Polity Class 29

27th October, 2023 at 9:00 AM

A BRIEF OVERVIEW OF THE PREVIOUS CLASS (9:03 AM)

POSITION OF PRIME MINISTER (PM) (9:07 AM)

- **India has adopted the British Cabinet style of govt which is based on the principle of, "PM is first among the equals"**
- **It means that the PM does not have a special position as compared to the other ministers but is only the leader of the team**
- **However, in practice, India has adopted a Prime Ministerial form of govt where the PM's position is significantly more powerful as compared to other ministers**
- **There are a number of reasons for this**
- **Constitutional factors: Even though the ministers are appointed by the President, it is the PM who advises him on the same**
- **Not only that but the allocation of portfolios and removal of the ministers is also done as per the advice of the PM**
- **According to Article 78(a), the PM is supposed to keep the President informed of the activities of the Union Executive**
- **Further, he acts as a channel of communication between the Council of Ministers and the President**
- **<u>Cultural factors:</u> Indian politics of personality-based politics and therefore, the position of PM has acquired significant importance**
- **The personality of PMs has played an important role in deciding their status vis-a-vis COM**
- **In the past, a number of PMs controlled a large part of the decision-making of the govt and this trend continues in the present time as well**
- **The position of the PM is also dependent on his/her position in the party as well as on whether the govt is a coalition govt or not**
- **<u>Conventions</u>: The PM presides over the meeting of the Cabinet and is supposed to play an important role in inter-ministerial coordination**
- **Also, he directs various ministries in case of crisis**
- **Also, the resignation or death of the PM brings about the dissolution of the entire COM**
- **The PM is also the leader of the house from which he is elected to the Parliament and the chief spokesperson of the Govt in the Parliament**
- **He also plays a crucial role in advising the President on summoning and proroguing the sessions of the Parliament**

- ***Refer handout for further detail***

COUNCIL OF MINISTERS (9:28 AM)

- **The COM shall be headed by the prime minister and shall be responsible for providing aid and advice to the president**
- **If any member does not agree with the decision of the council he/she must resign**
- **Originally the constitution did not prescribe any size limit for the COM**
- **However, the 91st Constitutional Amendment Act limited the size of the council to 15% of the total size of the House of the People**

GOVERNOR (9:46 AM)

- ***Provisions related to the removal of the Governor***
- **Several experts believe that the removal process is against the principles of natural justice and it has reduced the dignity of such an important constitutional position**
- **Since the danger of removal, always lurks in the mind of the governor**
- **He is not able to exercise his discretionary powers in the public interest**
- **It has severe repercussions on the independence of this office. In ideal circumstances, he is supposed to act on the aid and advice of the State COM. But this provision gives control to the union over the governor compromising the principles of federalism**
- **The wholesale removal of governors due to the change in the party in power at the center has led to the over-politicization of this post**
- **BP Singal vs Union of India**
- **The court held that the powers of the union to remove the governor may be subject to judicial review if the petitioner can prove that his removal was based on arbitrary grounds**
- **The court stated that the burden of proof for showing the arbitrary removal shall be on the petitioner**
- **If the petitioner can prove this prima facie, then the court may ask the Central COM to produce the relevant material on the basis of which the decision was taken to verify the compelling reasons for the removal**
- **The court also stated that a mere variance of opinion or ideology cannot be a ground for the removal of the governor**
- **This judgment of the court has been criticized as it would be impossible for the petitioner to prove his removal on irrelevant grounds till the time he has access to the relevant material on the basis of which the COM formed its opinion**
- ***Discretionary power of the Governor***

- **In normal circumstances, the Governor is supposed to act on the aid and advice of the council of ministers except in those cases, where he has been provided with discretionary powers by the constitution or as per the situation.**
- ***Specific discretionary powers are given to the governor***
- **According to article 239(2), the governor appointed as administrator of adjoining UT shall act at his discretion, with respect to the administration of that UT**
- **According to Schedule 6, paragraph 9, if a dispute arises with respect to the share of the autonomous district council in royalty from mining and license provided for such purpose, the governor shall exercise his discretionary powers**
- **In the case of certain states having a special status governor is supposed to exercise powers with respect to these matters at his discretion. (States like Nagaland, Sikkim, Arunachal Pradesh, etc)**
- **The governor exercises his discretion on the submission of his reports with respect to the failure of constitutional machinery in the state, according to Article 356**
- **Under Article 200, the governor may exercise his discretionary powers and may reserve the bill for the assent of the President if he considers it to be a concern of national importance**
- ***Refer to study materials regarding the Attorney General of India and the Solicitor General of India***

EMERGENCY PROVISIONS (10:37 AM)

- **Emergency provisions are adopted from the Weimar Republic of Germany**
- **Article 352: National emergency/Proclamation of emergency**
- **Article 356: President's rule/Failure of constitutional machinery**
- **The above two convert India into a unitary setup.**
- **Article 360: Financial emergency**
- ***Financial Emergency*(10:59 AM)**
- **Article 360 of the Indian Constitution deals with the provisions of financial emergency**
- **A financial emergency can be declared if the financial stability or credit of India is threatened**
- **The declaration of a financial emergency can be made only on the written advice of the Council of Ministers headed by the Prime Minister**
- **It must be approved by both Houses of Parliament within two months of its declaration**
- **Once declared, the President can issue directions for the reduction of salaries and allowances of all government officials, including judges**

- **The President can also direct the reduction of salaries and allowances of members of the Parliament and the state legislatures**
- **The financial emergency remains in operation until it is revoked by the President**
- **The provisions have never been invoked in the constitutional history of India, even during the financial crisis of 1991**
- **Provisions related to financial emergency were inspired by the events in the US during the Great Economic Depression**
- **Several legislations related to financial measures by the government were struck down by the US Supreme Court**
- ***Proclamation of Emergency*(11:33 AM)**
- **Article 352 empowers the President to declare a National Emergency if there is a threat to the security of India due to war, external aggression, or armed rebellion**
- **It suspends the normal functioning of federalism and grants the central government extensive powers to manage the country during an emergency**
- **The union becomes competent to issue executive directions to the states under their executive powers**
- **Additionally, the Parliament can make laws to confer power and duties on the Union officer, irrespective of whether that matter is enumerated in the Union list or not**
- **The Parliament acquires concurrent power to legislate on state subjects while the proclamation of emergency is in force**
- **The state continues to retain its power but in case of conflict, the union law shall prevail**
- **Such a law made by the Parliament shall cease to operate six months after the Proclamation of Emergency goes out of effect**
- **Financial arrangements between may be suspended or modified by an order of the President**
- **The maximum period for this to remain in effect is the end of the financial year, in which the Proclamation of Emergency ceases to exist**

Topic for the next class: Continuation of emergency provisions