

Union Executive

President, Vice-President, Prime Minister, CMs, Attorney General

President [Election, Qualifications, Impeachment, Powers & functions, Constitutional position]

Art. 52

- There shall be a President of India.
- Seat cannot empty at any point
- The operation of the constitutional scheme or structure cannot be envisaged even for a short while without a President of India being in office.

Art. 53

- word not explained in constn
- The executive power of the Union shall be vested in the President. Decisions taken in name of Pres
 - Executive Power Ram Jawaya Kaur v. State of Punjab (1955) Initiating a policy as well as Implementing it
 - "executive function" comprised both determination of policy as well as carrying it into execution. This included initiation of the legislation, the maintenance of law and order, the promotion of social and economic welfare, the direction of the foreign policy; in fact, the carrying on or supervision of general administration of the state. Overall governance of country.

- According to Wade & Bradley, in Constitution and Administration
- Residue:** Subtract legislative & judicial power from Executive Function comprises the whole corpus of authority to govern, other than that which is involved in the legislative functions of the Parliament and the judicial functions of the courts.
- And these powers are vested in name of Pres.

⇒ Constitutional Position of the President

- Dr. Rajendra Prasad episode [Speech in constituent assembly]
 - not have ~~any~~ discretionary power
 - British model parliament [PM is supreme, COM]
 - Supreme Parliament.
- President on advice of PM of all executive decisions
- Ram Jawaya case - The President is only a formal or constitutional head of the executive and the real executive power is vested in the hands of the ministers. Pres has to listen to aid & advice of ministers.

But position changed when he became President, he said no when written to accept aids & advice of ministers

Art. 74

There shall be Council of ministers headed by PM to aid & advice president of India.

- U.N. R. Rao v/s Indira Gandhi (1971) - our constitution is modelled on the British parliamentary system.
- President mere a rubber stamp PM aids to queen. Same in India.

What is satisfaction?

Many times if President is satisfied, he can do this.

(2) That...

Saroshesh Singh v/s State of Punjab (1974) — whenever the constitution requires the satisfaction of President or the Governor the satisfaction is not the personal satisfaction of President/Governor, but it is the satisfaction of Council of Minister headed by P. M.

Conclusion

- No Discretionary Power.
- Rubber Stamp.

Prez is only a formal head, a constitutional head, a nominal head but real power of executive with com.

So, Art. 53 to be read with Art. 74.

Indira Gandhi Art. 74 added 42nd CA 76

There shall be a CoMs headed by the PM to aid & advise the President, who shall act on that advice.
Prez bound by aid & advice of com.

↓
44th CA Act, 1978 by Tantekal added

provided the President may ask for the reconsideration of the advice and shall act on that advice.

Prez can send bill back once but once given
President = de jure head (by law). back to Prez,
= de facto head (by practice) real head. he to accept

PM advice is binding on Prez. (anyone PM)

Only Discrete power in Lok Sabha as President call to make PM from Govt. if doesn't have its majority in Lok Sabha ASAP when no party/coalition has formed govt.

Art. 54 — Election of the President

- Indirectly elected by people
- Electoral college:

a) The elected members of both houses of the Parliament. $\frac{12}{Nominated} \rightarrow RS$ $\frac{2}{\text{LS}} \rightarrow LS$ These don't

b) Elected members of the Legislative Assemblies of the states.

\Rightarrow Not nominated member.

States include — legislative assembly of Delhi, Puducherry.

Some states bicameral legislature
 LA \rightarrow lower house ✓
 Leg. Council \rightarrow upper house X
 not in vld

why this Indirect Election...

- Very time consuming exercises — time & money wasted.
- Not real power. Not both by people as ego issue will be there.

Art. 55

Manner of election of President

- As far as practicable, there shall be uniformity in the scale of representation of the different states at the election of the President. should be same as As all states are equal, value of vote of 1 individual in 1 state \wedge another.
- Value of vote of MP & MLA not equal \rightarrow because of 1971 census area difference.

$$\text{Value of a vote of } \frac{\text{Total population of State}}{\text{Total no. of elected members of LA}} \times \frac{1}{1000}$$

Value of a vote of an MP = $\frac{\text{Total no. of Votes of all the MLA's}}{\text{Total no. of elected members of Parliament}}$ (3)

Total no. of votes that a individual have to get to be a President of India = $\frac{\text{Total no. of Valid votes Polled}}{\text{no of vacancies}} + 1$

→ Return by Absolute Majority of Valid votes.

Art 55 also talks about 2 Elections should be held by Proportional Representation System ...

- Single Transferable Vote
- Secret Ballot

⇒ ~~Proportional Representation System~~

• First Past the Post System. [First Past the Post System].
Elections are conducted divided into constituencies; one gets the largest no. of votes polled for MPs/MLAs

Flaw: State into constituency, one gets elected who has largest no. of votes polled
whoever gets the first will be elected.

only maxm. votes. [not truly Representative] because maxm. has rejected more votes than others

Not agreed by 90% but still represented
Flaw.

2014 LS elections

BJP → 31% → 282 seats

INC → 19.31% → 44 seats Flaw, Not representative of 4.1%.

BSP → 4.1%

TMC → 3.84% → 24 seats

AIADMK → 3.27% → 37 seats

Flaw → 4.1% have no representative

States

while BSP

Scattered in Andhra

Flaws diminished in Proportional Representation should be there as

$$\frac{\% \text{ of votes}}{\text{to party}} = \frac{\% \text{ of seats}}{\text{given to party}}$$

Problem - Not a situation for a government to form

for single party as not possible to get
50.1%.

- Not a stable government, always coalition.

Which members will be MP? - No constituency, vote for party, Party decides
they will representatives then abst members - Party funds will be there
of party & not people.

President by Proportional Representation System.

Proportion of seats allocated to a party, proportion to those they

⇒ Single Transferable Vote

will have a say in
Pres elections

More strength, more command.

Every member of Parliament & LA, Ballot Paper is provided
to every voter

Cardinal Preference	
A	1
B	2
C	3
D	4

← Ballot Paper

→ 10%
→ 20%
→ 30%
→ 40%

} First Counting

In first counting no one is
able to get absolute
majority of
votes.

A → 10%. → Check for 2nd Preference
||
1st Preference vote

Vote of A
who voted for

as A will be
rejected [1st
preference]

So if 2nd round of voting →

<u>C</u>	2	30+	1X
<u>D</u>	3	40+	91.

so D's 2nd preference vote transferred to 1st preference
 At the end → **D winner** **CSD**

History of India

Selected only
 ^ In 1st round but only 1 case in which 2 need
 except

1969 V. V. Giri vs N. S. Reddy.

President elected indirectly by people by Electoral College by means of proportional representation
Through Secret Ballot By single transferable vote concept of

Invalid Votes - Not to be displayed. Secret ballot

(By Mulayam Singh Yadav in 2012)
 He showed his ballot paper.

So, Valid Votes only included. They should be secret
 secretly put this in ballot box.

Article 56 - Term of Office

- 5 years.
- a) Vacancy
 - Resignation [Resignation to V.P].
 - Death
 - Impeached

→ If ~~Vacancy~~ Temporarily Vacancy V.P will be elevated to the post of President of India.

President Rajendra Prasad, Soviet Union

⇒ 20th June, 1960 - Ask VP to discharge function of President

May, 1961 → Rajendra Prasad ill ~~out~~ \Rightarrow V.P. to discharge functions.

If travelling / sick President to decide whether VP has to give power ~~not~~ or not.

Other cases; Resig., Death, Impeachment, VP will act as President of India.

Quick Points

- The President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.
- Any resignation addressed to V.P. shall forthwith be communicated by him to the speaker of the Lok Sabha.

Art. 57 - Eligibility for re-election

- Irish Constitution - prohibits more than 2 terms
- US Constitution - election of same person more than twice to the office of the President.

Eg. Barack Obama - ~~also~~ Two term.

— In India, no restriction on upper limit.

Any no. of times president can be elected.

Art 58-

Art 58 - Qualification for President.

(5)

- a) Citizens of India.
- b) 35 years of age. to become
- c) Qualified for the election as a member of the Lok Sabha.
- d) Should also not hold any Office of Profit.
believes in God
believer Atheist
not believe in God

Neelima Sanjeeva Reddy only Prez to win Pres elec.
unopposed

Art 60 - Oath or Affirmation

• execute the office of the President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India.

Under constn of India, only Prez is impeached & no other. All others are removed.

Art 61 - Impeachment

- Violation of the Constitution. Assured Not abiding by adt advice of com are removed.
- Quasi-Judicial process as investigation is there Impeachment Process of impeachment can initiate in either of house.

(one)

L.S write

1/4th of members to Speaker Notice sent to Prez → Pres to → 14 days.
to impeach President no activity

15th day onwards

(Resolution is moved) talks about impeachment

If passed

FY Special majority /

not less than 2/3rd of total membership of House.

sent to

2nd house investigates

R. S — investigate / get the same investigated the charges

| President - right to appear to present himself
or his council might appear

If R.S declares changes are sustained

goes to prove

resolution not passed by less than 2/3rd of the total membership

As investigation is also carried out by this is quasi-judicial process.

Powers of President

As of now, no president has been impeached.

Executive, Legislative, Financial, Judicial and Veto Powers

Executive Power

Art 53

[All executive powers vested in the name of president]

Appointment of PM & CoM

Attorney General of India.

CAG, Chief Election Commissioner and other Election Commission, Chairmen & members of UPSC, Governor, Chairmen and members of Finance Commission.

L. Rubber stamp only, order sign only, aid and advice by PM.
No discretionary power cleared by PM

Council of Ministers

also recommended by P.M.

Pres. cannot appoint anyone out of his own choice ⑥

Military Powers

- Supreme commander of the defence forces of India
- Declares war and conclude peace

L Also by Central Govt., no discretionary powers to Pres.

- Diplomatic Powers — All matters which bring the union into relation with any foreign country.
Vested with Pres.

Treaties initiated by Pres.
subject to com on their aid & advice To make & To Implement
But authority of treaty by Parliament
e.g. but the task of negotiation of treaty by
President on advice of Com provided ratification
of Parliament. Parliament must agree with that
treaty.

Veto Power of President: Absolute, Suspensive & the
Pocket Veto.

Article 111 [Assent to Bills]

Passed

Bill to become Act by Lok Sabha R.S & President

Says President can give his assent or he can
withhold assent to that bill. If assent, Bill is passed
& becomes an act.

If withhold assent — Death of Bill — Absolute Veto

Bill never becomes a law
Last time used — Queen Anne - 1701 possessed this.

After 1701 not used.
In England
But in India Parliamentary / constitutional form of govt.
cancel Private Bill advised by CoM.
Any MP other than CoM

Absolute veto in 2 cases → ① unconstitutional ② private members bill

Case in India
1991 - Bill to increase the salary of M.P.

↳ Financial Bill due to some other provisions as well.

— can ~~not~~ be introduced only by previous recommendation of President. But, this bill was not sought recommendation from President without recommendation passed by both L.S & S.

But presented & Absolute Veto used.

But Article III, Assent to Bills

L President may ask for reconsideration

3rd option → Bill Sent back to House / Entire Bill or originated / Part of Bill

But only one time, second time has to sign.

→ 2006, APJ Abdul Kalam, Office of Profit Bill sent back, Parliament passed same again, then President has to sign.

So, Supervisory Veto → suspended the passage only once

If same back, he has to sign it.

— Pocket veto [in U.S.A]

USA Bill → President [keeps the bill lying on desk].
(leg of US) Neither signs nor returns back
Congress → After 10 days, automatically law regardless of action of Pres.
(in session)

Case may be sent to President 4 days before end of session

Congress is adjourned before 10 days, lying on desk., Bill dead. if it is not passed.

This is pocket veto of Pres in US

for India

No such thing as Pocket Veto in constⁿ
Different form of Pocket Veto is there in India
⁷

1986 → Giani Tali Singh

Rajiv Gandhi Govt.

Indian Post Office (Amendment) Bill, 1986

President — Neither signs nor withhold

↳ In India, no limit to signing time wise.

↳ So kept in his Pocket. [neither signs nor gives back] Didn't become a law. He did something not in constⁿ

Qualified Veto — Only in U.S.A Kept bill on desk.

A veto is "qualified" when it can be overridden

by an extraordinary majority of the legislature.

Prez: When sent back bill to house - but if parliament house now passes it again with 2/3rd majority (extraordinary majority) then no need of sign. Veto is removed
(Not in India) in this case.

Vice-President of India

2nd most imp office under constⁿ of India

Article 63

There shall be a Vice President of India.

Art 64 Being the VP

to be VP.

The VP to be ex-officio chairman of Council of States (Rajya Sabha). Same as speaker of LS → functioning & procedure of LS.
He → RS

Art 65 Provided that during any period when the VP acts as the President he shall not perform the duties of chairman of Rajya Sabha [Council of States]

Article 66 — Election

Also Indirectly by people
• Electoral College

- a) Both houses of the Parliament. [Nominated & elected].
- b) By Proportional Representational System
by means of Single Transferable Vote
- c) Similar to President
- d) Secret Ballot. So, A political party with more strength in Parliament will have more no. of votes to elect both Pres & VP.

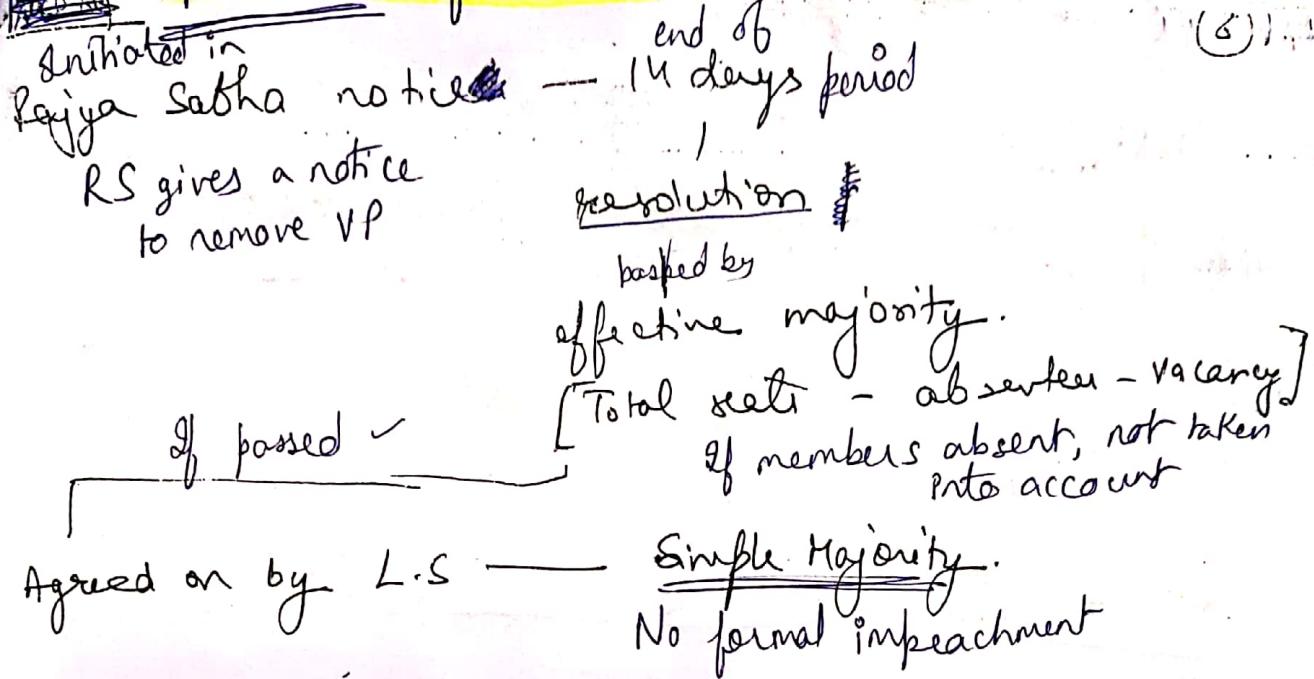
Qualification for V.P

- a) Citizens of India
- b) > 35 yrs of age.
- c) Qualified as a member of Council of States (Rajya Sabha).
- d) Should not hold any office of Profit

Art. 67 — Terms of Office

- o 5 yrs
 - o Vacancy
 - a) Resignation ^{sent to} President
 - b) Removal — 67(b) (not impeached only President's impeachment)
 -) Death
- On what grounds VP can be removed, nothing is mentioned in the const'.

Process of removal



Art. 69 — Oath or Affirmation ...

President has to defend an const
but in Art. 69 bear true faith to constⁿ of India &
faithfully discharge the duty
upon I am about to enter. (Rajya Sabha
chairman the council of states only)

Article 70

Discharge of President's Functions in other contingencies

This article empowers Parliament to make provision for the discharge of the functions in any contingency not provided for by the Constitution. Parliament is given power if office of VP → this situation not considered by constⁿ makers
1969: Sudden death of Zafir Hussain & the resignation of the VP V.V. Giri, while he was acting as President

Parliament enacted President (Discharge of function) Act, 1969

If both offices vacant,

— In this case, functions by C.J.I.
↓ after
Senior most judge of Supreme Court.

Apart from this, no role of VP.

Art. 71

All doubts and disputes arising out of or in connection with the election of a President or VP shall be inquired into and decided by the S.C. whose decision shall be final.

Case of Electoral college not complete / if one Legislative Assembly not in any state) there dissolved.
|
Will elections continue or suspended
|
Election continue
|
regardless of vacancy in Electoral college

Case President Dele in Rajasthan (example)

Legislative Assembly

|
Legislative Assembly is suspended
Not dissolved but suspended

|
But will vote [MLAs] Yes

|
1967 in Rajasthan.

Indian and US VP ~~Compared~~
Compared

In India

President (vacant)

↓ How long?

V.P (only till new President) only functions.
Only discharges functions, doesn't become next Pres.

In U.S.A.

Hillary Clinton → 4 yrs

After 1 yr. she died - V.P elevated to President
to the remainder of term (3 yrs)

In India

Nominated members will take part in Impeachment
of President. Elected members of Leg. Assembly will
not be participating in this process.

Ex-officio chairperson of RSTV.
Rajya Sabha Television.

→ No ground for removal of V.P.

Council of Ministers

PM & the Cabinet.

Our model of govt is modelled
along British Parliamentary system
Cabinet is supreme & is real
executive head headed by PM,
for a Parliamentary form

Introduction

• The Constitution provides for a Parliamentary form
of Govt. modelled on British pattern.

• Parliament form of Govt. means Council of
Ministers is responsible to the Lok Sabha

Power vested to Pres but exercised by council of ministers

Art. 74

(Sardar Patel, 1976, 42nd CA Act).

There shall be a COMs with the PM at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. If he doesn't, impeached for violation of constn. added by 42nd CA + Joint Party. Provided that the President may require the COMs to reconsider that advice and the President shall in accordance with the advice retendered.

Art 53 to be read with Art 74.

Important Points

- The advice tendered by COMs by the COMs to the President shall not be inquired in any court.
- The COMs shall be collectively responsible to the Lok Sabha
- There is no provision in Constitution which makes President responsible to the Parliament for the acts of the Govt.

Strength of ~~COM~~ COM [No mention in original constⁿ]

Vajpayee (41st CA Act, 2003)

Total no. of COM including PM shall not exceed 15% of total number of members of Lok Sabha

CoM

CoM + PM $\leq 15\%$ of L.S.

(10)

Art. 75

The PM shall be appointed by President and the other ministers shall be appointed by the

President on the advice of PM.

Constn doesn't talk about election of PM but only his appointment

The first step in the process of forming govt. is PM chooses CoMs

i.e. to find a PM.

Discretionary powers of President. [Only] which we talked in Prez.]

Process elected by PM by Lok Sabha. — Appointment by President

If no absolute majority any majority, President can call anyone to form Govt. and prove majority. If cannot prove, he has to resign as PM.

Imp. Points regarding CoM.

The minister shall hold office during the pleasure of the President. [Not personal pleasure of Prez]

Originally PM, PM ask for resign also but if minister referred then PM ask president to remove him.

Oath of CoM is mentioned in 3rd schedule.

Before a minister enters upon his office, the

President shall administer to him the oath of office & secrecy acc. to Third Schedule.

A minister who for any period of six consecutive months is not a member of either house of the Parliament shall cease to be a minister.

No clear cut separation of powers & Only b/w exec & judiciary
The salaries & allowances of the Ministers shall be such as the Parliament may from time to time by law determine and shall be specified in the Second Schedule. Parliament decides salary of Com

Co Ms v/s Cabinet

Co Ms → Broad body
Cabinet from Co Ms.

15-20 members — heads of Ministry.

Ex. Rajnath — Home Affairs

Sub departments are for more

MOS → If 1 or more becomes incharge of any sub department

⇒ Minister of State [MOS] are in charge of this assisting ~~Minister~~
Cabinet Minister [Incharge of entire ministry] These MOS are responsible to Cabinet Minister

MOS of Independent Charge — Report directly to PM
[Incharge of Ministry/ Dept.] not to Cabinet Minister.

Ex. In UPA — Sachin Pilot

MOS Corporate Affairs / Independent charge

⇒ Deputy Minister also — assist the minister
neither incharge of entire ministry, nor incharge of a particular dept.

All these in Co Ms.

Cabinet

Cabinet — meets as a body. [not CoMs] [collective functions]. [Real source of power for a govt.] Decides entire policy of govt All decisions taken by them.

CoMs — term mentioned originally in Constitution.

Cabinet — term mentioned in 44th C.A Act, 1978.

Why? Date Del written advice of

National Emergency approved by [^] Cabinet. Not on oral advice of PM decision.

Kitchen Cabinet

- informal body [Cabinet Ministers]

Influence on PM. / Parted in a few

Part of group that decided most imp. functions & policies of govt. / Advani, Murli Manohar, Pranab Mukherjee, Atal Bihari Vajpayee

Select group of cabinet ministers

⇒ PM Kitchen Cabinet — Rajiv Gandhi & Jaitley.

Cabinet Committees

for co-ordination

consist only of Cabinet Minister, sometimes MoS (Addl. charge)

- Extra — Constitutional devices.

- Mentioned in the Rules of Business & not in Rules → How business will be conducted? constn

Types: Standing

Adhoc: set up for a particular purpose, till that purpose. 1962 War committee then dissolved

Cabinet Committee

Only Cabinet Ministers [sometimes MoS with independent charge].

Reason for committee

Coordination

More information from different Ministries.

More inputs

Collaborative / Decision from this information

Collective

These are created based on necessities / regnts

Cabinet Committee in India →

1.) Appointment Committee of Cabinet (MoHAI) → PM
Important appointments / officers / secretaries

Can Reject Recommendation of UPSC also.

2) Cabinet Committee on Accommodation → minister / MP etc.
Which bungalow / flat to minister / MP etc. rent etc.

Home Minister

Mo Union Develop.
M Venkaish Naidu

Jasith

Road Transport Parliament
Gadkari & highways Affairs

(composition of these committees can change at any point in time)

3) Cabinet Committee on Economic Affairs + PM & others
issues which affect economy

4) Cabinet Committee on Parliamentary Affairs → PM
legislation bills / issues tabled in Parliament

5) Cabinet Committee on Political Affairs → PM
Centre / state Relation / Coordination.

6) Cabinet Committee on Security

Super Cabinet

PM

Defence Minister

MoHAI, MoEA, MoF

Internal security aspects
law & order

Prime Minister (Revisited).

(12)

Ans. 78

L Functions of PM w.r.t President

PM to communicate to the President all decisions of the Coms relating to the administration of proposals for legislation. (All imp decisions taken & which leg. to move in Parliament)

President can seek any information from ~~any minister~~ any minister

L Pranab Mukherjee to Mo Health for NEET.

Individual Responsibility to President of each of Com

Collective Responsibility to Lok-Sabha of Com.

Part of collective responsibility ↴
of the president to require, to submit for the consideration of the Coms any matter/scheme on which a decision is taken by a Minister, but which has not been considered by the Council. — To the PM. (PM may be asked)

⇒ Individual Responsibility
launched by I, Defended by council (consideration)
Every minister must respect that decision in public as well as parliament
If not he has resign/president to dismiss

L A minister accountable to President
Individually

Collectively to L.S.

⇒ If decision by Cabinet every minister should respect/support — If not support — Resign or President will remove

→ B.R. Ambedkar on Hindu Code Bill — 1953

→ Afif Khan in Rajiv Gandhi on Muslim Triple Talaq

So, collectively → LS; individually → Prez., this is ^{vale Ad.} parliamentary form of govt.

⇒ If PM Resign or die or assassinated



[Indira Gandhi case]

Death of the CMs. New CMs given oath of office & secrecy

Important Points (Earlier written)

by Prez.

- The advice tendered by CMs. to not inquire into in any court — 74(2). This advice can't be enquired by judiciary, secret
- No provision in Constⁿ; Prez. not responsible to Parliament for any acts of govt.

Attorney General for India / Union Executive

Article 76

Govt of India is whose against most cases are filed. AGI represent govt in various courts of the country.

- AGI — Highest Law officer in the Country.
- The President has assigned to the AGI the duty to appear on behalf of the GoI in all cases in which GoI is concerned and to represent GoI in any reference made by the President to SC under Article 143.

↓
SC is advisor of Prez.

AGI explains views of GoI to SC

Qualification for Attorney General of India (13)
⇒ on Govt. Nominee

- The President shall appoint a person who is qualified to be appointed a judge of the Supreme Court to be the Attorney General of India.
↓ Distinguished choice in eye of president
Citizen
Must have >10 yrs. for High Court Advocate
a Judicial office
- It shall be the duty of AG to give advice to the Cro I upon such legal matters and to perform duties of legal character, as may from time, to referred or assigned to him by President.

Imp Points

for refinement

- Age limit[^] of 65 for the judges of SC does not apply to AG.
- Not a member of the Cabinet, but integral part of the Executive Machinery
- Doctrine of Pleasure
 - ↳ Political Appointee.

Every Govt. appoint its own law officer.

- Remuneration decided by the President.

- The AG has the right of audience in all courts in the territory of India. Can go to any SC & ask to hear my views
- AG has right to speak and to take part in the proceedings of both houses of the Parliament or their Joint Sittings and any committee of the Parliament (Cabinet Committee) can be a part of Cabinet Committee which he may be named as a member (without a right to vote).

- Enjoys all the privileges & immunities that are available to a member of the Parliament.
- AG not paid salary but Retainership. (can do private practice also). - not full time employee of GOI - not govt. servant. can pursue his own cause if the opponent is not the state (can take all civil cases.)
- Cannot defend the accused in the Criminal case without permission of GOI (Criminal case is always against the state)
- Assisted by Solicitor General of India and Solicitor General → not Constitutional Posts. AGI → constn post under Art 76