice of the Cabinet (Prime Minister and his Cabinet) before the appointment of the Governor. Governor will be appointed by the Central Government.

Two conventions seemed to have established with regard to the appointment of the

Governor. They are:-

- No individual from the same state will be appointed as the Governor of that state.
- The governor who is appointed by the Central Government should be accepted by the respective states also.

3.10.d. Term:

Governor is appointed for 5 years. But he will remain in power as long as the President wishes. At the same time the President may transfer the Governor to other states also. No State government has the power to pass an impeachment against Governor and while occupying the office the Governor has to take an Oath before the Chief Justice of High Court of the respective state.

In the absence of the Governor, the Chief Justice of the State High Court acts as the 'Acting Governor'.

3.10.e. Allowances:

The salary of the Governor will be paid out of State Revenue. Along with this, a rent free accommodation at Raj Bhavan and travel allowances and all such allowances will be paid in conformity with the status and dignity.

3.10.f. Legal Immunities of the Governor:

As a head of the state, the Governor of a state is not answerable to any court during his office and no criminal and civil proceedings can be instituted against the Governor during his term of office.

3.11. Powers and Functions of the Governor:

As a head of the state, the Governor enjoys a large amount of powers and dignity. Some of them are: -

1. Legislative Functions:

- i) Governor will address the first session of the newly formulated government after the general elections. Usually it will be a joint session and "his address" outlines the policies of the government. The Chief Minister and his council of ministers will prepare the speech.
- ii) The governor summons the Legislative Assembly atleast twice a year and the time gap between these two sessions will not be more than 6 months. In case of any emergency, he may call for an emergency meeting also.
- iii) Any bill passed by Legislative Assembly and Council, will become law after Governor's signature.
- iv) He may dissolve Legislative Assembly before the completion of its term on the recommendations of Chief Minister.
- v) All the state government orders has to be issued in his name

- vi) Governor may appoint 2 members to Legislative Assembly from Anglo Indian Community.
- vii) Whenever the State Legislature is not in session – he may issue ordinances.

2. Executive Functions:

- i) Governor appoints Chief Minister and his council of minister. Theoretically speaking Governor may appoint any person as the Chief Minister.
- ii) Governor is the nominal executive of the state government and all the administrative actions are taken in his name.
- iii) All major appointments at the state level are made by the Governor (Advocate general, Chairman of State Public Service Commission etc.)
- iv) When no single party is having a clear majority, the Governor can play an active and deterministic role in the appointment of the Chief Minister. He may also recommend the imposition of President's rule in a state when the elections result into a Hung Vidhana Sabha.
- v) Governor will be the ex-officio chancellor of Universities situated in the state.
- vi) He has a dual role to play – as a constitutional head of the state as well as a representative of the Centre.

3. Financial Powers:

- i) Money bill may be introduced in Legislative Assembly only with the prior permission of the Governor.
- ii) Governor enjoys complete control over the State Contingency fund.
- iii) Governor monitors that the state budget is prepared and presented in time.

4. Judicial Powers: The Governor of the state has some judicial powers. He can influence the appointments, postings and promotions of the district judges and other judicial officials. Under article 161, he has the power to grant pardon, reprieve or remission of punishment or to suspend, remit or commute the sentences of any person, convicted of any offence against any law relating to the matter to which the executive authority of the State extends. The President, also consults the Governor of the State while appointing the Chief Justice and other Judges of State High Court.

5. Other Function: The Governor receives the annual report of the State Public Service Commission and passes it on to the Council of Ministers for Comments. Thereafter, he passes on the report and these comments to the Speaker of the Assembly for placing it before the legislature. In case he feels that the State administration cannot be run in accordance with the provisions of the Constitution, he can send a report under Article 356 to the President, recommending the imposition of President's rule. Whenever the Presidential rule is being imposed, the Governor looks after the administration of the State. President's rule in the State really means Governor's rule.

3.12. Chief Minister

The Chief Minister is the most powerful functionary of the State Government. He is the head of the State Council of Ministers, which is the real executive. The Chief Minister, as such, can be described as the real executive head of the State Government and in his capacity exercises vast and real powers. As the leader of his State, the leader of the majority party, the head of the State Council of Ministers, the Chief Advisor to Governor and the Representative of the people of the state, the Chief minister plays a leading and powerful role in the administration of the State. His role and status in the State Political system is more or less similar to the one enjoyed by the Prime Minister in the Centre.

3.12. a. Method of Appointment:

Theoretically, Chief Minister is appointed by the Governor. But it does not mean that the Governor is free in the selection of the Chief Minister. In practice, he has no real choice open to him because after the elections, the party, which secures majority in the State Legislative Assembly, elects its leader and communicates the same to the Governor. The Governor then formally summons and designates him as the Chief Minister and asks him to form his Council of Ministers.

In case no party gets a clear majority in the State Assembly, the Governor, asks the leader of the single largest party to form the government, in case he feels it can be in a position to manage majority with the help of some other members. In most of the cases, however, if a single party is not enjoying majority in the State Legislative Assembly, then two or three parties form a Coalition Government. This group then elects its leader and communicates his name to the Governor who then summons him to form the Government. In such a situation, the Governor is left with same discretion in the choice of the Chief Minister.

3.12.b. Tenure:

Chief Minister holds office during the pleasure of the Governor, which means, so long as he enjoys the confidence of the Legislative Assembly i.e., majority support in Legislative Assembly. Legislative Assembly may pass a vote of no-confidence against Chief Minister and in such a case the Governor asks the Chief Minister to prove his majority, failing which, the Chief Minister either submits his resignation to the Governor or gets dismissed by the Governor.

3.13. Powers and Functions of the Chief Minister

The Chief Minister is the real executive head of the State. His powers and functions can be discussed as follows;

1. **Formation of the Council of Ministers:** The task of formation of the ministry begins with the appointment of the Chief Minister by the Governor. After assuming the office of Chief Ministership, Chief Minister prepares a list of persons, who are to be appointed as ministers in the council of ministers. Chief Minister

is free to determine the strength of his Ministry and also to select the ministers as per his choice. Chief Minister decides, who amongst them shall be his cabinet ministers, ministers of cabinet rank, department heads and Board heads etc.

2. **Allocation of Portfolios:** It is an undisputed privilege of the Chief Minister to allocate portfolios to his ministers. Which particular department shall be entrusted to which minister is determined by him. While doing so, he has to select duly qualified persons for allocating such portfolios. Some of the portfolios are kept by him.
3. **Reshuffling of Portfolios:** The Chief Minister has the power to shuffle his ministry. It is his privilege to shuffle and reshuffle his ministry any time and as many times as he likes. Chief Minister will review the allocation of portfolios and effect the changes where desirable.
4. **Chairman of the Cabinet:** The Chief Minister is the leader of the Cabinet. He presides over its meetings. He decides the agenda of its meetings. In fact all matters are discussed in Cabinet with the approval and consent of the Chief Minister. It is up to him to accept or reject proposals for cabinet discussion. Any minister, not finding the policy acceptable, has no choice except to submit his resignation. The ministers have to accept the leadership of Chief Minister.
5. **Removal of Ministers:** Chief Minister can demand resignation from any minister at any time. If any minister doesn't resign even on the asking of Chief Minister, the Chief Minister can either get him dismissed by the Governor or can submit his own resignation, which in fact means the resignation of his whole council of ministers. No one can remain a minister without the consent of the Chief Minister.
6. **Chief Link between the Governor and the Cabinet:** Chief Minister is the main channel of communication between the Governor and the Cabinet. He communicates to the Governor all decisions arrived at in the Cabinet and puts before the Cabinet the views of the Governor. Chief Minister keeps the Governor informed of all affairs of the government. This is the sole privilege of the Chief Minister and no other minister can, on his own, convey the decisions or reveal to the Governor.
7. **Leader of State Legislative Assembly:** All major policies of the state are announced by him on the floor of the parliament. He can address Legislative Assembly and official spokes person of his party. All major policies of the government are announced by him.
8. **To Manage and to Go-ordinate the working of various ministries:** Chief Minister has the prime responsibility of co-ordinating the work of various departments of the government. He has to see that all the ministers work as a team and help each other. It is his duty to see that no department of the government harms the functioning of the other departments of the governments. He has to ensure that all the departments of the government pull together as a team and

lend helping hand to each other in the best interests of the state. He resolves the conflicts or deadlocks between any two or more departments. His decisions supersede the decisions of his ministers. In case a disagreement persists, the concerned minister has to quit the ministry.

9. Power of Dissolution of the Parliament: Chief Minister has an ultimate power of dissolution of Legislative Assembly, which means, all members hold their seats in the House at the mercy of the Chief Minister as no member likes to contest frequent elections as they involve huge expenditure and no certainty of winning every time.

10. Chief Minister is the ex-officio chairman of the planning commission. Chief Minister is the main spirit behind state economic planning. He plays a leading role in all fiscal and developmental planning of the state. Chief Minister is the ex-officio chairman of the State Planning Commission. Governor always accepts the advice of the Chief Minister.

11. Appointment making powers: All the major appointments and promotions are made by the Governor on the advice of the Chief Minister.

12. Role in Centre-State Relations: As the real head of the State administration, Chief Minister has to maintain a good relation with the Centre. He has to use his position for securing central grants and help. A good terms with the Central government is necessary for this. He has to act as a good negotiator.

3.14. State Council of Ministers

The task of formation of the ministry begins with the appointment of the Chief Minister by the Governor. After assuming the office of Chief Ministership, Chief Minister prepares a list of persons, who are to be appointed as ministers in the council of ministers. Chief Minister is free to determine the strength of his Ministry and also to select the ministers as per his choice. Theoretically Governor formulates the State Council of Ministries but while doing so, Governor is guided by Chief Minister who decides, who amongst them shall be his cabinet ministers, ministers of cabinet rank, department heads and Board heads etc. While selecting his team, the Chief Minister can appoint even a non-member of the Assembly as a minister in the State Council of Ministers. However, such a person must secure a seat in the Legislative Assembly within a period of six months from the date of appointment as minister. In case he fails to do so, he has to resign his membership.

There are three categories of Ministers. They are:

1) Cabinet Ministers: These ministers hold independent charge of the important departments like finance, home affairs, education etc., They are responsible for determining the policies of the state. They are considered very close to the Chief Minister.

2) Ministers of State: These ministers do not attend the meeting of the Cabinet and normally do not participate in the process of policy making. They help the cabinet ministers and are attached to them in their departments. In some cases they may be

given independent charge of some departments.

3) Deputy Ministers: These Ministers are not given any independent charge, instead, they assist ministers. They are attached with either a Cabinet Minister or a State Minister or with both for assisting them in the working of their departments.

3.15. Powers and Functions of the Council of Ministers

The State Council of Ministers as the real executive exercises vast and real executive powers. The governor is a nominal executive head. The State Administration is run by the Council of Ministers in his name. All executive powers of Governor, except the one in which Governor can use his discretion as specified in the Constitution, are exercised by the State Council of Ministers. The Governor acts upon its advice, particularly under the advice of the State Chief Minister.

The powers and functions of the state council of ministers are discussed as follows:

1) Formulation of State Policies: The Council of Ministers has the responsibility of formulating and determining the policies of the State. All the policies are discussed and decided upon by it. While policy formulation is theoretical a function of the entire Council of Ministers, in practice only the Cabinet performs this task collectively. Further, each policy bears the imprint of the ideas, views and perceptions of the Chief Minister.

2) Running of Administration: The Council of Ministers runs the state administration. The ministers are responsible for running the administration of the State in accordance with the policies of the government and the laws passed by the legislature. Their duty is to see and ensure that the administration of the State is run in pursuance of the policies of the government. Each Minister has one or more departments under his control and is responsible for the administration of those departments.

3) Co-ordination Function: The Cabinet is also responsible for securing co-ordination in the working of various governmental departments. Without co-ordination among the departments, the smooth sailing of the State government cannot be ensured. The Cabinet has the responsibility to resolve conflicts and deadlocks between various departments. All the ministers are committed to accept the decisions of the Cabinet.

4) Role in Law Making: The State Council of Ministers plays a key role in the legislative sphere. It is the ministry which really decides the legislative programme. The bills moved by the ministers are mostly passed by the legislature because of the backing of the majority of the members. A private member's bill has little chance of its enactment, unless it is supported by the Ministry. When the state legislature is not in session, the Council of Ministers can satisfy its needs for law making by getting ordinances issued from the Governor. These ordinances have the force of law and can be got converted into laws from the State Legislature when it comes into session. Thus for all practical purposes, the Cabinet is an important law maker in the State and can carry out this role so long as it enjoys the support of the majority in the Assembly. The Governor summons, prorogues and dissolves the State Legislature upon the advice of the Council of Ministers.

5) Financial Functions: The Council of ministers really controls the finances of the State. It determines the fiscal policy of the State. The Cabinet formulates and implements all development policies and plans. It manages the finances of the State in accordance with the policy and budget as passed by the State Legislature. The Finance Minister, who is responsible for preparing and presenting the Budget, is a member of the Cabinet and in the conduct of the finances of State he goes by decisions of the Cabinet.

3.16. Summary:

India is Republic. The head of the Indian State is an elected President. All the executive and several other powers of the Union are vested in him. But, they are exercised by the Council of Ministers. The President is the Constitutional head. The real executive is the Prime Minister and his Council of Ministers. President is elected by an Electoral College comprising of all elected members of Union Parliament and State Legislative Assemblies. Prime Minister and his Council of Ministers are elected directly by the people. At the State level, Governor is the Nominal Head and his powers, on his behalf are exercised by Chief Minister. Governor is appointed by the President, who will act as an agent of the Central Government and Chief Minister of the State will be elected by the people of the state through elections.

3.17. Self Assessment Questions

1. Who is regarded as the first citizen of India?
2. Minimum age requirement for the post of President is _____.
3. _____ is the official residence of President of India.
4. The Chief Justice of India is appointed by _____
5. Article ____ deals with the emergency provisions.
6. Who will be the real executive in the Indian Parliamentary System?
7. _____ will be the ex-officio chairman of the Planning Commission of India.
8. Who are Cabinet Ministers?
9. Who is an executive head of the state?
10. _____ is the real executive at the State Level.
- 11.

3.18. Terminal Questions

Answer the following questions in a word or sentence each. Each question carries 1 marks.

1. Who is the constitutional head of our country?
2. Who is the present President of India?
3. What is the term of President of India?
4. What is an impeachment?
5. Which is the official residency of President of India?

6. Name the present Vice-President of India?
7. Who is the real executive of our parliamentary system?
8. Who are Cabinet Ministers?
9. Who is the nominal executive at the state level?
10. Who will be the chief architect of Council of Ministry at the state level?

Answer the following questions in a paragraph each. Each question carries 5 marks

1. What are the qualifications required to become the President of India.
2. Explain the procedure of Impeachment of the President of India.
3. State the judicial powers of the President of India.
4. Write a note on the President's rule in the State?
5. What is the meaning of collective responsibility?
6. "Prime Minister is the keystone of the Cabinet Arch". Explain.
7. Critically examine the role and position of the Governor of the state.
8. Write a note on the relations between Chief Minister and Governor.
9. Describe the role of the Chief Minister in the Ministry of a state.
10. Write a brief note on the Vice-President of India.
11. Explain the features of the Cabinet system in India.
12. Explain the positions of the Prime Minister of India.
13. Briefly explain the powers of the Governor.
14. Explain the mode of appointment, tenure, qualifications, powers and functions of the Governor of the state.
15. Describe the emergency powers of the president.
16. Describe the Composition, powers, functions and mode of functioning of the Union Council of ministers.

Answer the following questions in detail. Each questions carries 14 marks

1. Explain the mode of appointment, powers, functions and position of the Prime Minister of India.
2. Comment on the powers and functions of President of India?
3. Critically examine the powers and functions of the Chief Minister?
4. Explain the role and responsibilities of Union Council of Ministers?

3.19 Answers

Answers to 1 mark questions

1. Refer to sub section 3.3
- 2 . Refer to sub section 3.3
- 3 . Refer to sub section 3.3. (iv)
- 4 . Refer to sub section 3.3 (v)
- 5 . Refer to sub section 3.3 (vii)
- 6 . Refer to sub section 2.7.i.

- 7 . Refer to sub section 3.6
- 8 . Refer to sub section 3.8.a.
- 9 . Refer to sub section 3.11.
10. Refer to sub section 3.13.

Answers to 5 mark questions

1. Refer to sub section 3.3. (i)
- 2 . Refer to sub section 3.3. (v)
- 3 . Refer to sub section 3.4.d.
- 4 . Refer to sub section 3.4.g.
- 5 . Refer to sub section 3.8.(ii)
- 6 . Refer to sub section 3.7.
- 7 . Refer to sub section 3.10 and 3.11.
- 8 . Refer to sub section 3.13 (6)
- 9 . Refer to sub section 3.13.
10. Refer to sub section 3.5. f
- 11 . Refer to sub section 3.8.
- 12 . Refer to sub section 3.7.
- 13 . Refer to sub section 3.11.
- 14 . Refer to sub section 3.10a,b,c,d,e,f. and 3.11.
- 15 . Refer to sub section 3.4.(c) and 3.4. (g)
16. Refer to sub section 3.8 and 3.9.

Answers to 14 mark questions

1. Refer to sub section 3.6 and 3.7
2. Refer to sub section 3.4
3. Refer to sub section 3.12
4. Refer to sub section 3.8