

## **Extra Reading Material**

### **Union and State Executive**

**Jatin Gupta**

#### **POSITION OF PRIME MINISTER (PM)**

India has adopted the British Cabinet style of functioning of Government that is based on the principles of "PM as first among the equals". It means that the PM does not have a special position as compared to the other members of the council but is only a leader of the team. However in practice, India adopted a Prime Ministerial form of Government where the PM's position is significantly more powerful as compared to other ministers. It can be attributed to a number of reasons listed as follows:

- Even though the Ministers are appointed by the President, it is the PM who advises him on the same.
- Even the allocation of portfolios and removal of Ministers is done by the President as per the advice of the PM.
- The PM according to Article 78 acts as the principal channel of communication between the Council and the President showcasing his pivotal role.
- Indian politics is largely influenced by personality-based politics and therefore the position of the PM has acquired significant importance.
- In the past, a number of PMs controlled a large part of the decision-making of the Executive and this trend continues in the present time as well.

The position of the PM vis-a-vis the Council is also dependent on his/her position in the party as well as whether the Government is a coalition Government or not.

#### **COUNCIL OF MINISTERS**

- **According to Article 74(1)**, The COM shall be headed by the prime minister and shall be responsible for providing aid and advice to the president in the exercise of executive powers vested in him.
- **According to Article 75(3)**, The COM shall be collectively responsible to the house of people, it means that they "sink and swim together" in other words all the decisions of the council are taken as per acceptance of all the members.
- If any member does not agree with the decision of the council he must resign. A minister may also be removed at any time by a presidential order as per the advice of the PM {Article 75(2)}. Since the COM is supposed to be headed by a PM his resignation or death results in the dissolution of the entire council.

#### **SIZE OF THE COM**

- Originally the constitution did not prescribe any size limit for the COM.
- But the 91st CAA, limited the size of the council to 15% of the total size of the house of the people.
- One of the reasons for the introduction of such a provision was the ever increasing size of the council during the era of coalition governments. It created interministerial friction and coordination issues and led to the fragmentation of the government.

#### **ARGUMENT IN FAVOUR OF LIMITING THE SIZE OF COM**

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- It reduces red tapism and makes the decision making swift within the government.
- It reduces the chances of ego and political clashes between the ministers especially when certain ministries are expected to work closely with each other.
- It leads to reduced expenditure and can possibly introduce efficiency in the functioning of the government.
- It gives effect to the maxim of minimum government and maximum governance.

### ARGUMENTS AGAINST LIMITING THE SIZE OF THE CoM

- Specialized ministries may be able to give dedicated attention to the priority sectors of the economy.
- Limiting the size would create a problem in accommodating the diversity of the country.
- It can lead to issues with respect to accountability as a single ministry would be responsible for a number of tasks and activities.
- Specialisation is the demand of the hour, setting up specific ministries can help in better work distribution as well.

### PROVISIONS RELATED TO THE REMOVAL OF THE GOVERNOR

- **According to Article 156**, The governor of a state holds the office at the pleasure of the president. It means that he may be removed from his position at any time by a presidential order even before the completion of 5 years tenure.
- The court has stated that the president need not provide any reasons to the governor for his removal nor is the president required to issue any notice to the Governor.

### ISSUES ASSOCIATED WITH THE REMOVAL OF THE GOVERNOR

- Several constitutional experts believe that the removal process is **against the principle of natural justice**.
- Since the danger of removal is always lurking in the minds of the governor, he often becomes subservient to the direction provided by the union COM.
- He is not able to exercise his discretionary power in public interest and is rather driven by petty political gains and personal interest.
- In ideal circumstances, he is supposed to act in the aid and advice of the COM, but this provision ends up giving a lot of power/control in the hands of the union COM compromising the interest of a duly elected government and principles of federalism.
- The wholesale and arbitrary removal of governors upon the change in party in power has led to the over politicisation of this post.

### BP SINGHAL VS UOI (2010)

- In this case the court held that the powers of the union to remove the governor of the state may be subject to judicial review but the petitioner would have to prove that **prima facie** his removal was based on arbitrary grounds. Once the petitioner

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can prove so, the court stated that it may ask the central COM to provide the compelling reasons for such a removal.

- The court also stated that simply because there is a variation in the opinion or ideology of the governor and the central government removal of the governor would not be justified.
- This judgement of the court has been **criticised** as it would be impossible for the petitioner to prove his removal on irrelevant grounds till the time he has access to relevant material on the basis of which the COM formed its opinion but this material can be produced only if his removal is proven to be arbitrary prima facie.

### WAY AHEAD

- Ideally, the central council of ministers should behave more responsibly and should not misuse their powers for the removal of the government but considering various political compulsions it may not happen in reality.
- Therefore, certain expert bodies have suggested that the removal should happen as per a resolution passed by the state legislature or the parliament. Such a measure would help in ensuring greater independence of the position of the governor.

### DISCRETIONARY POWERS OF THE GOVERNOR

- In normal circumstances, the governor is supposed to act on the aid and advice of the COM. Except in those cases where discretionary power has been explicitly granted by the constitution itself.
- **According to Article 239(2)**, A Governor appointed as administrator of an adjoining UT shall act in his discretion with respect to administration of that UT.
- According to **paragraph of schedule VI**, If a dispute arises with respect to the share of an autonomous district council in royalty from mining and license provided for such purpose.
- In case of certain states having a special status the governor is supposed to exercise powers on certain matters at his discretion. e.g Article 371 A, 371 F
- **Under article 200**, the Governor may exercise his discretionary power and reserve a bill passed by the state legislature for the assent of the president.
- In the opinion of the Governor, if a bill derogates the powers of the High court of the state, he is duty bound to reserve such a bill for the assent of the president.
- The Governor exercises his discretion on submission of his reports with respect to the failure of constitutional machinery in the state according to Article 356.