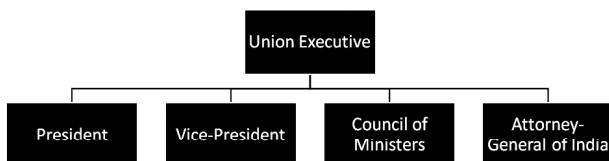


## THE UNION EXECUTIVE



### THE PRESIDENT

**A**rticle 52 of the Constitution provides for a President of India. He stands at the head of the Union Executive. He is the first citizen of the country. He is the supreme commander of the Armed forces.

According to **Article 53** the executive power of the Union is conferred in the hands of the President which he may discharge either directly or through officers subordinate to him in accordance with the provisions of the Constitution. **Article 53(1)** reads as- The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

**Article 53(2)** states that without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

### Election of the President

Articles 54, 55 and 71 of the Constitution deal with the election of the President. Apart from these provisions the Parliament has also enacted certain laws regulating the election of the President. These are President and Vice-President Election Act-1952 and the President and Vice-President (Amendment) Act 1974 and 1997. The 1997 (Amendment) Act raised the security deposit to Rs 15,000/- . The nomination papers must be proposed by 50 electors and another 50 must second it. According to Article 54 the President is elected by an electoral college consisting of all the elected MPs and the elected MLAs. The nominated members and the MLCS do not participate in the Presidential election.

**Article 54** reads—The President shall be elected by the members of an electoral college consisting of—

- (a) the elected members of both Houses of Parliament; and
- (b) the elected members of the Legislative Assemblies of the States.

**Note:** The **70th Constitutional (Amendment) Act, 1992** gave voting rights to MLA's of Delhi and Puducherry for election of President. Thus in this Article "State" includes the National Capital Territory of Delhi and the Union territory of Puducherry.

**Article 55** deals with the method of the President's election. The President is elected by Proportional Representation with single transferable vote system. Proportional representation means that in order to get elected the candidate must get quota of votes i.e., more than 50% of valid votes. Under the Single transferable vote system an elector can indicate more than one preference on his ballot paper, He can make as many preferences as the number of candidates are. However, he must not mention all preferences. At least one preference must be made for the validity of votes.

Article 55 requires that, as far as practicable, there shall be maintained uniformity in the scale of representation among the States inter se as well as parity between the States as a whole and the Union. To achieve such uniformity and parity, Article 55 contains a formula to be adopted at the election of the President for determining the value of votes of each member of the Electoral College.

**Value of vote of one MLA** = Total Population of the State/total number of elected MLAs X 1/1000.

**Value of vote of one MP** = Total value of votes of all the MLAs / Total Number of elected MPs.

According to **Article 71 (1)** All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.



**Article 71(2)** states that if the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

| <b>FOCUS ON</b>            |                                |                                      |
|----------------------------|--------------------------------|--------------------------------------|
| <b>PRESIDENTS OF INDIA</b> |                                |                                      |
| 1.                         | Dr. Rajendra Prasad            | January 30, 1950 to May 13, 1962     |
| 2.                         | Sarvepalli Radhakrishnan       | May 13, 1962 to May 13, 1967         |
| 3.                         | Zakir Hussain                  | May 13, 1967 to May 3, 1969          |
| 4.                         | Varahagiri Venkata Giri        | May 3, 1969 to July 20, 1969         |
| 5.                         | Muhammad Hidayatullah          | July 20, 1969 to August 24, 1969     |
| 6.                         | Varahagiri Venkata Giri        | August 24, 1969 to August 24, 1974   |
| 7.                         | Fakhruddin Ali Ahmed           | August 24, 1974 to February 11, 1977 |
| 8.                         | Basappa Danappa Jatti          | February 11, 1977 to July 25, 1977   |
| 9.                         | Neelam Sanjiva Reddy           | July 25, 1977 to July 25, 1982       |
| 10.                        | Giani Zail Singh               | July 25, 1982 to July 25, 1987       |
| 11.                        | Ramaswamy Venkataraman         | July 25, 1987 to July 25, 1992       |
| 12.                        | Shankar Dayal Sharma           | July 25, 1992 to July 25, 1997       |
| 13.                        | Kocheril Raman Narayanan       | July 25, 1997 to July 25, 2002       |
| 14.                        | A. P. J. Abdul Kalam           | July 25, 2002 to July 25, 2007       |
| 15.                        | Smt. Pratibha Devi Singh Patil | July 25, 2007 to till date           |

## TERM OF OFFICE OF PRESIDENT

**Article 56 (1)** The President shall hold office for a term of five years from the date on which he enters upon his office:

*Provided that—*

- (a) The President may, by writing under his hand addressed to the Vice-President, resign his office;
- (b) The President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61;
- (c) The President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

According to **Article 56(2)** any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

## Eligibility for Re-Election

**Article 57-A** person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

## Qualifications for election as President

**Article 58-(1)** No person shall be eligible for election as President unless he—

- (a) is a citizen of India,
- (b) has completed the **age of thirty-five years**, and
- (c) is qualified for election as a member of the House of the People.

**Article 58(2)** A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

**Explanation:** For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.



### Conditions of President's Office

**Article 59(1)** - The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

**Article 59(2)**: The President shall not hold any other office of profit.

**Article 59(3)**: The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

**Article 59(4)**: The emoluments and allowances of the President shall not be diminished during his term of office.

**Note: The salary of the President has been raised to Rs. 1.5 lakh per month and his pension has been raised to Rs. 6 lakh per annum.**

### Impeachment of the President

Article 61 of the Constitution deals with the Impeachment of the President. The President can be impeached on the grounds of violation of the Constitution. The Impeachment motion can be brought about in the form of resolution in either house of the Parliament. It must be supported by not less than One- Fourth of the total strength of the house for its introduction. This resolution can be passed with a special majority of not less than two-third of the total strength of the house voting in favour of the impeachment motion. It can be passed only after the expiry of the 14 days notice served to the President.

The other House acts as an investigating house. It investigates the charges itself or appoints a committee to investigate. The President has the right to defend himself in this house through attorney of his choice or personally. If the second house also passes the resolution after investigation by not less than two-third of the total strength of the house, then from that day the President is considered to be impeached. It is a quasi-judicial

process as the second house acts as the investigating house.

### Vacancy in the office of the President

A vacancy in the office of the President may be caused in any of the following ways:

- On the expiry of his term of five years.
- By his death
- On his impeachment
- Otherwise, e.g., on the setting aside of his election as President.

According to Article 62(1), when the vacancy is going to be caused by the expiry of the term of the sitting President, an election to fill the vacancy must be completed before the expiry of the term. But in order to prevent an 'interregnum', owing to any possible delay in such completion, it is provided that the outgoing President must continue to hold office, notwithstanding that his term has expired, until his successor enters upon office.

In case of a vacancy arising by reason of any cause other than the expiry of the term of the President, an election to fill the vacancy must be held as soon as possible after, and in no case later than, six months from the date of occurrence of the vacancy. According to Article 65(1), immediately after such vacancy arises, say, by the death of the President, and until a new President is elected, as above, it is the Vice-President who shall act as President. The new President shall be entitled to the full term of five years from the date he enters upon his office.

According to Article 65(2), apart from a permanent vacancy, the President may be temporarily unable to discharge his functions, owing to his absence from India, illness or any cause, in that case the Vice- President shall discharge his functions until the date on which the President resumes his duties.

### Privileges of the President

**According to Article 361(1)**: The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:



Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefore, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

### Powers of the President

The President of India enjoys the following powers:

- (1) Administrative Powers
- (2) Legislative powers.
- (3) Judicial Powers
- (4) Emergency Powers
- (5) Military Powers
- (6) Diplomatic Powers

### Administrative/ Executive Powers

The **Constitution** vests in the President of India all the executive powers of the Central Government. Article 77 requires that every executive action of the Union shall be taken in the name of the President. The President is further

empowered to make rules for the more convenient transaction of the business of the Government of India and for the allocation of the said business among the Ministers.

In the exercise of his executive powers, the President makes a number of appointments. It is the President who appoints the **Prime Minister** and the other members of the Council of Ministers, distributing portfolios to them on the advice of the Prime Minister.

The President is responsible for making a wide variety of appointments. These include the appointment of Governors of **States**, The **Chief Justice** and other judges of the **Supreme Court** and **High Courts**, The Attorney General, The Comptroller and Auditor General, The Chief Election Commissioner and other Election Commissioners, The Chairman and other Members of the Union Public Service Commission Ambassadors and High Commissioners to other countries.

According to Article 78(a), The President is entitled to be informed of the affairs of the Union and all proposals for legislation. According to Article 78(b), He may require the prime Minister to furnish information relating to the administration of the affairs of the Union and proposals for legislation. Further, according to Article 78(c), the President may require the Prime Minister to place before the Council of Ministers any matter on which decision has been taken by a Minister, but which has not been considered by the Council.

### Legislative powers

The President is a component part of the Union Parliament. He nominates 12 persons, eminent in literature, art, science or social service to the Rajya Sabha. He can also nominate two persons belonging to Anglo- Indian Community to the Lok Sabha, if in his opinion, that community is inadequately represented in the House.

If any question arises as to whether a member of either House of Parliament has become subject to a disqualification mentioned in Article 102, the question is referred to the President, whose decision is final.

The President summons both houses of the **Parliament** and prorogues them. He can even dissolve the **Lok Sabha** before the expiry of the



term of the House. He inaugurates the session of the Parliament by addressing it after the general elections and also at the beginning of the first session each year. This address is essentially identical in nature to a **Speech from the Throne**. He may send messages to either House of the Parliament with respect to a bill pending in the House.

A bill passed by the Parliament can become a law only after the President gives their assent to it. He can return a bill other than a money bill or a Constitutional Amendment bill for the reconsideration of the Parliament only for once. Every year, the President causes to be laid before Houses of Parliament, the Annual Financial Statement (the annual budget), the report of the Comptroller General of India, the recommendations of the Finance Commission and reports of the Union Public Service Commission.

Article 123(1) gives Ordinance making power to the President. The President may promulgate Ordinances with all those matters with respect to which Parliament is competent to make laws. An ordinance can be promulgated only when the Houses of the Parliament are not in session. The President may withdraw the Ordinance at any time. The ordinance is required to be laid before both Houses of the Parliament. It ceases to operate at the expiry of six weeks from the reassembly of the Parliament.

### Judicial powers

Article 72 confers on the President power to grant pardons, reprieves, respites or remissions of punishment, or to commute the sentence of any person convicted of an offence.

**Article 72 says: Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.—** (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

- (a) in all cases where the punishment or sentence is by a Court Martial;
- (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

- (c) in all cases where the sentence is a sentence of death.

### FOCUS ON

**A Pardon** completely absolves the guilt of an offender. When a convict is granted pardon, he is completely absolved from the punishment imposed on him as also from all penal consequences and such disqualification

**Rerieve** means temporary suspension of death sentence, for example, pending a proceeding for pardon or commutation.

**Respite** means awarding a lesser punishment on some special ground, for example, pregnancy of a women offender.

**Remission** means reduction of the amount of sentence and changing its character. For example, 7years of rigorous imprisonment is reduced to 3 yrs of rigorous imprisonment.

**Commutation** means exchange of one form of punishment for another, for example, Rigorous imprisonment is commuted to Simple imprisonment.

### Emergency powers

The President has been empowered by the Constitution to proclaim Emergency. Article 352 confers power on the President to make a proclamation of Emergency on the grounds of war, external aggression, or armed rebellion. Article 356 confers power on the President to make a proclamation of State Emergency by declaring that the Government in a State cannot be run on in accordance of the provisions of the Constitution. Under Article 360, the President is vested with the power to proclaim Financial Emergency, if he is satisfied that the financial stability or, the credit of India or any part of India is threatened, by any reason.

### Military powers

Article 53(2) lays down that "the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law". The President is thus declared to be the Supreme Commander of the defence forces of the country. In the exercise of this



power, it is the President, who can declare war against a country and make peace.

### Diplomatic powers

The President appoints Indian diplomats to other countries and receives foreign diplomats posted to India. The ambassador designate becomes ambassador after calling on the President and presenting his credentials. All treaties and agreements with foreign States are entered into, in the name of the President.

### Constitutional Position of the President

The Constitution confers enormous powers on the President in relation to the Executive, legislature, the Armed forces, etc., as discussed above. Though formally vested in the President, the intention was not that he should exercise all his powers personally. It would have been a task physically impossible and Constitutionally undesirable. All the powers expressly vested, have to be interpreted in the light of the Parliamentary system of Government, adopted under the Constitution. The essential characteristic of such a system is to have a nominal Head of the State.

Article 53(1), which vests the executive power of the Union in the President, provides that the power may be exercised by the President either directly or through Officers subordinate to him. It thus provides for delegation of the executive power by the President to others.

In day to day administration, the President has not much role to play. The matter was discussed in the Constituent Assembly and it was made clear the Assembly had adopted the British Cabinet System of the Government. Therefore, the relevant conventions which were operating in England were to be relevant under the Indian Constitution and the formal provisions contained therein should be read in the light of these conventions. Article 74(1) incorporates the idea of making the President a formal agency and though, the Council of Ministers would superficially seem to be an advisory body, by convention, its advice is binding on the President.

Prior to 1976, there was no provision in the Constitution the President is bound to act in accordance with the advice tendered by the Council of Ministers, though it was judicially

established that the President of India was not a real executive, but a constitutional head, who was bound to act according to the advice of the Council of Ministers, so long as they command the confidence of the majority in the Lower House i.e., the House of the People or Lok Sabha. The **Constitution (Forty-Second Amendment) Act, 1976** amended Article 74(1) to clarify this position. Article 74(1) as so amended, reads:

*"There shall be a Council of Ministers with the Prime Minister at its head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice."*

The word 'shall' makes it obligatory for the President to act in accordance with ministerial advice.

The **Constitution (Forty-Fourth Amendment) Act, 1978**, added a Proviso to Article 74(1) as follows:

*"Provided that President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration."*

The conclusion that we arrive at is that after the Constitution (Forty-Fourth Amendment) Act, 1978 is that except in certain marginal cases referred to by the Supreme Court, the President shall have no power to act in his discretion in any case. The President has the power to send back the advice received from the Council of Ministers, in a particular case, back to them for their reconsideration; and if the Council of Ministers adheres to its previous advice, the President shall have no option but to act in accordance with such advice. The power to return the advice for reconsideration can be exercised only once on the same matter.

Apart from the above discussed aspects, the President enjoys some discretionary powers which he can use without even consulting the Council of Ministers.

### Discretionary Powers

1. **Appointment of Prime Minister:** The President of India is, the head of the federal State in the parliamentary mode, i.e. he acts as a parliamentary federal functionary on the Union Cabinet's advice. However, in certain situations he/she may initially act in personal



discretion, i.e. when the party system fails to yield a majority party Government after an election or subsequent to it due to unforeseen contingencies. The written text of the Constitution itself is silent on the appointment of the Prime Minister though it binds the President to the Prime Minister's advice in the appointment of other Ministers who must be members of Parliament or must become one in six months thence. However, the Constitution and convention and practical commonsense dictate that the Cabinet thus appointed must be able to muster majority in the Lok Sabha. In the event of death of three Prime Ministers in harness- Pandit Nehru's in 1964, Lal Bahadur Shastri's in 1966, and Indira Gandhi's in 1984-Presidents Radhakrishnan and Zail Singh conducted the prime ministerial succession in different manners. On the two former occasions, Radhakrishnan immediately sworn in the seniormost Cabinet colleagues of the deceased Prime Ministers pending the election of the regular leader of the Congress parliamentary party. The interim Prime Minister on both these occasions was Gulzarilal Nanda, while the party's final choices were Lal Bahadur Shastri and Indira Gandhi, respectively. In these instances, the President had no Prime Minister to advise him and had to decide on his own about caretaker Prime Minister creating constitutional precedents. However, these precedents could not develop into a convention. For, in the event of Indira Gandhi's assassination President Zail Singh ignored the seniormost Cabinet Minister Pranab Mukherji and sworn in Rajiv Gandhi.

**2. Duties of Prime Minister as respect to the furnishing of information to the President :** Under article 78 of the Constitution, it shall be 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.

- 3. Power to send a bill for the reconsideration of Parliament:** The President can send a bill other than a money bill or a Constitutional amendment bill for the reconsideration of Parliament only for once. The President Abdul Kalam sent the Office of Profit bill for the reconsideration of Parliament.
- 4. Pocket Veto:** When an ordinary bill after being passed by the goes to the President for this assent, he can give his assent or he may declare that he is withholding the assent, or he may send the bill for the reconsideration of the only for once.
- 5. Dissolution of the Lok Sabha:** In normal circumstances the President dissolves the Lok Sabha on the aid and advice of the Council of Ministers but he is not bound to follow the advice of the Council of Ministers which has lost the vote of confidence in the lower house. Here the President will look that whether an alternative government can be formed or not.

#### President's office: A Critical Analysis

It would, however, be wrong to say that the President under the Constitution of India is merely a non-entity or an ineffective symbol. He does have marginal discretion in exceptional and abnormal circumstances in some matters, e.g., *appointment of the Prime Minister, dismissal of the Council of Ministers, dissolution of the Lok Sabha*. Being the Head of the State, the President is empowered to be informed of the affairs of the country. Article 78 expressly imposes a duty on the Prime Minister, to keep the President informed of the matters relating to the administration of the affairs of the union and proposals for legislation. The President may call for any information relating to these matters and the Prime Minister shall be duty bound to furnish these to the President.

The country has been fortunate to have had a succession of illustrious Presidents starting with a patriot of the first order, Rajendra Prasad. The first President had reservations about the Hindu Code Bill, but bowed to the wishes of the Prime Minister and Parliament and upheld Constitutional rectitude.



The eminent philosopher-statesman, S. Radhakrishnan, brought pride to the office and did not allow the weight of the Presidency to overwhelm him. His bond with Jawaharlal Nehru was close enough to withstand his famous speech bemoaning our "credulity and negligence" at the time of the Chinese war. Radhakrishnan became foreign policy advisor and even visited the forward areas in command. Zakir Hussain was an eminent educationist and a Gandhian.

The Presidency had its decline when Fakhruddin Ali Ahmed quietly affixed his signature to the proclamation of Emergency in 1975. Neelam Sanjeeva Reddy is said to have trusted more in the Supreme Power than in the Constitution when he sworn in Charan Singh as Prime Minister without facing Parliament. Giani Zail Singh promised to wash the floor if Prime Minister Indira Gandhi ordered him to do so. Yet, he had the audacity to suggest to his Vice-President, Mr R. Venkataraman, to take over as Prime Minister in the event of the President dismissing Rajiv Gandhi.

Mr R. Venkataraman, Shankar Dayal Sharma and Mr K. R. Narayanan were all eminent intellectuals steeped in the Gandhi-Nehru tradition. Mr Abdul Kalam, proved that an eminent scientist could also make an eminent President.

Barring exceptions, India has been fortunate to have a succession of Presidents and Prime Ministers who worked in a spirit of co-operation and not confrontation. The role of the President's post varies depending on the institutional context, the nature of the party leading the government and the political circumstances in which the Prime Minister governs.

When governments are formed from a coalition of various parties, necessitating concessions to the differences in party interests in order to keep a government together, it becomes imperative for the Prime Minister to act primarily not as leader but as conciliator between opposing interests within a government.

Political power gets fragmented and there is the threat of the role of the Prime Minister being reduced to that of a figurehead. It was in this context probably that Mr Abdul Kalam called for the establishment of a two-party system in India. Dr. Shankar Dayal Sharma had sought a debate

on the need for a switchover to the Presidential form of government.

The way the parties in the coalition government seek to assert their regional rights brings to mind Gibbon's famous comment that "militant mendicancy" can never be a part of the style of working of coalition governments.

It is in this context that the role of the President assumes absolute importance. Like the British King, our copybook President has "the right to advise, the right to be informed and the right to warn." The President is a unifying national symbol. He has a paramount role when the general elections produce a hung Parliament leaving it to the President to swear-in an assortment of parties with clear majority in national interest. Mr. Venkataraman made a conscious suggestion for the establishment of a National Government. The President has to keep the interest of the nation at heart.

At the moment, India is surrounded by neighbours whose allegiance to democracy is open to question. Sri Lanka is engaged in fratricidal internal war. Burma has military dictatorships. Pakistan is in the process of reviving its shattered democracy. Bangladesh has lost its Parliamentary democracy to Army generals. China is assuming threatening postures over Arunachal Pradesh. In this vast desert of all round dictatorships, India shines forth as an Oasis of Democracy.

It is not always possible to lay down in precise terms the do's and don'ts for Constitutional and legislative functionaries. Beyond the sphere of duty which is legally enforceable, there is a vast range of significant behaviour in which the law does not and ought not to intervene. This feeling of obedience to the unenforceable is the very opposite of the attitude that whatever is technically possible is to be allowed.

India's democracy will be safe only and only if we have as President a person who can rise above party and sectarian interests and provide leadership of the type we saw from the illustrious occupants of the office in the past six decades.

The influence of the President, however, depends on his personality and a man of character and ability can exert a potent influence on the affairs of the Government. In the ultimate analysis, it is the Council of Ministers which will prevail and



not the President. His role is at the best advisory in nature. He may act as a friend, philosopher and guide to the Council of Ministers. The Constitution envisages not a dictatorial President but a democratic one who uses his judgement to keep the democratic and representative government functioning. India's democracy will be safe only if the President can rise above party and sectarian interests and provide leadership of the type the nation saw from the occupants of the office in the past six decades. The President is the only authority who can advise the polity to stand by the mandate.

### **Hung Parliament and the Role of the President**

The Constitution states that the Prime Minister shall be appointed by the President (Article 75). This does not give any guidance in choice of a PM. This is because the framers of the Constitution had apparently believed at that time that India like England would have a few major political parties in a general election which would give a majority to one or the other party and the President like the Queen would have to make only a formal decision in appointing a Prime Minister. The framers did not foresee the type of political disarray amongst political parties that is present today.

In the case of a hung Parliament, the President has to make an informed judgment to invite a leader of a party which either by itself or with the declared support of other parties will secure the confidence of the Lok Sabha. This person would normally, but not invariably, be the leader of the single largest party. Circumstances, however, may rule out an invitation to the leader of the single largest party when it is clear that there will be no support to her or him from other parties. In such a situation, the President would have to invite a person who seems to be able to form a government with a reasonable prospect of maintaining a government in office. The Indian innovation in constitutional law is that the President directs the Government to seek a vote of confidence at the earliest.

Here the President's discretion becomes crucial. The President must assess the situation, hold consultations with several leaders and sift legal advice showered on her officially and gratuitously and then invite a leader who she believes will be

able to form a government which has a reasonable prospect of enduring. In doing this, the President must not only act fairly but also be seen to have acted fairly without any preferences and to stand above the dust and din of politics.

The former President of India R Venkataraman proposed a simplistic rule of invitation in the order of the strength of the political parties in a hung Parliament. He maintained that calling parties in the order of their strength in the House will be the most prudent and non-controversial course of action. In his view, once the leader of the largest party is invited, the President should not look to the quantum of support to the leader of the largest party at the time of invitation for this purpose but that the supporters of this leader should demonstrate that in the House. President Venkataraman claimed to have applied this rule twice — in 1989 when he called on V P Singh and in 1991 when he called on Narasimha Rao to form the Government.

Venkataraman's view cannot be a prescription for all situations. Inviting the leader of the single largest minority party in a highly fractured house without ascertaining his likely support in Parliament at least for a reasonably foreseeable period would be highly chancy. In the two cases of 1989 and 1991, it was antecedently reasonably clear that the other parties would not at least immediately outvote the minority government. Venkataraman was, therefore, on fairly safe ground.

But the unreliability of Venkataraman's view was shown when President S D Sharma invited A B Vajpayee as PM in 1996 simply because he was leader of the BJP, which was the single largest party with its allies in the 11th LS. Within 13 days of the formation of Government, Vajpayee had to withdraw his motion of confidence in the LS when defeat stared him in the face.

The 1998 results again presented a hung Parliament. This time, President K R Narayanan carried out a careful exercise of ascertaining that the BJP with the support of the parties would be able to secure the confidence of the House. In a carefully worded Rashtrapati communique, Narayanan laid down the cogent guiding principles which can be adopted for the future. He stated: When no party or pre-election alliance of parties is in a clear majority, the head of State,



in India and elsewhere, gives the first opportunity to the leader of the party or combination of parties that has won the largest number of seats, subject to the PM so appointed obtaining majority support on the floor of the House within a stipulated period of time. This procedure is not, however, an all-time formula because situations can arise when MPs not belonging to the single largest party or combination can, as a collective entity, outnumber the single largest claimant. The President's choice is pivoted on the would-be PM's claims of commanding majority support.

The 14th Lok Sabha election again presented a hung Parliament. The results on May 13, 2004 revealed that the BJP-led NDA secured 187 seats while the Congress and its pre-poll allies secured 216. The Congress was the single largest party with 145 seats, BJP next with 138 seats. After the election, apart from the support from its pre-poll allies, the Congress was assured of outside support from the Left having 61 seats. This itself assured the Congress of the support of 277, a majority in the LS with a strength of 543. Considering the assured support to the Congress, President A P J Abdul Kalam invited Sonia Gandhi of the Congress to form the government. This time, he did not direct the PM to seek a vote of confidence as the government was assured of majority support. Thus, in every case of a hung Parliament — except in 1996 — the President's invitation to form a government has been made after consultations assured that the largest party or political formation supporting the largest party would command majority support in Parliament for a reasonable period of time.

India's democracy will be safe only and only if we have as President a person who can rise above party and sectarian interests and provide leadership of the type we saw from the illustrious occupants of the office in the past six decades.

### VICE-PRESIDENT

**Article 63** of the Constitution provides for the Vice-President of India. The Vice-President is the second most important Constitutional functionary of the Union. His office is a contingency office to take care of the President's office if there is a vacancy in the office of the President. The following provisions of the Constitution deal with the office of the Vice-President.

### Election of Vice-President

The election of the Vice-President, like that of the President, shall be indirect. According to **Article 66 (1)**, the Vice-President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

According to Article 66(2), the Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

### Vice-Presidents of India

|     | Vice-President               | Date of assuming office            |
|-----|------------------------------|------------------------------------|
| 1.  | Dr. Sarvepalli Radhakrishnan | May 13, 1952 to May 12, 1962       |
| 2.  | Dr. Zakir Hussain            | May 13, 1962 to May 12, 1967       |
| 3.  | Varahagiri Venkata Giri      | May 13, 1967 to May 3, 1969        |
| 4.  | Gopal Swarup Pathak          | August 31, 1969 to August 30, 1974 |
| 5.  | Basappa Danappa Jatti        | August 31, 1974 to August 30, 1979 |
| 6.  | Muhammad Hidayat Ullah       | August 31, 1979 to August 30, 1984 |
| 7.  | Ramaswamy Venkataraman       | August 31, 1984 to July 27, 1987   |
| 8.  | Shankar Dayal Sharma         | September 3, 1987 to July 24, 1992 |
| 9.  | Kocheril Raman Narayanan     | August 21, 1992 to July 24, 1997   |
| 10. | Krishna Kant                 | August 21, 1997 to July 27, 2002   |
| 11. | Bhairon Singh Shekhawat      | August 19, 2002 to -               |
| 12. | Shri Mohd. Hamid Ansari      | 11th August 2007 to till date      |



### Qualification

According to **Article 66 (3)** no person shall be eligible for election as Vice-President unless he—

- (a) is a citizen of India;
- (b) has completed the age of thirty-five years; and
- (c) is qualified for election as a member of the Council of States.

Article 66 (4) holds that a person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

**Explanation:** For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

**Article 67- Term of office of Vice-President.**—The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

*Provided that—*

- (a) A Vice-President may, by writing under his hand addressed to the President, resign his office;
- (b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;
- (c) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

### Oath by Vice-President

Before entering upon his office, the Vice-President has to make and subscribe before the President or some person appointed in that behalf by him, an oath/affirmation in the following form:

*"I, A.B., do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution*

*of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."*

### Functions of the Vice- President

#### *Functions as Vice-President*

Under article 65 of the Constitution of India, the Vice-President acts as President in the event of a vacancy occurring due to death, resignation or removal of the President, or otherwise. The Vice-President reverts to his office when a new President is elected and enters upon his office. When the President is unable to act owing to his absence, illness or any other cause, the Vice-President discharges the President's functions for a temporary period until the President resumes his duties.

When the Vice-President acts as, or discharges the functions of the President, he has all the powers and immunities of the President and is entitled to the same emoluments as the President (Article 65). However, during this period he does not perform the duties of the office of the Chairman of the Rajya Sabha (Article 64) and then the Deputy Chairman of the Rajya Sabha acts as its Chairman.

Parliament has by an enactment made provision for the discharge of the functions of the President when vacancies occur in the offices of the President and of the Vice-President simultaneously, owing to removal, death, resignation of the incumbent or otherwise. In such an eventuality, the Chief Justice of India, or in his absence the senior most Judge of the Supreme Court of India available discharges the functions of the President until a newly elected President enters upon his office or a newly elected Vice-President begins to act as President under article 65 of the Constitution whichever is earlier.

Besides presiding over the Rajya Sabha and performing Presidential duties in the contingencies mentioned above, the Vice-President performs several other functions. At times, he goes on goodwill and friendship missions to other countries or represents the country abroad on occasions of national importance in those countries. Because of the high office of the Vice-President, he is consulted on formulation and implementation of State policies. Though he is not connected with the day-to-day affairs of the State, he is posted with the decisions of the Cabinet so



that he has with him a complete picture of the affairs of the Union Government.

There are many claimants on the time and wealth of wisdom and experience of the Vice President. If one were to see a day's list of visitors at the Vice-President's House, one will get an idea about the number of dignitaries and delegations who come to call on him. His social, cultural, educational, academic engagements are indicative of his busy schedule. He may be wanted for a university convocation or release of a commemorative volume about a freedom fighter, or for inauguration of a seminar or unveiling of a statue of an eminent countryman and so on. The letters, representations, petitions and memoranda received by him from persons, organisations and institutions seeking his personal attention, run into hundreds. Some seek advice from him, others want him to intercede on their behalf with those who matter, still others just call on him to pay respects and regards. By convention he is also the Chancellor of some universities and in that capacity he is closely associated with many eminent institutions of higher learning.

The Vice-President has a small Secretariat called the Vice-President's Secretariat to assist him in the discharge of his duties and functions. The Secretariat is headed by a Secretary who is a senior civil servant.

#### **Functions as Chairman of the Rajya Sabha:**

According to **Article 64** the Vice-President to be the ex *officio* Chairman of the Council of States-As the Chairman of the Rajya Sabha, the Vice-President presides over the meetings of the House. As the Presiding Officer, the Chairman of the Rajya Sabha is the unchallenged guardian of the prestige and dignity of the House. He is also the principal spokesman of the House and represents the collective voice to the outside world. He ensures that the proceedings of the House are conducted in accordance with the relevant constitutional provisions, rules, practices and conventions and that decorum is maintained in the House. He is the custodian and guardian of the rights and privileges of the House and its members. Due to several pressing and urgent engagements and preoccupations as Vice-President he may not be able to devote full time as Presiding Officer of the Rajya Sabha, but in practice he presides during

the first hour of the sitting of the House which is the Question Hour. This lively and occasionally tumultuous period is one of the high points of the day during each Session where the accountability of Government is most obviously on display. He deftly handles the situation, ensures that Members' rights of asking questions and receiving complete replies is well enforced and gives rulings on privilege matters and other procedural points. Whenever important debates or landmark discussions such as on Constitution Amendment Bills take place, he is invariably in the Chair. He has no vote except when there is a tie (article 100). The Chairman's rulings constitute precedents which are of a binding nature. The Chairman is not bound to give reasons for his decisions. The Chairman's rulings cannot be questioned or criticized and to protest against the ruling of the Chairman is a contempt of the House.

In his task as Chairman, he is assisted by the Deputy Chairman who is a member of the House and elected by it. The Deputy Chairman presides over the Rajya Sabha in the absence of the Chairman and performs the duties of the office of the Chairman if the Vice-President is acting as President or if there is a vacancy in the office of the Vice-President. There is also a panel of six Vice-Chairmen, which is constituted every year. A Vice-Chairman presides over the meeting of the Rajya Sabha in the absence of the Chairman or the Deputy Chairman. There is a Secretariat of the Rajya Sabha headed by a Secretary-General to assist the Chairman in the discharge of his functions.

#### **The dual Role**

The Office of the Vice-President is one of the unique features of the Constitution of India. It has no exact parallel in the countries of other democratic constitutions of the world. There is no such office in other Parliamentary systems of Governments in Commonwealth countries or in Ireland. The only Constitution, among the important democracies of the world, which provides for such an office, is that of the United States of America. But the office of the Vice-President of India though analogous to, is not identical with, that of the Vice-President in the United States of America for the obvious reason that it has a Presidential system of Government and not a Parliamentary one as in



India. And yet the Constitution-makers of India, while basically following the British Parliamentary system, decided to opt for the American system and provided that like the Vice-President in the U.S.A. The Vice-President of India would preside over the Upper House and act as President in certain contingencies. Thus the Vice-President of India has been clothed with a dual capacity as the second head of the Executive and as the Presiding Officer of the Upper House of Parliament.

This naturally casts an enormous burden of responsibility on the holder of the two offices. He has to keep the responsibilities of the two offices distinct and separate. The Chairman cannot allow his mind to be influenced by the knowledge acquired in his capacity as the Vice-President. While performing his duties as Vice-President, he cannot do anything which may impair his obligation as Chairman. It is remarkable that in India the holders of this high office as Vice-President have functioned within this fusion of roles and have received admiration and appreciation of the nation as a whole. All of them have been great personalities. They have occupied the Chair of the Rajya Sabha with singular distinction and have performed their functions with dignity and grace during all these years.

### COUNCIL OF MINISTERS

In a Parliamentary democracy, the Head of the State is the nominal head whereas the Council of Ministers headed by the Prime Minister is the real head. As India is also a Parliamentary democracy, this holds good for India also. Our Constitution makers intended that though formally all executive powers were vested in the President, he should act as the Constitutional head of the Executive like the British Crown, acting on the advice of the Ministers responsible to the Lower House i.e., the popular House of the Legislature.

Article 74 provides for the Council of Ministers, whereas Article 75 deals with the other provisions in regard to the Council of Ministers.

**Article 74.** (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:

Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

**Article 75. Other provisions as to Ministers.—(1)**

The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent of the total number of members of the House of the People.

(1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

### Explanation

The Council of Ministers comes into existence as soon as the Prime Minister takes oath. Even the



Prime Minister alone can constitute the Council of Ministers of Ministers. After that it is known as expansion of the Ministry.

There are three types of ministers in the Council of Ministers.

- Cabinet Ministers:** Cabinet Ministers are the senior most ministers and they always head the department or the Ministry if they are given one. A cabinet Minister can be without a portfolio also. For example: Mamta Banerjee was the Cabinet Minister in the NDA government led by Shri Atal Bihari Vajpayee. The name of Mr. Natwar Singh can also be cited as he remained a minister without a portfolio after he was relieved of his responsibilities as the External Affairs Ministry after the Oil for Food Scam. The cabinet ministers can take part in the cabinet meetings as a matter of right. The cabinet enjoys a Constitutional status under Article 352, which says that the President can proclaim National Emergency on the written advice of the Cabinet.
- Ministers Of State:** These Ministers are generally not given independent portfolio but the Prime Minister can allocate independent ministry to these ministers. They can attend cabinet meetings but only on the invitation of the Prime Minister.
- Deputy Ministers:** The Deputy Ministers are the junior most ministers. They never head a department and they can never attend the cabinet meetings

### Size of the Council of Ministers

**The Constitution (Ninety-First Amendment) Act, 2003** fixed the size of the Council of Ministers. The Strength of the Council of Ministers including the Prime Minister shall not exceed 15% of the total strength of the Lower House.

### Responsibilities of the Council of Ministers

**Collective Responsibility:** Article 75 (3) provides for collective responsibility of the Council of Ministers. The Council of Ministers is collectively responsible to the lower house. The principle of collective responsibility is based on the principle of swim or sinks together. A no confidence motion

is brought and passed not against an individual minister but against the Council of Ministers as a whole.

**Individual Responsibility:** Article 75 (2) states that the ministers are individually responsible to the President of India. The President appoints the Ministers and can remove them.

But in reality the ministers are responsible to Prime Minister and the President acts on the advice of Prime Minister regarding their appointment and removal. It is on the recommendation of the Prime Minister that the Presidents appoints a minister and can remove him.

### THE PRIME MINISTER

**The Prime Minister of India is the Head of the Union (Federal) Government**, as distinct from the President of India, who is the Head of State. Since India has adopted the Westminster model of constitutional democracy, it is the Prime Minister who oversees the day-to-day functioning of the Union (Federal) Government of India.

The Prime Minister is assisted in this task by his Council of Ministers, comprising Cabinet Ministers, Ministers of State with Independent Charge, Ministers of State who work with Cabinet Ministers, and Deputy Ministers.

The President of India appoints the leader of the party or alliance that enjoys majority support in the Lok Sabha (Lower House of Indian Parliament) as Prime Minister. In case no single party or alliance has a majority, the leader of the largest single party or alliance is appointed Prime Minister, but he/she has to subsequently secure a vote of confidence in the Lok Sabha. The Union Council of Ministers is appointed by the President on the advice of the Prime Minister.

The Prime Minister can be a member of either the Rajya Sabha (Upper House of Parliament) or the Lok Sabha. As Prime Minister, he is the Leader of the House to which he belongs. The Prime Minister is also the Chairman of the Planning Commission of India.

As head of the Council of Ministers, the Prime Minister oversees the work of all the Ministries. He presides over Cabinet meetings, which are normally held in the Cabinet Room of the Prime Minister's Office.



### Functions of the Prime Minister

- Functions regarding the formation of the Council of Ministers:** According to the British Political Scientist, Harold J. Laski, the Prime Minister in a Parliamentary form of government is central to the formation of Council of Ministers, central to its life and central to its death. This view of Laski holds well in Indian context as well as India has Parliamentary form of government. According to the provisions of the Constitution, the President appoints the other members of the Council of Ministers on the advice of the Prime Minister. The Prime Minister advises the President on the allotment of portfolios to the ministers.
- The Prime Minister as the leader of the Cabinet:** There are many who describe the Prime Minister as '*primus inter pares*'. This is to say, all minister or members of the Cabinet have an equal position, and the other ministers are the Prime Minister's colleagues, but not his subordinate staff. However, in view of the important role that the Prime Minister now plays as the leader of the Cabinet, it is alleged by many that he has been elevated to the position of a dictator. In case of conflict with the Prime Minister the minister concerned has to resign. He presides over the Cabinet meetings. It is under his directions that the agenda of the meetings are fixed. Even in the matter of formulating the policies of the Cabinet, the Prime Minister's role is greatly important. On many occasions, he unilaterally takes the decisions or formulates the policies of the Cabinet, the Prime Minister's role is greatly important. The Prime Minister co-ordinates different departmental policies and activities. The decisions taken by the Cabinet Committees are not generally discussed in the Cabinet Meeting. But as the Prime Minister himself is the Chairman of those Committees, he can easily control the committees. In the way, the Indian Prime Minister, like the British Prime Minister, plays a very important role as the leader of the Cabinet, and so he is described as '*the cornerstone of the Cabinet arch*'.
- The Prime Minister as the leader of the ruling party:** The Prime Minister is the leader of the ruling party. He has the authority to

take decisions in fixing the dates of summoning and proroguing the Lok Sabha, drawing up the programme of official business to be transacted in the session, etc. As the main spokesman of the government, he explains the Government policies before the Parliament. He has to take the initiative in getting the important Bills passed. He has to maintain constant touch and good relation with the opposition party to ensure the smooth conduct of the business of the House.

- The main channel of communication between the President and the Council of Ministers:** The Prime Minister is the main link between the President and the Council of Ministers. It is the duty of the Prime Minister 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 and to furnish such information relating hereto as the President may call for.
- Leader of the Nation:** The Prime Minister leads the entire nation. He addresses the people of the country on important national and international issues, and problems. If there are problems in the political, social or economic spheres, he assures the people by communicating to them the government's policies and programmes for the solution of the problems.

### Position of Prime Minister

There are two contradictory views on the position of the Indian Prime Minister, as is the case of the *British Prime Minister*. One of the views is that the Prime Minister is '*primus inter pares*', i.e. '*first among equals*'. This implies that, despite belonging to the same category with his ministerial colleagues, he has preeminence, and a special position. As the Constitutional head of the State, the President appoints the Ministers including the Prime Minister. It is, however, true that the Prime Minister, has a special position compared to the other Ministers. He acts not only as a communications channel between the President and the Council of Ministers but also as the chief spokesman of the Cabinet policies before Parliament. As the leader of the ruling party or alliance, he plays a very important role. On many



occasions, the general election is held in India centering round the Prime Minister.

Those who are not agreed to regard the Prime Minister as *primus inter pares* can be divided in two main groups. One group of persons prefers to identify him as a dictator in view of his vast and multifarious powers. According to them though, in theory, the President appoints and removes the other ministers, he does so only on the advice of the Prime Minister. In any important matter, the Prime Minister can unilaterally take the decisions without consulting his colleagues and the decisions, taken by him are, in practice, final and irresistible. Thus, in without is consulting the Cabinet. Again, *Rajiv Gandhi* did not feel any necessity of informing the President of such important matters as the purchase of Bofors guns, The *Punjab Accord*, the *Assam Agreements*, etc. Being the supreme leader of the majority party in Parliament, *Indira Gandhi and Rajiv Gandhi* virtually became the center of all the powers in Parliament. The supporters of the second group are not agreed to call the Prime Minister of India a dictator. In their opinion, during the Prime Minister ship of *Mrs. Indira Gandhi and Rajiv Gandhi*, there was '*Presidentialisation of the Prime Minister's Office*' For they became extraordinarily powerful like the American President. In the regard, *M. Chalapathi Rau*, who is known as intimately associated with the Nehru family, commented that the Prime Minister ship had acquired '*a Presidential character*' because of the reserves of power possessed by the Prime Minister. The Indian Cabinet was virtually at the beck and

call of the Prime Minister during the Prime Minister ship of *Mrs. Indira Gandhi or Rajiv Gandhi*. In the opinion of *L.M. Singhvi*, 'Institutionally, Cabinet Ministers are in a process of becoming in an increasing measure, the agent and delegates of the Prime Minister. Again just like the American President, some of the Indian Prime Ministers carried the advice of their cabinet Colleagues. Besides, the same type of emotion and excitement were witnessed in India at the times of *Indira Gandhi and Rajiv Gandhi* centering round the election of the Prime Minister as are witness in the U.S.A. during the *Presidential election*.

It is, however, true that the Indian Prime Minister cannot act at his free will, being entirely free from restraints. In this era of coalition politics and with the formation of minority governments, the role of the Prime Minister has changed to a considerable extent. In the contemporary era of coalition politics in India it is very difficult on the part of the Prime Minister to be a dictator. Because the Prime Minister has to remember that as the leader of a coalition government he should always try to satisfy the coalition partners. He cannot appoint the ministers in the Council of Ministers at its will and has no major say in the allotment of portfolios amongst the ministers. He has to consult and take into consideration the views of the coalition partners before taking a policy decision. The Prime Minister has to work to take the coalition partners into confidence in all important issues. In fact, the powers and position of the Prime Minister largely depends on his personality and efficiency.

#### PRIME MINISTERS FROM THE YEAR 1947

|    |                        |                                      |
|----|------------------------|--------------------------------------|
| 1. | Jawaharlal Nehru       | August 15, 1947 to May 27, 1964      |
| 2. | Gulzarilal Nanda       | May 27, 1964 to June 9, 1964         |
| 3. | Lal Bahadur Shastri    | June 9, 1964 to January 11, 1966     |
| 4. | Gulzarilal Nanda       | January 11, 1966 to January 24, 1966 |
| 5. | Indira Gandhi          | January 24, 1966 to March 24, 1977   |
| 6. | Morarji Desai          | March 24, 1977 to July 28, 1979      |
| 7. | Choudhary Charan Singh | July 28, 1979 to January 14, 1980    |
| 8. | Indira Gandhi          | January 14, 1980 to October 31, 1984 |



|     |                         |                                       |
|-----|-------------------------|---------------------------------------|
| 9.  | Rajiv Gandhi            | October 31, 1984 to December 2, 1989  |
| 10. | Vishwanath Pratap Singh | December 2, 1989 to November 10, 1990 |
| 11. | Chandra Shekhar         | November 10, 1990 to June 21, 1991    |
| 12. | P. V. Narasimha Rao     | June 21, 1991 to May 16, 1996         |
| 13. | Atal Behari Vajpayee    | May 16, 1996 to June 1, 1996          |
| 14. | H. D. Deve Gowda        | June 1, 1996 to April 21, 1997        |
| 15. | Inder Kumar Gujral      | April 21, 1997 to March 19, 1998      |
| 16. | Atal Behari Vajpayee    | March 19, 1998 to May 22, 2004        |
| 17. | Dr. Manmohan Singh      | May 22, 2004                          |
| 18. | Narendra Modi           |                                       |

### Cabinet Secretariat

Before the adoption of the portfolio system in the Government of India, all governmental business was disposed of by the Governor-General-in-Council, the Council functioning as a joint consultative board. As the amount and complexity of business of the Government increased, the work of the various departments was distributed amongst the members of the Council only the more important cases being dealt with by the Governor-General or the Council collectively.

This procedure was legalised by the Councils Act of 1861 during the time of Lord Canning, leading to the introduction of the portfolio system and the inception of the Executive Council of the Governor-General. The Secretariat of the Executive Council was headed by the Private Secretary to the Viceroy, but he did not attend the Council meetings. Lord Willingdon first started the practice of having his Private Secretary by his side at these meetings. Later, this practice continued and in November, 1935, the Viceroy's Private Secretary was given the additional designation of Secretary to the Executive Council.

The constitution of the Interim Government in September 1946 brought a change in the name, though little in functions, of this Office. The Executive Council's Secretariat was then designated as Cabinet Secretariat. It seems, however, at least in retrospect, that Independence brought a sort of change in the functions of the Cabinet Secretariat. It no longer remained

concerned with only the passive work of circulating papers to Ministers and Ministries but developed into an organisation for effecting coordination between the Ministries.

After independence, in 1949 an Economic Committee of the Cabinet was set up with its Secretariat at Ministry of Finance. In 1950 this was transferred to Cabinet Secretariat and designated as Economic Wing and ultimately merged with the Secretariat in 1955. In 1954, the Organisation and Methods Division was established under the Cabinet Secretariat which was later transferred to Ministry of Home Affairs during 1964.

In 1957, the Defence Committee of the Cabinet was constituted under Cabinet Secretariat for which officers were drawn from the Defence services. This wing was transferred during 1991 to the Ministry of Defence. Department of Statistics was created in 1961 under Cabinet Secretariat which was transferred to Ministry of Planning in Feb. 1973. Department of Special Economic Coordination was set up under Cabinet Secretariat in 1962 and later transferred to Ministry of Economic Defence Coordination and at present the Department is not existing. The Intelligence Wing was set up to provide secretarial assistance to the Joint Intelligence Committee in 1965.

The Bureau of Public Enterprises was brought under the Cabinet Secretariat for short duration from Jan. 1966 to June, 1966 and later transferred to Department of Economic Affairs under Ministry of Finance and later during 1985 to the



Department of Public Enterprises under Ministry of Industry.

In June, 1970 three departments namely:

- (1) Department of Electronics
- (2) Department of Scientific and Industrial Research and
- (3) Department of Personnel were created under Cabinet Secretariat and in July, 1970 Directorate General of Revenue Intelligence-cum-Directorate of Enforcement was set up under Deptt. of Cabinet Affairs under Cabinet Secretariat and later this directorate was shifted to Department of Personnel in August, 1970.

Department of Scientific and Industrial Research became independent department in May, 1971.

The Department of Electronics became independent department in 1971 and the Department of Personnel became independent. Department of Personnel and Administrative Reforms was transferred to the Ministry of Home Affairs from the Cabinet Secretariat. At present it is a part of Ministry of Personnel, Public Grievances and Pension with a bifurcation as Department of Personnel and training and Department of Administrative Reforms and Public Grievances.

Department of Ocean Development was created in July 1981 under Cabinet Secretariat and became independent department in Feb. 1982. The **Directorate of Public Grievances** was set up in the Cabinet Secretariat in March, 1988. This Directorate entertains grievances from the public.

The Cabinet Secretariat is under the direct charge of the Prime Minister. The administrative head of the Secretariat is the Cabinet Secretary who is also the ex-officio Chairman of the Civil Services Board.

In the Government of India (Allocation of Business) Rules, 1961 "Cabinet Secretariat" finds a place in the First Schedule to the Rules. The subjects allotted to this Secretariat are:

1. Secretarial assistance to Cabinet and Cabinet Committees.
2. Rules of Business.

The Cabinet Secretariat is responsible for the administration of the Government of India (Transaction of Business) Rules, 1961 and the Government of India (Allocation of Business)

Rules 1961, facilitating smooth transaction of business in Ministries/Departments of the Government by ensuring adherence to these rules. The Secretariat assists in decision-making in Government by ensuring Inter-Ministerial coordination, ironing out differences amongst Ministries/Departments and evolving consensus through the instrumentality of the standing/adhoc Committees of Secretaries. Through this mechanism new policy initiatives are also promoted.

The Cabinet Secretariat ensures that the President, the Vice President and Ministers are kept informed of the major activities of all Ministries/Departments by means of monthly summary of their activities. Management of major crisis situations in the country and coordinating activities of various Ministries in such a situation is also one of the functions of the Cabinet Secretariat.

### **Support to Cabinet Committees**

The secretarial assistance provided by Cabinet Secretariat to the Cabinet and Cabinet committees, includes:

1. Convening of the meetings of the Cabinet on the orders of the Prime Minister.
2. Preparation and circulation of the agenda.
3. Circulating papers related to the cases on the agenda.
4. Preparing a record of discussions taken.
5. Circulation of the record after obtaining the approval of the Prime Minister.
6. Watching implementation of the decisions taken by the Cabinet.

The Cabinet Secretariat is the custodian of the papers of the Cabinet meetings.

### **Promotion of Inter-Ministerial Coordination**

Among the inter-Ministerial matters, the coordination is required for:

- (i) removing difficulties;
- (ii) removing differences;
- (iii) overcoming delays;
- (iv) coordination in administrative action
- (v) coordination of policies.

While each Ministry is responsible for acting on its own for expeditious implementation of



Government policies, plans and programmes, where inter-Ministerial cooperation is involved, they often seek the assistance of the Cabinet Secretariat. The inter-Ministerial problems are dealt with in the meetings of the Committees of Secretaries (COS). Committees are constituted for discussing specific matters and proposals emanating from various Secretaries to the Government and meetings are held under the chairmanship of the Cabinet Secretary. These committees have been able to break bottlenecks or secure mutually supporting inter-Ministerial action.

The discussions of the COS takes place on the basis of a paper formulated by the principal Department concerned and the Department with a different point of view, if any, providing a supplementary note. The decisions or recommendations of the COS are unanimous. These proceedings are also circulated to and are followed up by the departments. There are other important functions which it discharges, viz,

1. Monitoring
2. Coordination
3. Promoting new policy initiatives

The Cabinet Secretariat is seen as a useful mechanism by the departments for promoting inter-Ministerial coordination since the Cabinet Secretary is also the head of the civil services. The Secretaries felt it necessary to keep the Cabinet Secretary informed of developments from time to time. The Transaction of Business Rules also require them to keep the Cabinet Secretary informed of developments from time to time, specially if there are any departures from these rules.

### **Prime Minister's Office**

The PMO provides secretarial assistance to the Prime Minister. It is headed by the Principal Secretary to Prime Minister. The PMO includes the anti-corruption unit and the public wing dealing with grievances.

The subject-matter of files required to be submitted to the Prime Minister depends on whether he is holding direct charge of the Ministry or whether there is a Cabinet Minister or Minister of State (Independent Charge) in charge of the Ministry.

In the case of the latter, most matters are dealt with by the Cabinet Minister / Minister of State-in-charge. Only important policy issues, which the Minister concerned feels should be submitted to the Prime Minister for orders or information, are received in the PMO.

In cases where the Prime Minister is the Minister-in-charge, all matters requiring Ministerial approval not delegated to the Minister of State / Deputy Minister, if any, are submitted for orders. The Prime Minister has traditionally been the Minister-in-charge of the Departments of Space, Atomic Energy, and Ministry of Personnel, Public Grievances and Pensions.

Since the Prime Minister is Chairman of the Planning Commission, relevant files are forwarded to the PMO for his comments and clearance.

Some of the important matters that require the Prime Minister's personal attention include the following:

- (a) Important defence-related issues;
- (b) Decorations, both civilian and defence, where Presidential approval is required;
- (c) All important policy issues;
- (d) Proposals for appointment of Indian Heads of Missions abroad and requests for grant of agreement for foreign Heads of Missions posted to India;
- (e) All important decisions relating to the Cabinet Secretariat;
- (f) Appointments to State Administrative Tribunals and the Central Administrative Tribunal, UPSC, Election Commission, Appointment of members of statutory/constitutional Committees, Commissions attached to various Ministries;
- (g) All policy matters relating to the administration of the Civil Services and administrative reforms;
- (h) Special Packages announced by the Prime Minister for States are monitored in the PMO and periodical reports submitted to Prime Minister; and
- (i) All judicial appointments for which Presidential approval is required.

Parliament Questions relating to the Ministries and Departments of which Prime Minister is the Minister-in-charge are answered by a MOS



nominated for the purpose or by Prime Minister himself.

**The Prime Minister's National Relief Fund (PMNRF) and the National Defence Fund (NDF)** are operated directly from the PMO.

### THE ATTORNEY-GENERAL FOR INDIA

The office of the Attorney General is a Constitutional office provided under Article 76 of the Constitution. Article 76 reads as:

**Article 76(1)** The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

#### Duties of the Attorney- General

**Article76 (2)** lays down the following duties of the Attorney- General for India:

- a. to give advice to the Government of India upon such legal matters, and
- b. to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and
- c. to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

The following rules are framed for the Attorney-General for India:

1. He shall appear in all cases in the Supreme Court in which the Government of India is party. The Government of India may require the Attorney General to appear in any High Court in any case in which the Government of India is a party
2. He shall not advise or hold a brief against the Government of India.
3. In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.
4. The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

The Attorney General is the first law officer of the

Country. He is appointed by the President. In the U.S. and U.K., the Attorney general is a member of the Council of Ministers, but in India, he is not a member of the Council of Ministers. He retires at the age of 65years.

#### The special power/rights of the Attorney General:

1. According to Article 76 (3) in the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.
2. According to Article 88 the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

#### Solicitor Generals

The Attorney General is assisted by 2 Solicitor Generals and 4 Additional Solicitor Generals. Unlike the Attorney General, Solicitor General does not tender legal advice to the Government of India. His workload is confined to appear in courts on behalf of the union of India. The Solicitor and Additional Solicitor Generals are appointed by the Ministry of Law and Justice. They along with the Attorney General of India are referred to as Law officers.

#### Restrictions on Attorney General and Solicitor Generals

*A Law Officer shall not-*

- (a) hold briefs in any court for any party except the Government of India or the Government of a State or any University, Government School or College, local authority, Public Service Commission, Port Trust, Port Commissioners, Government aided or Government managed hospitals, a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956), any Corporation owned or controlled by the State, any body or institution in which the Government has a preponderating interest;



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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (b) advice any party against the Government of India or a Public Sector Undertaking, or in cases in which he is likely to be called upon to advise, or appear for, the Government of India or a Public Sector Undertaking; | company or corporation without the permission of the Government of India;                                                                                                                                                                                       |
| (c) defend an accused person in a criminal prosecution, without the permission of the Government of India; or                                                                                                              | (e) advise any Ministry or Department of Government of India or any statutory organization or any Public Sector Undertaking unless the proposal or a reference in this regard is received through the Ministry of Law and Justice, Department of Legal Affairs. |
| (d) accept appointment to any office in any                                                                                                                                                                                |                                                                                                                                                                                                                                                                 |

