

UNIT II UNION GOVERNMENT

President, Vice-President, Prime Minister, Union Council of Ministers, Parliament, Parliamentary Committees, Supreme Court of India

PRESIDENT

The Union executive consists of the President, the Vice President, the Prime Minister, the council of ministers and the attorney general of India. The President is the head of the Indian State. He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation

ELECTION OF THE PRESIDENT

The President is elected not directly by the people but by members of the Electoral College consisting of:

1. The elected members of both the Houses of Parliament;
2. The elected members of the legislative assemblies of the states; and
3. The elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry.

QUALIFICATIONS, OATH AND CONDITIONS

Qualifications for Election as President

A person to be eligible for election as President should fulfill the following qualifications:

1. He should be a citizen of India.
2. He should have completed 35 years of age.
3. He should be qualified for election as a member of the Lok Sabha.
4. He should not hold any office of profit under the Union government, state government, local authority, or other public authority.

Oath or Affirmation by the President

Before entering upon his office, the President has to make and subscribe to an oath or affirmation. In his oath, the President swears:

1. to faithfully execute the office;
2. to preserve, protect and defend the Constitution and the law; and
3. to devote himself to the service and well-being of the people of India.

Conditions of President's Office

The Constitution lays down the following conditions of the President's office:

Note: For detailed discussion, it is recommended to refer "Indian Polity" by Lakshmikanth

1. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is elected as President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as President.
2. He should not hold any other office of profit.
3. He is entitled, without payment of rent, to the use of his official residence (the Rastrapathi Bhavan).
4. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.
5. His emoluments and allowances cannot be diminished during his term of office.

TERM, IMPEACHMENT AND VACANCY

Term of President's Office

The President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the VicePresident. Further, he can also be removed from the office before completion of his term by the process of impeachment.

Impeachment of President

The President can be removed from office by a process of impeachment for 'violation of the Constitution'. However, the Constitution does not define the meaning of the phrase 'violation of the Constitution'.

Vacancy in the President's Office

A vacancy in the President's office can occur in any of the following ways:

1. On the expiry of his tenure of five years.
2. By his resignation.
3. On his removal by the process of impeachment.
4. By his death.
5. Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.

POWERS AND FUNCTIONS OF THE PRESIDENT

The powers enjoyed and the functions performed by the President can be studied under the following heads. 1. Executive powers 2. Legislative powers 3. Financial powers 4. Judicial powers 5. Diplomatic powers 6. Military powers 7. Emergency powers

Note: For detailed discussion, it is recommended to refer "Indian Polity" by Lakshmikanth

VETO POWER OF THE PRESIDENT

A bill passed by the Parliament can become an act only if it receives the assent of the President. When such a bill is presented to the President for his assent, he has three alternatives (under Article 111 of the Constitution):

1. He may give his assent to the bill, or
2. He may withhold his assent to the bill, or
3. He may return the bill (if it is not a Money bill) for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, the President must give his assent to the bill.

The veto power enjoyed by the executive in modern states can be classified into the following four types:

1. Absolute veto, which is, withholding of assent to the bill passed by the legislature.
2. Qualified veto, which can be overridden by the legislature with a higher majority.
3. Suspensive veto, which can be overridden by the legislature with an ordinary majority.
4. Pocket veto, which is, taking no action on the bill passed by the legislature.

ASSIGNMENT TOPICS

ORDINANCE-MAKING POWER OF THE PRESIDENT - PARDONING POWER OF THE PRESIDENT - CONSTITUTIONAL POSITION OF THE PRESIDENT.

VICE-PRESIDENT

The Vice-President occupies the second highest office in the country. He is accorded a rank next to the President in the official warrant of precedence. This office is modelled on the lines of the American Vice-President.

ELECTION

The Vice-President, like the president, is elected not directly by the people but by the method of indirect election. He is elected by the members of an electoral college consisting of the members of both Houses of Parliament. Thus, this electoral college is different from the electoral college for the election of the President in the following two respects:

1. It consists of both elected and nominated members of the Parliament (in the case of president, only elected members).

Note: For detailed discussion, it is recommended to refer "Indian Polity" by Lakshmi Kanth

2. It does not include the members of the state legislative assemblies (in the case of President, the elected members of the state legislative assemblies are included).

QUALIFICATIONS, OATH AND CONDITIONS

Qualifications

To be eligible for election as Vice-president, a person should fulfil the following qualifications: 1. He should be a citizen of India. 2. He should have completed 35 years of age. 3. He should be qualified for election as a member of the Rajya Sabha. 4. He should not hold any office of profit under the Union government, state government, local authority, or other public authority.

Oath or Affirmation

Before entering upon his office, the Vice-president has to make and subscribe to an oath or affirmation. In his oath, the Vice-president swears: 1. to bear true faith and allegiance to the Constitution of India; and 2. to faithfully discharge the duties of his office. The oath of office to the Vice-President is administered by the President or some person appointed in that behalf by him.

Conditions of Office

The Constitution lays down the following two conditions of the Vice-President's office: 1. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is elected Vice-President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President. 2. He should not hold any other office of profit.

Vacancy – same as president

POWERS AND FUNCTIONS

The functions of Vice-President are two-fold:

1. He acts as the ex-officio Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha. In this respect, he resembles the American vice-president who also acts as the Chairman of the Senate—the Upper House of the American legislature.
2. He acts as President when a vacancy occurs in the office of the President due to his resignation, impeachment, death or otherwise. He can act as President only for a maximum period of six months within which a new President has to be elected.

Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.

Note: For detailed discussion, it is recommended to refer "Indian Polity" by Lakshmikanth

INDIAN AND AMERICAN VICE PRESIDENTS COMPARED

Though the office of the Indian Vice-president is modelled on the lines of the American Vice-President, there is a difference. The American Vice-president succeeds to the presidency when it falls vacant, and remains president for the unexpired term of his predecessor. The Indian Vice-president, on the other hand, does not assume the office of the President when it falls vacant for the unexpired term. He merely serves as an acting President until the new President assumes charge.

PRIME MINISTER

OATH, TERM AND SALARY

Before the Prime Minister enters upon his office, the president administers to him the oaths of office and secrecy. 2 In his oath of office, the Prime Minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

POWERS AND FUNCTIONS OF THE PRIME MINISTER

The powers and functions of Prime Minister can be studied under the following heads:

In Relation to Council of Ministers

The Prime Minister enjoys the following powers as head of the Union council of ministers:

1. He recommends persons who can be appointed as ministers by the president. The President can appoint only those persons as ministers who are recommended by the Prime Minister.
2. He allocates and reshuffles various portfolios among the ministers.
3. He can ask a minister to resign or advise the President to dismiss him in case of difference of opinion.
4. He presides over the meeting of council of ministers and influences its decisions.
5. He guides, directs, controls, and coordinates the activities of all the ministers.

Note: For detailed discussion, it is recommended to refer "Indian Polity" by Lakshmikanth

6. He can bring about the collapse of the council of ministers by resigning from office.

In Relation to the President

The Prime Minister enjoys the following powers in relation to the President:

1. He is the principal channel of communication between the President and the council of ministers. It is the duty of the prime minister: (a) to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation; (b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and (c) if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
2. He advises the president with regard to the appointment of important officials like attorney general of India, Comptroller and Auditor General of India, chairman and members of the UPSC, election commissioners, chairman and members of the finance commission and so on.

In Relation to Parliament

The Prime Minister is the leader of the Lower House. In this capacity, he enjoys the following powers: 1. He advises the President with regard to summoning and proroguing of the sessions of the Parliament. 2. He can recommend dissolution of the Lok Sabha to President at any time. 3. He announces government policies on the floor of the House.

Other Powers & Functions

In addition to the above-mentioned three major roles, the Prime Minister has various other roles. These are: 1. He is the chairman of the NITI Ayog (which succeeded the planning commission), National Integration Council, InterState Council, National Water Resources Council and some other bodies. 2. He plays a significant role in shaping the foreign policy of the country. 3. He is the chief spokesman of the Union government. 4. He is the crisis manager-in-chief at the political level during emergencies. 5. As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and so on. 6. He is leader of the party in power. 7. He is political head of the services.

ASSIGNMENT TOPICS

ROLE DESCRIPTIONS AND RELATIONSHIP WITH THE PRESIDENT (w.r.to Article 74, 75 & 78)

Note: For detailed discussion, it is recommended to refer "Indian Polity" by Lakshmikanth

UNION COUNCIL OF MINISTERS

As the Constitution of India provides for a parliamentary system of government modelled on the British pattern, the council of ministers headed by the prime minister is the real executive authority in our politico-administrative system.

APPOINTMENT OF MINISTERS

The Prime Minister is appointed by the President, while the other ministers are appointed by the President on the advice of the Prime Minister. This means that the President can appoint only those persons as ministers who are recommended by the Prime minister.

OATH AND SALARY OF MINISTERS

Before a minister enters upon his office, the president administers to him the oaths of office and secrecy. In his oath of office, the minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

The salaries and allowances of ministers are determined by Parliament from time to time.² A minister gets the salary and allowances that are payable to a Member of Parliament. Additionally, he gets a sumptuary allowance (according to his rank), free accommodation, traveling allowance, medical facilities, etc. In 2001, the sumptuary allowance for the prime minister was raised from ₹1,500 to ₹3,000 per month, for a cabinet minister from ₹1,000 to ₹2,000 per month, for a minister of state from ₹500 to ₹1,000 per month and for a deputy minister from ₹300 to ₹600 per month.

RESPONSIBILITY OF MINISTERS

Collective Responsibility - Individual Responsibility - No Legal Responsibility

COUNCIL OF MINISTERS VS CABINET

The words 'council of ministers' and 'cabinet' are often used interchangeably though there is a definite distinction between them. They differ from each other in respects of composition, functions, and role. These differences are shown in the below Table.

KITCHEN CABINET

The cabinet, a small body consisting of the prime minister as its head and some 15 to 20 most important ministers, is the highest decision-making

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body in the formal sense. However, a still smaller body called the 'Inner Cabinet' or 'Kitchen Cabinet' has become the real centre of power.

The prime ministers have resorted to the device of 'inner cabinet' (extra-constitutional body) due to its merits, namely:

1. It being a small unit, is much more efficient decision-making body than a large cabinet.
2. It can meet more often and deal with business much more expeditiously than the large cabinet.
3. It helps the Prime Minister in maintaining secrecy in making decisions on important political issues.

However, it has many demerits also.

1. It reduces the authority and status of the cabinet as the highest decision-making body.
2. It circumvents the legal process by allowing outside persons to play an influential role in the government functioning.

Council of ministers	Cabinet
1. It is a wider body consisting of 60 to 70 ministers.	1. It is a smaller body consisting of 15 to 20 ministers.
2. It includes all the three categories of ministers, that is, cabinet ministers, ministers of state, and deputy ministers.	2. It includes the cabinet ministers only. Thus, it is a part of the council of ministers.
3. It does not meet, as a body, to transact government business. It has no collective functions.	3. It meets, as a body, frequently and usually once in a week to deliberate and take decisions regarding the transaction of government business.
4. It is vested with all powers but in theory.	4. It exercises, in practice, the powers of the council of ministers and thus, acts for the latter.
5. Its functions are determined by the cabinet.	5. It directs the council of ministers by taking policy decisions which are binding on all ministers.
6. It implements the decisions taken by the cabinet.	6. It supervises the implementation of its decisions by the council of ministers.

Note: For detailed discussion, it is recommended to refer "Indian Polity" by Lakshmikanth

FEATURES OF CABINET COMMITTEES

The following are the features of Cabinet Committees:

1. They are extra-constitutional in emergence. In other words, they are not mentioned in the Constitution. However, the Rules of Business provide for their establishment.
2. They are of two types—standing and ad hoc. The former are of a permanent nature while the latter are of a temporary nature. The ad hoc committees are constituted from time to time to deal with special problems. They are disbanded after their task is completed.
3. They are set up by the Prime Minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature, and composition varies from time to time.

LIST OF CABINET COMMITTEES

In 1994, there were the following 13 Cabinet Committees:

1. Cabinet Committee on Political Affairs
2. Cabinet Committee on Natural Calamities
3. Cabinet Committee on Parliamentary Affairs
4. Appointments Committee of the Cabinet
5. Cabinet Committee on Accommodation
6. Cabinet Committee on Foreign Investment
7. Cabinet Committee on Drug Abuse Control
8. Cabinet Committee on Prices
9. Cabinet Committee on Minority Welfare
10. Cabinet Committee on Economic Affairs
11. Cabinet Committee on Trade and Investment
12. Cabinet Committee on Expenditure
- 13.

Cabinet Committee on Infrastructure In 2013, the following 10 Cabinet Committees were in existence:

1. Cabinet Committee on Economic Affairs
2. Cabinet Committee on Prices
3. Cabinet Committee on Political Affairs
4. Appointments Committee of the Cabinet
5. Cabinet Committee on Security
6. Cabinet Committee on World Trade Organisation (WTO) Matters
7. Cabinet Committee on Investment
8. Cabinet Committee on Unique Identification Authority of India (UIDAI) related issues
9. Cabinet Committee on Parliamentary Affairs
10. Cabinet Committee on Accommodation

At present (as of 2019), the following 8 Cabinet Committees are functional:

1. Cabinet Committee on Political Affairs
2. Cabinet Committee on Economic Affairs
3. Appointments Committee of the Cabinet
4. Cabinet Committee on Security
5. Cabinet Committee on Parliamentary Affairs
6. Cabinet Committee on Accommodation
7. Cabinet Committee on Investment and Growth
8. Cabinet Committee on Employment and Skill Development.

Note: For detailed discussion, it is recommended to refer “Indian Polity” by Lakshmikanth

FUNCTIONS OF CABINET COMMITTEES

The following four are the more important cabinet committees: 1. The Political Affairs Committee deals with all policy matters pertaining to domestic and foreign affairs. 2. The Economic Affairs Committee directs and coordinates the governmental activities in the economic sphere. 3. Appointments Committee decides all higher level appointments in the Central Secretariat, Public Enterprises, Banks and Financial Institutions. 4. Parliamentary Affairs Committee looks after the progress of government business in the Parliament.

PARLIAMENT

The Parliament is the legislative organ of the Union government. It occupies a pre-eminent and central position in the Indian democratic political system due to adoption of the parliamentary form of government, also known as 'Westminster' model of government.

ORGANISATION OF PARLIAMENT

Under the Constitution, the Parliament of India consists of three parts viz, the President, the Council of States and the House of the People. In 1954, the Hindi names 'Rajya Sabha' and 'Lok Sabha' were adopted by the Council of States and the House of People respectively. The Rajya Sabha is the Upper House (Second Chamber or House of Elders) and the Lok Sabha is the Lower House (First Chamber or Popular House). The former represents the states and union territories of the Indian Union, while the latter represents the people of India as a whole. Though the President of India is not a member of either House of Parliament and does not sit in the Parliament to attend its meetings, he is an integral part of the Parliament. This is because a bill passed by both the Houses of Parliament cannot become law without the President's assent.

COMPOSITION OF THE TWO HOUSES

The maximum strength of the Rajya Sabha is fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the president. At present, the Rajya Sabha has 245 members. Of these, 229 members represent the states, 4 members represent the union territories and 12 members are nominated by the president.

The maximum strength of the Lok Sabha is fixed at 552. Out of this, 530 members are to be the representatives of the states, 20 members are to be the representatives of the union territories and 2 members are to be nominated by the president from the AngloIndian community. At present, the Lok Sabha has 545 members. Of these, 530 members represent the states,

Note: For detailed discussion, it is recommended to refer "Indian Polity" by Lakshmikanth

13 members represent the union territories and 2 Anglo-Indian members are nominated by the President.

DURATION OF TWO HOUSES

The Rajya Sabha (first constituted in 1952) is a continuing chamber, that is, it is a permanent body and not subject to dissolution. However, one-third of its members retire every second year. Their seats are filled up by fresh elections and presidential nominations at the beginning of every third year. The retiring members are eligible for re-election and renomination any number of times.

Unlike the Rajya Sabha, the Lok Sabha is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections, after which it automatically dissolves. However, the President is authorised to dissolve the Lok Sabha at any time even before the completion of five years and this cannot be challenged in a court of law.

MEMBERSHIP OF PARLIAMENT

Qualifications

The Constitution lays down the following qualifications for a person to be chosen a member of the Parliament: 1. He must be a citizen of India. 2. He must make and subscribe to an oath or affirmation before the person authorised by the election commission for this purpose. In his oath or affirmation, he swears (a) To bear true faith and allegiance to the Constitution of India (b) To uphold the sovereignty and integrity of India 3. He must be not less than 30 years of age in the case of the Rajya Sabha and not less than 25 years of age in the case of the Lok Sabha. 4. He must possess other qualifications prescribed by Parliament.

Disqualifications

Under the Constitution, a person shall be disqualified for being elected as a member of Parliament: 1. if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by Parliament). 2. if he is of unsound mind and stands so declared by a court. 3. if he is an undischarged insolvent. 4. if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state; and 5. if he is so disqualified under any law made by Parliament.

Vacating of Seats

In the following cases, a member of Parliament vacates his seat.

1. Double Membership, 2. Disqualification, 3. Resignation, 4. Absence and 5. Absence

Note: For detailed discussion, it is recommended to refer "Indian Polity" by Lakshmikanth

Oath

In his oath or affirmation, a member of Parliament swears: 1. to bear true faith and allegiance to the Constitution of India; 2. to uphold the sovereignty and integrity of India; and 3. to faithfully discharge the duty upon which he is about to enter.

Salaries and Allowances

In 1954, the Parliament enacted the Salaries, Allowances and Pension of Members of Parliament Act. In 2018, the salary of members was increased from ₹50,000 to ₹1,00,000 per month, the constituency allowance from ₹45,000 to ₹70,000 per month and the office expenses allowance from ₹45,000 to ₹60,000 per month. Earlier in 2010, the daily allowance was increased from ₹1,000 to ₹2,000 for each day of residence on duty.

ASSIGNMENT TOPICS

SESSIONS OF PARLIAMENT

SUPREME COURT

COMPOSITION AND APPOINTMENT

At present, the Supreme Court consists of thirty-four judges (one chief justice and thirty three other judges). In 2019, the centre notified an increase in the number of Supreme Court judges from thirty-one to thirty-four, including the Chief Justice of India. This followed the enactment of the Supreme Court (Number of Judges) Amendment Act, 2019. Originally, the strength of the Supreme Court was fixed at eight (one chief justice and seven other judges). The Parliament has increased this number of other judges progressively to ten in 1956, to thirteen in 1960, to seventeen in 1977, to twenty-five in 1986, to thirty in 2008 and to thirty-three in 2019.

Appointment of Judges The judges of the Supreme Court are appointed by the president. The chief justice is appointed by the president after consultation with such judges of the Supreme Court and high courts as he deems necessary. The other judges are appointed by president after consultation with the chief justice and such other judges of the Supreme Court and the high courts as he deems necessary. The consultation with the chief justice is obligatory in the case of appointment of a judge other than Chief justice.

Qualifications of Judges

A person to be appointed as a judge of the Supreme Court should have the following qualifications:

1. He should be a citizen of India.

Note: For detailed discussion, it is recommended to refer "Indian Polity" by Lakshmikanth

2. (a) He should have been a judge of a High Court (or high courts in succession) for five years; or (b) He should have been an advocate of a High Court (or High Courts in succession) for ten years; or (c) He should be a distinguished jurist in the opinion of the president. From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court.

Oath or Affirmation

A person appointed as a judge of the Supreme Court, before entering upon his Office, has to make and subscribe an oath or affirmation before the President, or some person appointed by him for this purpose. In his oath, a judge of the Supreme Court swears: 1. to bear true faith and allegiance to the Constitution of India; 2. to uphold the sovereignty and integrity of India; 3. to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the Office without fear or favour, affection or ill-will; and 4. to uphold the Constitution and the laws.

Salaries and Allowances

The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency. In 2018, the salary of the chief justice was increased from ₹1 lakh to ₹2.80 lakh per month and that of a judge from ₹90,000 to ₹2.50 lakh per month⁶. They are also paid sumptuary allowance and provided with free accommodation and other facilities like medical, car, telephone, etc. The retired chief justice and judges are entitled to 50 per cent of their last drawn salary as monthly pension.

Tenure of Judges

The Constitution has not fixed the tenure of a judge of the Supreme Court. However, it makes the following three provisions in this regard: 1. He holds office until he attains the age of 65 years. Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament. 2. He can resign his office by writing to the president. 3. He can be removed from his office by the President on the recommendation of the Parliament.

Removal of Judges

A judge of the Supreme Court can be removed from his Office by an order of the president. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal.⁵

INDEPENDENCE OF SUPREME COURT

The Supreme Court has been assigned a very significant role in the Indian democratic political system. It is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution. Therefore, its independence becomes very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the Legislature (Parliament). It should be allowed to do justice without fear or favour. The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Supreme Court:

1. Mode of Appointment
2. Security of Tenure
3. Fixed Service Conditions
4. Expenses Charged on Consolidated Fund
5. Conduct of Judges cannot be Discussed.
6. Ban on Practice after Retirement
7. Power to Punish for its Contempt
8. Freedom to Appoint its Staff