

Chapter-3

Organs of Governance, Parliament,
Composition, Powers and Functions,
Executive, President, Governor,
Council of Ministers, Judiciary,

PARLIAMENTARY SYSTEM

- The Constitution of India provides for a parliamentary form of government, both at the Centre and in the states.
- Articles 74 and 75 deal with the parliamentary system at the Centre and Articles 163 and 164 in the states.
- Modern democratic governments are classified into parliamentary and presidential on the basis of nature of relations between the executive and the legislative organs of the government.

- **Nominal and Real Executives**

- The President is the nominal executive (de jure executive or titular executive) while the Prime Minister is the real executive (de facto executive). Thus, the President is head of the State, while the Prime Minister is head of the government.

- **Majority Party Rule**

- The political party which secures majority seats in the Lok Sabha forms the government.
- The leader of that party is appointed as the Prime Minister by the President; other ministers are appointed by the President on the advice of the prime minister.

- **Collective Responsibility**

- This is the bedrock principle of parliamentary government. The ministers are collectively responsible to the Parliament in general and to the Lok Sabha in particular (Article 75). They act as a team, and swim and sink together.

- **Political Homogeneity**

- Usually members of the council of ministers belong to the same political party, and hence they share the same political ideology.

- **Double Membership**

- The ministers are members of both the legislature and the executive. This means that a person cannot be a minister without being a member of the Parliament.

- **Leadership of the Prime Minister**

- The Prime Minister plays the leadership role in this system of government. He is the leader of council of ministers, leader of the Parliament and leader of the party in power. In these capacities, he plays a significant and highly crucial role in the functioning of the government.

- **Dissolution of the Lower House**

- The lower house of the Parliament (Lok Sabha) can be dissolved by the President on recommendation of the Prime Minister.
- Unlike the Indian Constitution, the American Constitution provides for the presidential form of government.
- The American President is both the head of the State and the head of government. As the head of State, he occupies a ceremonial position. As the head of government, he leads the executive organ of government.
- The President is elected by an electoral for a fixed tenure of four years. He cannot be removed by the Parliament except by impeachment for a grave unconstitutional act.

- The President governs with the help of a cabinet or a smaller body called 'Kitchen Cabinet'. It is only an advisory body and consists of non-elected departmental secretaries.
- The President and his secretaries are not responsible to the Parliament for their acts. They neither possess membership in the Congress nor attend its sessions.
- The President cannot dissolve the House of Representatives—the lower house of the Assembly.
- Harmony Between Legislature and Executive

MERITS OF THE PARLIAMENTARY SYSTEM

- The greatest advantage of the parliamentary system is that it ensures harmonious relationship and cooperation between the legislative and executive organs of the government.
- **Responsible Government**
- The ministers are responsible to the Parliament for all their acts of omission and commission.

- **Prevents Despotism**

- Under this system, the executive authority is vested in a group of individuals (council of ministers) and not in a single person.
- Moreover, the executive is responsible to the Parliament and can be removed by a no-confidence motion.

- **Ready Alternative Government**

- In case the ruling party loses its majority, the Head of the State can invite the opposition party to form the government. This means an alternative government can be formed without fresh elections.

- **Wide Representation**

- In a parliamentary system, the executive consists of a group of individuals (i.e., ministers who are representatives of the people). Hence, it is possible to provide representation to all sections and regions in the government.

- **Unstable Government**

- The parliamentary system does not provide a stable government. There is no guarantee that a government can survive its tenure.

- **No Continuity of Policies**

- The parliamentary system is not conducive for the formulation and implementation of long-term policies. A change in the ruling party is usually followed by changes in the policies of the government.

- **Dictatorship of the Cabinet**

- When the ruling party enjoys absolute majority in the Parliament, the cabinet becomes autocratic and exercises nearly unlimited powers.

- **Government by Amateurs**

- The parliamentary system is not conducive to administrative efficiency as the ministers are not experts in their fields. The Prime Minister has a limited choice in the selection of ministers; his choice is restricted to the members of Parliament alone and does not extend to external talent.

REASONS FOR ADOPTING PARLIAMENTARY SYSTEM

- **Familiarity with the System**
- The Constitution-makers were somewhat familiar with the parliamentary system as it had been in operation in India during the British rule.
- **Preference to More Responsibility**
- Dr B R Ambedkar pointed out in the Constituent Assembly that 'a democratic executive must satisfy two conditions: stability and responsibility.

- **Need to Avoid Legislative—Executive Conflicts**
- The framers of the Constitution wanted to avoid the conflicts between the legislature and the executive which are bound to occur in the presidential system prevalent in USA.
- **Nature of Indian Society**
- India is one of the most heterogeneous States and most complex plural societies in the world.
- Hence, the Constitution-makers adopted the parliamentary system as it offers greater scope for giving representation to various section, interests and regions in the government.
- This promotes a national spirit among the people and builds a united India.

DISTINCTION BETWEEN INDIAN AND BRITISH MODEL

- India has a republican system in place of British monarchical system.
- In other words, the Head of the State in India (that is, President) is elected, while the Head of the State in Britain (that is, King or Queen) enjoys a hereditary position.
- The British system is based on the doctrine of the sovereignty of Parliament, while the Parliament is not supreme in India and enjoys limited and restricted powers due to a written Constitution, federal system, judicial review and fundamental rights.
- In Britain, the prime minister should be a member of the Lower House (House of Commons) of the Parliament. In India, the prime minister may be a member of any of the two Houses of Parliament.

- Usually, the members of Parliament alone are appointed as ministers in Britain. In India, a person who is not a member of Parliament can also be appointed as minister, but for a maximum period of six months.
- Britain has the system of legal responsibility of the minister while India has no such system. Unlike in Britain, the ministers in India are not required to countersign the official acts of the Head of the State.

PRESIDENT

- He should be a citizen of India.
- He should have completed 35 years of age.
- He should be qualified for election as a member of the Lok Sabha.
- Every candidate has to make a security deposit of Rs 15,000 in the Reserve Bank of India.

- **Executive powers**
- **Legislative powers**
- **Financial powers**
- **Judicial powers**
- **Diplomatic powers**
- **Military powers**
- **Emergency powers**
- All executive actions of the Government of India are formally taken in his name.

Executive Powers

- He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated.
- He can make rules for more convenient transaction of business of the Union government, and for allocation of the said business among the ministers.
- He appoints the prime minister and the other ministers. They hold office during his pleasure.

- He appoints the comptroller and auditor general of India, the chief election commissioner and other election commissioners, the chairman and members of the Union Public Service Commission, the governors of states, the chairman and members of finance commission, and so on.
- He can seek any information relating to the administration of affairs of the Union, and proposals for legislation from the prime minister.

- He can appoint a commission to investigate into the conditions of SCs, STS and other backward classes.
- He can appoint an inter-state council to promote Centre—state and interstate cooperation.
- He directly administers the union territories through administrators appointed by him.
- He can declare any area as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas.
- He can call the Parliament and dissolve the Lok Sabha.

Legislative Powers

- He can also call a joint sitting of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.
- He can address the Parliament at the commencement of the first session after each general election and the first session of each year.
- He can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant.
- Similarly, he can also appoint any member of the Rajya Sabha to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.

- He nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service.
- He can nominate two members to the Lok Sabha from the Anglo-Indian Community.
- He decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission.
- His prior recommendation or permission is needed to introduce certain types of bills in the Parliament. For example, a bill involving expenditure from the Consolidated Fund of India, or a bill for the alteration of boundaries of states or creation of a new state.

- When a bill is sent to the President after it has been passed by the Parliament, he can:
- He can promulgate ordinances when the Parliament is not in session.
- These ordinances must be approved by the Parliament within six weeks from its reassembly. He can also withdraw an ordinance at any time.
- He lays the reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others, before the Parliament.
- He can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu.
- In the case of Puducherry also, the President can legislate by making regulations but only when the assembly is suspended or dissolved.

- Money bills can be introduced in the Parliament only with his prior recommendation.
- He causes to be laid before the Parliament the annual financial statement (ie, the Union Budget).
- No demand for a grant can be made except on his recommendation.
- He can make advances out of the contingency fund of India to meet any unforeseen expenditure.
- He constitutes a finance commission after every five years to recommend the distribution of revenues between the Centre and the states.
- He appoints the Chief Justice and the judges of Supreme Court and high courts.
- He can seek advice from the Supreme Court on any question of law or fact.
- However, the advice tendered by the Supreme Court is not binding on the President.

- He can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person convicted of any offence:
- The international treaties and agreements are negotiated and concluded on behalf of the President. However, they are subject to the approval of the Parliament.
- He is the supreme commander of the defense forces of India. In that capacity, he appoints the chiefs of the Army, the Navy and the Air Force.
- He can declare war or conclude peace, subject to the approval of the Parliament.
- Article 123 of the Constitution empowers the President to promulgate ordinances during the recess of Parliament.
- These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws.

ORDINANCE MAKING POWER OF THE PRESIDENT:

- The ordinance-making power is the most important legislative power of the President. It has been vested in him to deal with unforeseen or urgent matters.
- He can promulgate an ordinance only when both the Houses of Parliament are not in session or when either of the two Houses of Parliament is not in session.
- An ordinance can also be issued when only one House is in session because a law can be passed by both the Houses and not by one House alone.
- An ordinance made when both the Houses are in session is void. Thus, the power of the President to legislate by ordinance is not a parallel power of legislation.

- He can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action.
- This means that the decision of the President to issue an ordinance can be questioned in a court on the ground that the President has prorogued one House or both Houses of Parliament.
- The 38th Constitutional Amendment Act of 1975 made the President's satisfaction final and conclusive and beyond judicial review.
- Every ordinance issued by the President during the recess of parliament must be laid before both the Houses of Parliament when it reassembles. If the ordinance is approved by both the Houses, it becomes an act.

Governor

- The state executive consists of the governor, the chief minister, the council of ministers and the advocate general of the state. Thus, there is no office of vice-governor (in the state) like that of Vice-President at the Centre.
- The governor is the chief executive head of the state. But, like the president, he is a nominal executive head (titular or constitutional head).
- The governor also acts as an agent of the central government. Therefore, the office of governor has a dual role.
- Usually, there is a governor for each state, but the 7th Constitutional Amendment Act of 1956 facilitated the appointment of the same person as a governor for two or more states.

APPOINTMENT OF GOVERNOR

- The governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the president.
- He is appointed by the president by warrant under his hand and seal. In a way, he is a nominee of the Central government. But, as held by the Supreme Court in 1979, the office of governor of a state is not an employment under the Central government. It is an independent constitutional office and is not under the control of or subordinate to the Central government.

- The Constitution lays down only two qualifications for the appointment of a person as a governor.
- He should be a citizen of India.
- He should have completed the age of 35 years.

POWERS AND FUNCTIONS OF GOVERNOR

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

- Executive powers.
 - Legislative powers.
 - Financial powers.
 - Judicial powers.
- A governor possesses executive, legislative, financial and judicial powers more or less analogous to the President of India. However, he has no diplomatic, military or emergency powers like the president.

- **Executive Powers**

- All executive actions of the government of a state are formally taken in his name.
- He can make rules specifying the manner in which the Orders and other instruments made and executed in his name shall be authenticated.
- He can make rules for more convenient transaction of the business of a state government and for the allocation among the ministers of the said business.
- He appoints the chief minister and other ministers.
- He appoints the advocate general of a state and determines his

• **Legislative Powers**

- A governor is an integral part of the state legislature. In that capacity, he has the following legislative powers and functions:
- He can summon or prorogue the state legislature and dissolve the state legislative assembly.
- He can address the state legislature at the commencement of the first session after each general election and the first session of each year.
- He can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or otherwise.
- He can appoint any member of the State legislative assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant.

- **Financial Powers**

- He sees that the Annual Financial Statement (state budget) is laid before the state legislature.
- Money bills can be introduced in the state legislature only with his prior recommendation.
- No demand for a grant can be made except on his recommendation.
- He can make advances out of the Contingency Fund of the state to meet any unforeseen expenditure.

- **Judicial Powers**

- He can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.
- He is consulted by the president while appointing the judges of the concerned state high court.
- He makes appointments, postings and promotions of the district judges in consultation with the state high court.
- He also appoints persons to the judicial service of the state (other than district judges) in consultation with the state high court and the State Public Service Commission.

JURISDICTION AND POWERS OF SUPREME COURT

- The Constitution has conferred a very extensive jurisdiction and vast powers on the Supreme Court.
- It is not only a Federal Court like the American Supreme Court but also a final court of appeal like the British House of Lords (the Upper House of the British Parliament).
- It is also the final interpreter and guardian of the Constitution and guarantor of the fundamental rights of the citizens. Further, it has advisory and supervisory powers.
- Therefore, Alladi Krishnaswamy Ayyar, a member of the Drafting Committee of the Constitution, rightly remarked: "The Supreme Court of India has more powers than any other Supreme Court in any part of the world."

- The jurisdiction and powers of the Supreme Court can be classified into the following:
 - Original Jurisdiction.
 - Writ Jurisdiction.
 - Appellate Jurisdiction.
 - Advisory Jurisdiction.
 - A Court of Record.
 - Power of Judicial Review.
 - Other Powers.

- **Original Jurisdiction**

- As a federal court, the Supreme Court decides the disputes between different units of the Indian Federation. More elaborately, any dispute between:
 - the Centre and one or more states; or
 - the Centre and any state or states on one side and one or more states on the other; or
- between two or more states.

- **Appellate Jurisdiction**

- As mentioned earlier, the Supreme Court has not only succeeded the Federal Court of India but also replaced the British Privy Council as the highest court of appeal.
- The Supreme Court is primarily a court of appeal and hears appeals against the judgements of the lower courts. It enjoys a wide appellate jurisdiction which can be classified under four heads:
 - Appeals in constitutional matters.
 - Appeals in civil matters.
 - Appeals in criminal matters.
 - Appeals by special leave.

- **Writ Jurisdiction**

- The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens.
- In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. However, the writ jurisdiction of the Supreme Court is not exclusive. The high courts are also empowered to issue writs for the enforcement of the Fundamental Rights.

THANK YOU