

ORGANISATION, COMPOSITION AND ELECTION OF INDIAN PARLIAMENT

PARLIAMENT

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

Articles 79 to 122 in Part V of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and etc. of the Parliament.

ORGANISATION OF PARLIAMENT

Under the Constitution, the Parliament of India consists of three parts viz, the President, the Council of States and the House of the People. In 1954, the Hindi names 'Rajya Sabha' and 'Lok Sabha' were adopted by the Council of States and the House of People respectively. The Rajya Sabha is the Upper House (Second Chamber or House of Elders) and the Lok Sabha is the Lower House (First Chamber or Popular House). The former represents the states and union territories of the Indian Union, while the latter represents the people of India as a whole.

Though the President of India is not a member of either House of Parliament and does not sit in the Parliament to attend its meetings, he is an integral part of the Parliament. This is because a bill passed by both the Houses of Parliament cannot become law without the President's assent. He also performs certain functions relating to the proceedings of the Parliament, for example, he summons and prorogues both the Houses, dissolves the Lok Sabha, addresses both the Houses, issues ordinances when they are not in session, and so on.

In this respect, the framers of the Indian Constitution relied on the British pattern rather than the American pattern. In Britain, the Parliament consists of the Crown (King or Queen), the House of Lords (Upper House) and the House of Commons (Lower House). By contrast, the American president is not an integral part of the legislature. In USA, the legislature, which is known as Congress, consists of the Senate (Upper House) and the House of Representatives (Lower House).

The parliamentary form of government emphasises on the interdependence between the legislative and executive organs. Hence, we have the ‘President-in-Parliament’ like the ‘Crown-in-Parliament’ in Britain. The presidential form of government, on the other hand, lays stress on the separation of legislative and executive organs. Hence, *the American president is not regarded as a constituent part of the Congress.*

COMPOSITION OF THE TWO HOUSES

Composition of Rajya Sabha

The maximum strength of the Rajya Sabha is fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the president.

At present, the Rajya Sabha has **245** members. Of these, 229 members represent the states, 4 members represent the union territories and 12 members are nominated by the president.

The Fourth Schedule of the Constitution deals with the allocation of seats in the Rajya Sabha to the states and union territories .

1. Representation of States The representatives of states in the Rajya Sabha are elected by the elected members of state legislative assemblies. The election is held in accordance with the system of proportional representation by means of the single transferable vote. The seats are allotted to the states in the Rajya Sabha on the basis of population. Hence, the number of representatives varies from state to state. For example, Uttar Pradesh has 31 members while Tripura has 1 member only. However, in USA, all states are given equal representation in the Senate irrespective of their population. USA has 50 states and the Senate has 100 members—2 from each state.

2. Representation of Union Territories The representatives of each union territory in the Rajya Sabha are indirectly elected by members of an electoral college specially constituted for the purpose. This election is also held in accordance with the system of proportional representation by means of the single transferable vote. Out of the seven union territories, only two (Delhi and Puducherry) have representation in Rajya Sabha. The populations of other five union territories are too small to have any representative in the Rajya Sabha.

3. Nominated Members The president nominates 12 members to the Rajya Sabha from people who have special knowledge or practical experience in art, literature, science and social service. The rationale behind this principle of nomination is to provide eminent

persons a place in the Rajya Sabha without going through the process of election. It should be noted here that the American Senate has no nominated members.

Composition of Lok Sabha

The maximum strength of the Lok Sabha is fixed at 552. Out of this, 530 members are to be the representatives of the states, 20 members are to be the representatives of the union territories and 2 members are to be nominated by the president from the Anglo-Indian community .

At present, the Lok Sabha has 545 members. Of these, 530 members represent the states, 13 members represent the union territories and 2 Anglo-Indian members are nominated by the President .

1. Representation of States The representatives of states in the Lok Sabha are directly elected by the people from the territorial constituencies in the states. The election is based on the principle of universal adult franchise. Every Indian citizen who is above 18 years of age and who is not disqualified under the provisions of the Constitution or any law is eligible to vote at such election. The voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988.

2. Representation of Union Territories The Constitution has empowered the Parliament to prescribe the manner of choosing the representatives of the union territories in the Lok Sabha. Accordingly, the Parliament has enacted the Union Territories (Direct Election to the House of the People) Act, 1965, by which the members of Lok Sabha from the union territories are also chosen by direct election.

3. Nominated Members The president can nominate two members from the Anglo-Indian community if the community is not adequately represented in the Lok Sabha. Originally, this provision was to operate till 1960 but has been extended till 2020 by the 95th Amendment Act, 2009.

SYSTEM OF ELECTIONS TO LOK SABHA

The various aspects related to the system of elections to the Lok Sabha are as follows:

Territorial Constituencies

For the purpose of holding direct elections to the Lok Sabha, each state is divided into territorial constituencies. In this respect, the Constitution makes the following two provisions:

1. Each state is allotted a number of seats in the Lok Sabha in such a manner that the ratio between that number and its population is the same for all states. This provision does not apply to a state having a population of less than six millions.
2. Each state is divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state.

In brief, the Constitution ensures that there is uniformity of representation in two respects: (a) between the different states, and (b) between the different constituencies in the same state.

The expression 'population' means the population as ascertained at the preceding census of which the relevant figures have been published.

Readjustment after each Census

After every census, a readjustment is to be made in (a) allocation of seats in the Lok Sabha to the states, and (b) division of each state into territorial constituencies. Parliament is empowered to determine the authority and the manner in which it is to be made. Accordingly, the Parliament has enacted the Delimitation Commission Acts in 1952, 1962, 1972 and 2002 for this purpose.

The 42nd Amendment Act of 1976 froze the allocation of seats in the Lok Sabha to the states and the division of each state into territorial constituencies till the year 2000 at the 1971 level. This ban on readjustment was extended for another 25 years (ie, upto year 2026) by the 84th Amendment Act of 2001, with the same objective of encouraging population limiting measures.

The 84th Amendment Act of 2001 also empowered the government to undertake readjustment and rationalisation of territorial constituencies in the states on the basis of the population figures of 1991 census. Later, the 87th Amendment Act of 2003 provided for the delimitation of constituencies on the basis of 2001 census and not 1991 census. However, this can be done without altering the number of seats allotted to each state in the Lok Sabha.

Reservation of Seats for SCs and STs

Though the Constitution has abandoned the system of communal representation, it provides for the reservation of seats for scheduled castes and scheduled tribes in the Lok Sabha on the basis of population ratios .

Originally, this reservation was to operate for ten years (ie, up to 1960), but it has been extended continuously since then by 10 years each time. Now, under the 95th Amendment Act of 2009, this reservation is to last until 2020.

Though seats are reserved for scheduled castes and scheduled tribes, they are elected by all the voters in a constituency, without any separate electorate. A member of scheduled castes and scheduled tribes is also not debarred from contesting a general (non-reserved) seat.

The 84th Amendment Act of 2001 provided for refixing of the reserved seats on the basis of the population figures of 1991 census as applied to rationalisation of the general seats. Later, the 87th Amendment Act of 2003 provided for the refixing of the reserved seats on the basis of 2001 census and not 1991 census.

Proportional Representation not Adopted

Though the Constitution has adopted the system of proportional representation in the case of Rajya Sabha, it has not preferred the same system in the case of Lok Sabha. Instead, it has adopted the system of territorial representation for the election of members to the Lok Sabha.

Under territorial representation, every member of the legislature represents a geographical area known as a constituency. From each constituency, only one representative is elected. Hence such a constituency is known as single-member constituency. In this system, a candidate who secures majority of votes is declared elected. This simple majority system of representation does not represent the whole electorate. In other words, it does not secure due representation to minorities (small groups).

The system of proportional representation aims at removing the defects of territorial representation. Under this system, all sections of the people get representation in proportion to their number. Even the smallest section of the population gets its due share of representation in the legislature.

There are two kinds of proportional representation, namely, single transferable vote system and list system. In India, the first kind is adopted for the election of members to the Rajya Sabha and state legislative council and for electing the President and the Vice-President.

Though some members of the Constituent Assembly had advocated the system of proportional representation for the election of members to the Lok Sabha, the Constitution has not adopted the system due to two reasons.

1. Difficulty for the voters to understand the system (which is complicated) due to low literacy scale in the country.
2. Unsuitability to the parliamentary government due to the tendency of the system to multiply political parties leading to instability in government.

Additionally, the system of proportional representation has the following demerits:

1. It is highly expensive.
2. It does not give any scope for organising by-elections.
3. It eliminates intimate contacts between voters and representatives.
4. It promotes minority thinking and group interests.
5. It increases the significance of party system and decreases that of voter.



PARLIAMENT OF INDIA – AN OVERVIEW

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INTRODUCTION

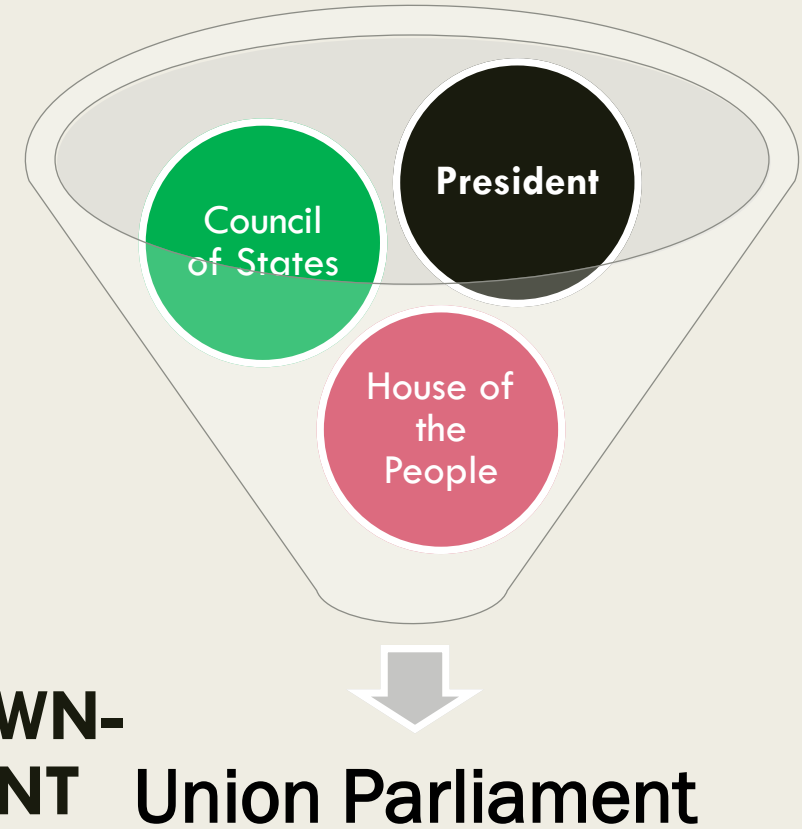
- **Parliament – Parliament comes from the word ‘parle’ means to speak**
- **Highest Legislative Body in India**
- **Bicameral in Nature – comprise of dual houses – House of People (Lok Sabha) and Council of States (Rajya Sabha)**
- **Traced to the Imperial Legislative Council set up under the Indian Councils Act, 1861**

INTRODUCTION

- **Union Parliament – Provisions of the Constitution – Art. 79 to 122 – Chapter II of Part V of the COI – “Parliament”**
- **It deals with the structure, composition, duration, powers and functions of the Parliament**
- **The Hindi names were adopted in the year 1954 - Rajya Sabha and Lok Sabha**
- **Predominantly Draws from British Parliamentary Form of Govt – House of Commons and House of Lords – partly inspired by US Congress - House of Senate – Council of States**
- **Principle of Constitutional Supremacy – not Parliamentary Supremacy - Jean-Louis de Lolme - ‘The British Parliament can do every thing except make a woman a man and a man a woman’**

UNION PARLIAMENT

- The Union Parliament as under Art. 79 comprises of the following viz.,
 - A. The President of India
 - B. The Council of States
 - C. The House of the People
- President – NOT A Member of Parliament – Integral PART of the UNION PARLIAMENT
- Several Functions summons, prorogues, dissolves, assents, etc. – Role AKIN TO CROWN-IN-PARLIAMENT – PRESIDENT-IN-PARLIAMENT
- UNLIKE USA – NOT an INTEGRAL part of US Congress – Separation of Powers



COUNCIL OF STATES (RAJYA SABHA)

- **Rajya Sabha i.e. Council of States is termed as the Upper House**
- **Second Chamber or House of Elders – Higher Age Qualification - People of Experience, Expertise and Calibre – Who may not necessarily be go through direct elector mandate**
- **Primarily representatives of the interests of the States and Union Territories**
- **Revisionary House – Prevents rash, knee jerk law making – popular sentiments**

COMPOSITION OF RAJYA SABHA (Art. 80)

- **Elected – Indirectly by MLA of the States – Proportional Representation**
- **TOTAL SANCTIONED STRENGTH – Art. 80 - 238 (States + UT) + 12 Nom MP**
- **Fourth Schedule – Allocation of RS Seats - 31 for UP - Tripura, Sikkim, Pondicherry – 1 Seat – No Equal Rep. for State Like US Senate**
- **PRESENT STRENGTH – 233 + 12 Nom. MPs - TOTAL PRESENT STRENGTH – 245 RS Seats**

TERM OF RAJYA SABHA (Art. 83) – DURATION OF HOUSES OF PARLIAMENT

- **Permanent Body – Shall not be subject to dissolution – No President's power to dissolve**
- **Term – Constitution does not fix it – Six Years – S. 154 of RPA, 1951 – Other than Casual Vacancy**
- **Art. 83(1) - 1/3 of Members Retire by rotation every 2 years – Staggered Terms**

HOUSE OF THE PEOPLE (LOK SABHA)

- **Lok Sabha i.e. House of the People is termed as the Lower House**
- **First Chamber or Popular House – Representatives of People of India as a whole**
- **Election – Directly by people through Territorial Constituencies**
- **Collective Responsibility of COM to LOK SABHA – Art. 75(3)**

COMPOSITION OF LOK SABHA (Art. 81)

- **Elected – Directly Election from Territorial Constituencies – UTs**
- **TOTAL SANCTIONED STRENGTH – Art. 81 - 330
States + 20 UTS + 2 Seats for Anglo Indian –
Abolished w.e.f 2020 – 104th Con. Amend. Act,
2019**
- **First Schedule of RPA, 1950 – Allocation of LS
Seats - 80 for UP - Nagaland, Mizoram,
Pondicherry – 1 Seat**
- **TOTAL PRESENT STRENGTH – 543 Elected MPs**

TERM OF RAJYA SABHA (Art. 83) – DURATION OF HOUSES OF PARLIAMENT

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- **Art. 83(1) - 1/3 of Members Retire by rotation every 2 years – Staggered Terms**

QUALIFICATION FOR MEMBERSHIP OF PARLIAMENT (Art. 84)

**A person shall not be chosen to fill a seat in
Parliament unless**

- **Citizen of India + Oath/Affirmation in 3rd
Schedule – Allegiance to COI and Uphold the
sovereignty and integrity of India**
- **Minimum Age – LS: 25 years – RS: 30 years**
- **Possess other qualifications by Parliamentary
made law**

DISQUALIFICATION FOR MEMBERSHIP OF PARLIAMENT (Art. 102)

A person shall be disqualified from being chosen and being a MP

- **Hold an Office of Profit – State/ Centre – not specifically excluded by Parliament**
- **Unsound Mind declared by competent Court**
- **Undischarged Insolvent**
- **Not a citizen of India / voluntarily acquires citizenship of foreign country / pledges allegiance to foreign state**
- **Disqualified by Parliamentary Law**
- **Violation of Anti-Defection Law u/sch. 10**

DISQUALIFICATION FOR DEFECTION (Art. 102 (2))

- **Aims to curtail unprincipled and unethical defections plaguing Indian electoral politics – Political Horse Trading**
- **Schedule 10 – 52nd Constitution Amendment Act, 1985 – Anti-Defection Provisions**
- **Voluntarily giving up Membership**
- **Voting against directions of the Party without prior permission – 15 days condonation period**
- **Loses MPs seat**
- **Exception – Merger Rule - 2/3 Party MPs Exit and merge with another party – Protected and not disqualified**

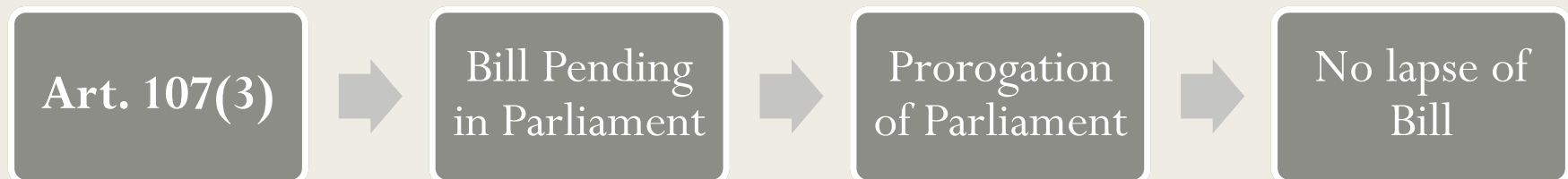
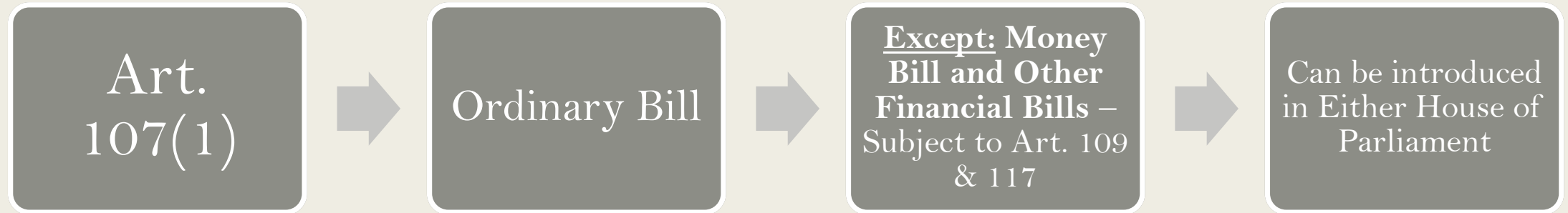
VACATION OF SEATS (Art. 101)

- **Simultaneous Membership not permitted – LS and RS**
- **Simultaneous Membership not permitted – MP and MLA – MP seat will be lost if he does not resign his MLA post**
- **Vacation on Disqualification under Art. 102**
- **Vacation of Seat on Resignation – writing under his hand to Speaker / Chairperson**

PRESIDING OFFICERS OF PARLIAMENT

- **Chairman and Deputy Chairman – Art. 89 – VP to be ex-officio Chairperson**
- **Speaker and Deputy Speaker – Art. 93**
- **Art. 100 (1) Voting – Laws, Decision and Motions – except certain cases – Majority of Votes – Simple Majority**
- **Quorum – 1/10 of Total Membership**
- **Art. 100(1) – Equality of Votes - Casting Vote – Not otherwise**
- **Joint Sitting – Art. 108 – Deadlock between Houses**
- **Powers, Privileges and Immunities of Parliament**
- **Upper Hand for LOK SABHA in MONEY BILLS**

PROVISIONS RELATING TO INTRODUCTION AND PASSING OF BILLS (Art. 107)



PRIME MINISTER AND COUNCIL OF MINISTERS – AN OVERVIEW

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UNION EXECUTIVE

- Art. 52-78 of the COI – Union Executive
- The Union Executive consists of the
 - a) The President,
 - b) The Vice- President,
 - c) **The Prime Minister,**
 - d) **The Council of Ministers and**
 - e) The Attorney General of India.
- Head of the State – Art. 52 – President of India

PRIME MINISTER AND COUNCIL OF MINISTERS

- Union Executive in India is inspired by the British Westminster style having a both a Head of the State and Head of the Government
- Head of the State – President – Nominal (De Jure) Executive
- Head of the Government – Prime Minister – Real (De facto) Executive
- The President of India plays a role similar to the British Crown subject to certain conditions and exceptions
- Article 74-78 deals with the PM and COM

PRIME MINISTER AND COUNCIL OF MINISTERS

- Art. 74 → Council of Ministers to aid and advise the President
- Art. 75 → Other Provisions as to Ministers
- Art. 76 → Attorney General of the India
- Art. 77 → Conduct of business of Government of the Union
- Art. 78 → Duties of PM as respect the furnishing of information to the President, etc.

APPOINTMENT OF PRIME MINISTER

- Art. 75 → President to appoint the Prime Minister
- No specific procedure explicitly laid down under COI
- Constitutional Conventions dictate the appointment of PM → Leader of the majority party in Lok Sabha
- No clear majority → Personal Discretion subject to certain conventions → Leader of Largest Party or Coalition → With requirement to prove majority in LS → Vote of Confidence
- PM can be member of Lok Sabha or Rajya Sabha → Unlike Britain → House of Commons Member requirement for PM

TENURE OF PRIME MINISTER

- Term of the Prime Minister → Not fixed → Holds office during the Pleasure of the President
- Does not mean that the president can dismiss the Prime Minister at any time.
- Prime Minister enjoying majority support in the Lok Sabha → Cannot be dismissed by the President
- PM loses the confidence of the Lok Sabha → Must Resign failing which President can Dismiss him
- PM → Head of COM → Death/ Resignation/ Dismissal of PM dissolves the Council of Ministers

ROLE AND FUNCTIONS OF PRIME MINISTER

- Ivor Jennings - *“He is, rather, a sun around which planets revolve. He is the keystone of the constitution. All roads in the constitution lead to the Prime Minister.”*

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

1. Recommends persons for appointment as ministers by the president.
2. Allocates and reshuffles various portfolios among the ministers.
3. Can ask a minister to resign or advise the President to dismiss him.
4. Presides over the meeting of council of ministers and influences its decisions.
5. Guides, directs, controls, and coordinates the activities of all the ministers.
6. Can bring about the collapse of the council of ministers by resigning from office.

ROLE AND FUNCTIONS OF PRIME MINISTER

In Relation to the President enjoys the following powers in relation to the President:

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

CENTRAL COUNCIL OF MINISTERS

- Art. 74 → Status of Council of Ministers
- Art. 75 → Appointment, Tenure, Responsibility, Qualification, Oath, Salaries and Allowances
- PM and COM to aid and advise the President in the exercise of his functions
- 42nd and 44th Constitution Amendment Act → makes aid and advice binding on the President
- Appointed on advice of PM by President → LS or RS Members → Non-members can become minister but must be elected/nominated as MP within 6 months
- Minister → Right to speak and take part proceedings in both houses → Voting rights in Single House → Art. 88

FUNCTION AND COMPOSITION OF CENTRAL COUNCIL OF MINISTERS

- Art. 74 → PM and COM to always advise the President → Advice rendered by Ministers not to be enquired by the Court
- Art. 75 (1) → Appointment by President on advice of PM
- Art. 75 (1A) → PM and COM not to exceed 15% of Lok Sabha
- Art. 75 (1B) → Not to be disqualified under anti-defection law to hold minister post
- Art. 75 (2) Minister → COM → Pleasure of the President
- Art. 75 (3) → COM **collectively responsible** to the Lok Sabha → Principle of Collective Responsibility
- Art. 75 (4) → Oath of Office and Secrecy administered by the President
- Art. 75 (5) → Non-member of Parliament for 6 consecutive months shall lose his ministerial position
- Art. 75 (6) → Salaries and Allowance as determined by the Parliament → The Salaries and Allowances of Ministers Act, 1952

ROLE OF MINISTERS

Responsibility of
Ministers

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graph TD; A[Responsibility of Ministers] --> B[Collective Responsibility]; A --> C[Individual Responsibility]
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Collective
Responsibility

Individual
Responsibility

RESPONSIBILITY OF MINISTERS

- Concept of Collective Responsibility → Basic Tenet of Parliamentary Form of Government → Art. 75(3) → COM Collectively Responsible to LS → All ministers are jointly responsible for their acts of commission and omission →
- “Swim together or sink together” → No confidence motion is successful every member of COM as to resign → including RS Ministers
- Cabinet decisions bind all cabinet ministers and other ministers even if they differed in the cabinet meeting → Duty to stand by all cabinet decisions → if he strongly disagrees → if not so he has to resign

RESPONSIBILITY OF MINISTERS

- Concept of Individual Responsibility → Implicit in the Doctrine of Pleasure under Art. 75
- Any particular minister who has lost the confidence of the PM can be removed by the President → particular in case of any form of wrongdoing on his part
- Dissatisfaction with performance or difference of opinion → PM can ask him to resign or get him dismissed by the President

CLASSIFICATION OF MINISTERS

Categories of Ministers

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graph TD; A[Categories of Ministers] --> B[Cabinet Minister]; A --> C[Minister of State]; A --> D[Deputy Minister]
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Cabinet
Minister

Minister of
State

Deputy
Minister

CLASSIFICATION OF MINISTERS

- Three Categories → Cabinet Minister, MoS and Dep. Ministers → Difference in ranks, emoluments and political importance → PM as the first among equals
- **Cabinet Ministers** → Important Ministry → Home, Defence, Finance, External Affairs → Members of Cabinet → Attends meetings and Policy making
- **Minister of State** → Independent Charge / Attached to Cabinet Minister → Accordingly Work independently or Work under Cabinet Ministers → Do not attend Cabinet Meetings unless specially invited
- **Deputy Ministers** → No independent charge → attached to Cabinet Ministers or MoS and assist them → Not part of Cabinet and do not attend Cabinet Meetings

CABINET

- It is a smaller body consisting of 20-30 ministers.
- It includes the cabinet ministers only.
- It is a part and a sub-set of the Council of ministers.
- It meets frequently usually at least once a week to deliberate and take decisions
- It's policy decisions are binding on all ministers
- It has a supervisory role on the Council of Minister
- Not originally stated explicitly in the Constitution of India → Added by 42nd Amendment to Art. 352 → PM and Other Ministers of Cabinet Rank
- *“The Cabinet is the steering wheel of the ship of the state” – Ramsay Muir*

KITCHEN CABINET

- It is sub-classified into a Kitchen/Inner Cabinet
- It is a super-small body of Cabinet with highest decision making powers
- Informal and Extra-Constitutional System that developed in system with a larger cabinet that may stifle decision making
- The objective is to ensure quick, efficient and robust decision making
- It helps in maintaining secrecy in important political matters
- It can meet more often and expeditiously than the full cabinet
- Decisions are cooked and placed before the full cabinet for formal approval
- Also exists in USA and Britain

Council of States (Rajya Sabha)

Background

Parliament of India consists of the President and the two Houses- the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). While the two Houses continue to be reorganized as the Council of States and the House of the People in the constitution, they are in actual practice known respectively as the Rajya Sabha and the Lok Sabha. On 23 August 1954, the Chairman of the Council of States, Dr. Sarvepalli Radhakrishna made an announcement in the Council about the adoption of Hindi name of the Council of States as 'Rajya Sabha'. Earlier, on 14 May 1954, the Speaker, Lok Sabha, Shri G.V. Mavalankar made an announcement in the House that the House of the People would thereafter be known as 'Lok Sabha'.

The origin of the second Chamber can be traced to the Montague-Chelmsford Report of 1918. The Government of India Act, 1919 provided for the creation of a 'Council of State' as a second chamber of the then legislature with a restricted franchise which actually came into existence in 1921. The Governor-General was the ex-officio President of the then Council of State. The Government of India Act, 1935, hardly made any changes in its composition.

The Constituent Assembly which first met on 9 December 1946, also acted as the Central Legislature till 1950, when it was converted as 'Provisional Parliament'. During this period, the Central Legislature which was known as Constituent Assembly (Legislature) and later Provincial Parliament was unicameral till the first election was held in 1952. Extensive debates regarding the utility or otherwise of a Second Chamber in Independent India ultimately; it was decided to have a bicameral legislature for independent India mainly because a federal system was considered to be most feasible form of Government for such a vast country with immense diversities. A single directly elected House, in fact, was considered inadequate to meet the challenges that free India would face. A second chamber known as the 'Council of States', therefore, was created with altogether different composition and method of election from that of the directly elected 'House of the People'. It was conceived as the other Chamber, with smaller membership than the House of the People. It was meant to be the federal chamber *i.e.*, a House elected by the elected members of Assemblies of the States and three Union Territories in which States were not given equal representation. Unlike several other countries which provide equal representation to all the States in the Upper House, in the

Rajya Sabha . States have unequal representation as they are represented in proportion to their population. Apart from the elected members, provision was also made for the nomination of twelve members to the House by the President. The minimum age of thirty years was fixed for membership as against twenty-five years for the Lower House. The element of dignity and prestige was added to the Council of State by making the Vice-President of India *ex-officio* Chairman of the Rajya Sabha. who presides over its sittings.

Constitutional Provisions relating to Rajya Sabha

Composition/Strength

Article 80 of the Constitution lays down the maximum strength of Rajya Sabha as 250, out of which 12 members are nominated by the President and 238 are representatives of the States and of the two Union Territories. The present strength of Rajya Sabha, however, is 245, out of which 233 are representatives of the States and Union territories of Delhi Puducherry and Jammu and Kashmir w.e.f. 31.10.2019 and 12 are nominated by the President. The members nominated by the President are persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service.

Allocation of Seats

The Fourth Schedule to the Constitution provides for allocation of seats to the States and Union Territories in Rajya Sabha. The allocation of seats is made on the basis of the population of each State. Consequent on the reorganization of States and formation of new States, the number of elected seats in the Rajya Sabha allotted to States and Union Territories has changed from time to time since 1952.

Eligibility

Qualifications

Article 84 of the Constitution lays down the qualifications for membership of Parliament. A person to be qualified for the membership of the Rajya Sabha should possess the following qualifications:

1. he must be a citizen of India , and makes and subscribes before some person authorized in that behalf by Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule to the Constitution.

2. he must be not less than 30 years of age;
3. he must possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Disqualifications

Article 102 of the Constitution lays down that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament –

1. if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
2. if he is of unsound mind and stands so declared by a competent court;
3. if he is an undischarged insolvent;
4. if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
5. if he is so disqualified by or under any law made by Parliament.

Explanation- [For the purposes of this clause] a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

Besides, the Tenth Schedule to Constitution provides for disqualification of the members on ground of defection. As per the provisions of the Tenth Schedule, a member may be disqualified as a member, if he has voluntarily *given* up the membership of such political party; or if he votes or abstains from voting in the House contrary to any direction issued by the political party to which he belongs, unless such voting or abstention has not been condoned by the political party within fifteen days. A member elected as an independent candidate shall be disqualified if he joins any political party after his election.

A member nominated to the House by the President, however, is allowed to join a political party if he/she does so within the first six months of taking seat in the House.

A member shall not be disqualified on this account, if he voluntarily gives up the membership of his political party after he is elected Deputy Chairman, Rajya Sabha.

Process for Election/Nomination

Electoral College:

The representatives of the States and of the Union Territories in the Rajya Sabha are elected by the method of indirect election. The representatives of each State and three Union territories are elected by the elected members of the Legislative Assembly of that State and by the members of the Electoral College for that Union Territory respectively, in accordance with the system of proportional representation by means of the single transferable vote. The Electoral College for the National Capital Territory of Delhi consists of the elected members of the Legislative Assembly of Delhi, and that for Puducherry and Jammu Kashmir consists of the elected members of the respective Legislative Assemblies.

Biennial/Bye-election

Rajya Sabha is a permanent House and is not subject to dissolution. However, one-third Members of Rajya Sabha retire after every second year. A member who is elected for a full term serves for a period of six years and on the expiration of this term retires from the membership of Rajya Sabha. The election held to fill a vacancy arising otherwise than by retirement of a member is called 'Bye-election'. A member elected in a bye-election remains a member only for the remainder of the term of the member whose resignation or death or disqualification under the Tenth Schedule led to the vacancy.

Presiding Officers - Chairman and Deputy Chairman

The Presiding Officers of Rajya Sabha have the responsibility to conduct the proceedings of the House. The Vice-President of India is *ex-officio* Chairman of Rajya Sabha. Rajya Sabha also chooses from amongst its members, a Deputy Chairman. There is also a Panel of Vice-Chairmen in Rajya Sabha, who are nominated by the Chairman, Rajya Sabha from the amongst the members of Rajya Sabha. In the absence of the Chairman and Deputy Chairman, a member from the Panel of Vice-Chairmen presides over the proceedings of the House.

Secretary-General

The Secretary-General is appointed by the Chairman of Rajya Sabha and holds rank equivalent to the highest civil servant of the Union. The Secretary-General works with anonymity and is readily available to the Presiding Officers for rendering advice on parliamentary matters. The Secretary-General is also the

administrative head of the Rajya Sabha Secretariat and the custodian of the records of the House. He works under the direction and control of the Chairman, Rajya Sabha.

Relation between the two Houses

Under Article 75(3) of the Constitution, the Council of Ministers is collectively responsible to the House of the People (Lok Sabha) which means Rajya Sabha cannot make or unmake the Government. It can, however, exercise control over the Government and this function becomes quite prominent, particularly when the Government does not enjoy majority in Rajya Sabha.

To resolve a deadlock between the two Houses, in case of an ordinary legislation, the Constitution provides for the joint sitting of both Houses. In fact, there have been three occasions in the past when the Houses of Parliament had met in joint sitting to resolve differences between them. Issues in joint sitting are decided by a majority of the total number of members of both Houses present and voting. The joint sitting is held in the Central Hall of Parliament House presided over by the Speaker, Lok Sabha. However, in the case of a Money Bill, there is no provision in the Constitution for a joint sitting of both Houses as Lok Sabha clearly enjoys pre-eminence over Rajya Sabha in financial matters. As regards a Constitution Amendment Bill, it has been provided in the Constitution that such a Bill has to be passed by the specific majority, as prescribed under article 368 of the Constitution, by both Houses. There is, therefore, no provision for resolving a deadlock between the two Houses in regard to a Constitution Amendment Bill.

Ministers may belong to either House of the Parliament. The Constitution does not make any distinction between the two Houses in this regard. The Ministers have the right to speak and take part in the proceedings of either House but are entitled to vote only in the House of which they are members.

With regard to powers, privileges and immunities of the Houses of Parliament, their members and committees thereof, the two Houses are placed absolutely on equal footing by the Constitution.

Other important matters in respect of which both Houses enjoy equal powers are election and impeachment of the President, election of the Vice-President, approving the proclamation of Emergency, the proclamation regarding failure of constitutional machinery in States and financial emergency. In respect of receiving reports and papers from various statutory authorities, etc., both Houses have equal powers.

Except in the case of collective responsibility of the Council of Ministers and certain financial matters, which fall in the domain of Lok Sabha only, both Houses enjoy equal powers.

Special Powers of Rajya Sabha

The Council of States (Rajya Sabha), has its own distinctive features. Rajya Sabha being a federal chamber enjoys certain special powers under the Constitution. All the subjects/areas regarding legislation have been divided into three Lists - Union List, State List and Concurrent List. Union and State Lists are mutually exclusive - The Parliament cannot legislate on a matter placed in the State List in normal circumstances. However, if Rajya Sabha passes a resolution by a majority of not less than two-thirds of members present and voting saying that it is "necessary or expedient in the national interest" that Parliament should make a law on a matter enumerated in the State List, Parliament becomes empowered to make a law on the subject specified in the resolution, for the whole or any part of the territory of India. Such a resolution remains in force for a maximum period of one year but this period can be extended by one year at a time by passing a similar resolution further.

If Rajya Sabha passes a resolution by a majority of not less than two-thirds of the members present and voting declaring that it is necessary or expedient in the national interest to create one or more All India Services common to the Union and the States, Parliament becomes empowered to create by law such services.

Under the Constitution, the President is empowered to issue Proclamations in the event of national emergency, in the event of failure of constitutional machinery in a State, or in the case of financial emergency. Every such proclamation has to be approved by both Houses of Parliament within a stipulated period. Under certain circumstances, however, Rajya Sabha enjoys special powers in this regard. If a Proclamation is issued at a time when Lok Sabha has been dissolved or the dissolution of Lok Sabha takes place within the period allowed for its approval, then the proclamation remains effective, if the resolution approving it is passed by Rajya Sabha within the period specified in the Constitution under Articles 352, 356 and 360.

Rajya Sabha in Financial Matters

A Money Bill can be introduced only in Lok Sabha. After it is passed by that House, it is transmitted to Rajya Sabha for its concurrence or recommendation. The power of Rajya Sabha in respect of such a Bill is limited. Rajya Sabha has to

return such a Bill to Lok Sabha within a period of fourteen days from its receipt. If it is not returned to Lok Sabha within the said period of fourteen days the Bill is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by Lok Sabha. Rajya Sabha cannot amend a Money Bill; it can only recommend amendments and Lok Sabha may either accept or reject all or any of the recommendations made by Rajya Sabha.

Apart from Money Bills, certain categories of Financial Bills also cannot be introduced in Rajya Sabha. There are, however, some types of Financial Bills on which there is no limitation on the powers of the Rajya Sabha. These Bills may be initiated in either House and Rajya Sabha has powers to reject or amend such Financial Bills like any other ordinary Bill. Of course, such Bills cannot be passed by either House of Parliament unless the President has recommended to that House the consideration thereof.

Despite the limited role, Rajya Sabha does have a bearing on matters relating to finance. The Budget of the Government of India is laid every year before Rajya Sabha also and its members discuss it. Though Rajya Sabha does not vote on Demands for Grants of the Ministries/Departments - a matter exclusively reserved for Lok Sabha - no money, however, can be withdrawn from the Consolidated Fund of India unless the Appropriation Bill has been passed by both the Houses. Similarly, the Finance Bill is also brought before Rajya Sabha. Besides, the Department-related Parliamentary Standing Committees that examine the annual Demands for Grants of the Ministries/Departments are joint committees *consisting* of members from Lok Sabha and Rajya Sabha.

Leader of the House

Apart from the Chairman and the Deputy Chairman, Leader of the House is an important Parliamentary functionary who plays an important role in the efficient and smooth conduct of the business in the House. The Leader of the House in Rajya Sabha is normally the Prime Minister, if he/she is its member or a Minister who is a member of the House and is nominated by the Prime Minister to function, as the leader of the House.

The primary responsibility of the Leader of the House is to maintain coordination amongst all sections of the House for a harmonious and meaningful debate in the House. For this purpose, he remains in close contact not only with the Government but also with the Opposition, individual ministers and the Presiding

Officer. He occupies the first seat (first row) in the Chamber at the right side of the Chair so that he is easily available to the Presiding Officer for consultation.

As per the Rules of Procedure and Conduct of Business in the Council of States, the Chairman consults the Leader of the House with regard to the arrangement of Government business in the House, allotment of days or allocation of time for discussion on the President's Address, discussion on Private Members' business on any day other than Friday, discussion on No Day-Yet-Named Motions, Short Duration Discussions and consideration and return of a Money Bill. He is also consulted by the Chairman in the matter of adjournment or otherwise of the House for the day in case of death of an outstanding personality, national leader or international dignitary.

In the era of coalition governments, the task of the Leader of the House has become more challenging. He ensures that all possible and reasonable facilities are made available to the House for a meaningful discussion on any matter that is brought before it. He works as the spokesperson of the House in expressing sense of the House and represents it on ceremonial or formal occasions.

The following members have been the Leaders of the House in the Rajya Sabha:

Name	From	To
1. Shri N. Gopalaswami Ayyangar	May 1952	Feb. 1953
2. Shri Charu Chandra Biswas	Feb. 1953	Nov. 1954
3. Shri Lal Bahadur Shastri	Nov. 1954	March 1955
4. Shri Govind Ballabh Pant	March 1955	Feb. 1961
5. Hafiz Mohammad Ibrahim	Feb. 1961	Aug. 1963
6. Shri Yashwantrao Balwantrao Chavan	Aug. 1963	Dec. 1963
7. Shri Jai Sukh Lal Hathi	Feb. 1964	March 1964
8. Shri M.C. Chagla	March 1964	Nov. 1967
9. Shri Jai Sukh Lal Hathi	Nov. 1967	Nov. 1969
10. Shri Kodradas Kalidas Shah	Nov. 1969	May 1971
11. Shri Uma Shankar Dikshit	May 1971	Dec. 1975
12. Shri Kamalapati Tripathi	Dec. 1975	March 1977
13. Shri Lal K. Advani	March 1977	Aug. 1979
14. Shri K.C. Pant	Aug. 1979	Jan. 1980
15. Shri Pranab Mukherjee	Jan. 1980	July 1981

Name	From	To
	Aug. 1981	Dec. 1984
16. Shri Vishwanath Pratap Singh	Dec. 1984	April 1987
17. Shri N.D. Tiwari	April 1987	June 1988
18. Shri P. Shiv Shanker	July 1988	Dec. 1989
19. Shri M.S. Gurupadaswamy	Dec. 1989	Nov. 1990
20. Shri Yashwant Sinha	Dec. 1990	June 1991
21. Shri S.B. Chavan	July 1991	April 1996
22. Shri Sikander Bakht	20th May 1996	31st May 1996
23. Shri Inder Kumar Gujral	June 1996	Nov. 1996
24. Shri H.D. Deve Gowda	Nov. 1996	April 1997
25. Shri Inder Kumar Gujral	April 1997	March 1998
26. Shri Sikander Bakht	March 1998	Oct. 1999
27. Shri Jaswant Singh	Oct. 1999	May 2004
	June 2004	May, 2009
28. Dr. Manmohan Singh	May 2009	May, 2014
29. Shri Arun Jaitley	June, 2014	<i>April, 2018</i>
	April, 2018	May, 2019
30. Shri Thaawarchand Gehlot	June, 2019	July, 2021
31. Shri Piyush Goyal	July, 2021	till date

Leader of the Opposition (LOP)

The office of the Leader of the Opposition in a legislature is of immense public importance. Its importance emanates from the central role accorded to the Opposition in a parliamentary democracy. The role of Leader of the Opposition is in fact very challenging as he has to ensure accountability of the government to the legislature and to the public and present alternatives to government proposals/policies. He has to be a very skilled parliamentarian to fulfill this special responsibility to Parliament and to the nation.

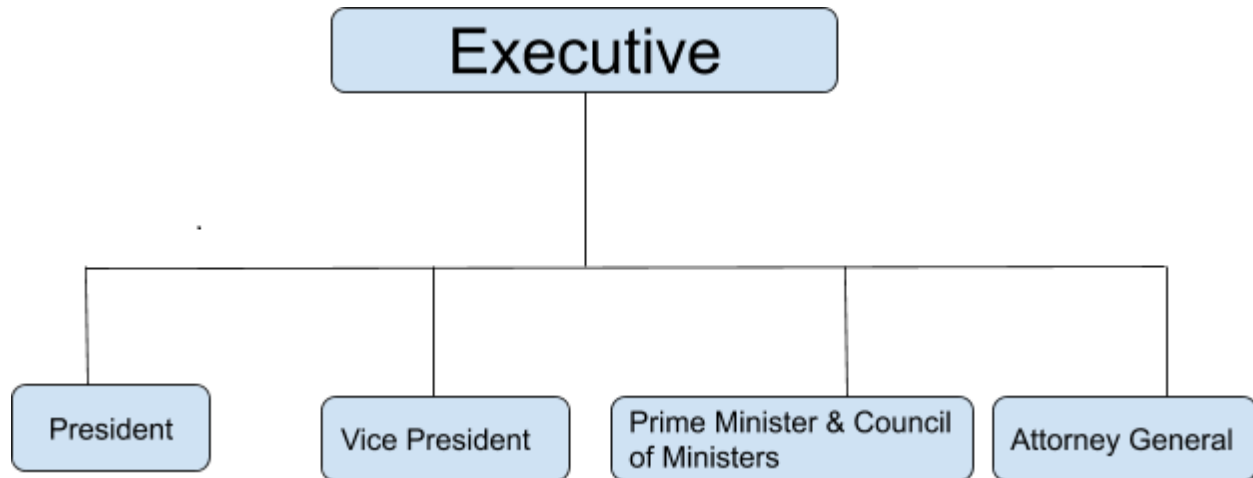
There was no Leader of the Opposition in Rajya Sabha in real sense of the term till the year 1969 till then the practice was to call the Leader of the party in Opposition having the largest number of the members as the Leader of the Opposition, without according him any formal recognition, status or privilege. The office of Leader of the Opposition was given official recognition through the Salary and Allowances of Leaders of the Opposition in Parliament Act, 1977. According to the said Act, the Leader of the Opposition should satisfy three conditions, namely, (i) he should be a member of the House (ii) the Leader in Rajya Sabha of the party in opposition to the Government having the greatest numerical strength and (iii) be recognized as such by the Chairman, Rajya Sabha.

The following members have been the Leaders of the Opposition in the Rajya Sabha:

	Name	From	To
1	Shri Shyam Nandan Mishra	December 1969	March 1971
2	Shri M. S. Gurupadaswamy	March 1971	April 1972
3	Shri Kamlapati Tripathi	30.3.1977	15.2.1978
4	Shri Bhola Paswan Shastri	24.2.1978	23.3.1978
5	Shri Kamlapati Tripathi	23.3.1978 18.4.1978	2.4.1978 8.1.1980
6	Shri Lal K. Advani	21.1.1980	7.4.1980
7	Shri P. Shiv Shanker	18.12.1989	2.1.1991
8	Shri M. S. Gurupadaswamy	28.6.1991	21.7.1991
9	Shri S. Jaipal Reddy	22.7.1991	29.6.1992
10	Shri Sikander Bakht	7.7.1992 10.4.1996	10.4.1996 23.5.1996
11	Shri S. B. Chavan	23.5.1996	1.6.1996
12	Shri Sikander Bakht	1.6.1996	19.3.1998
13	Dr. Manmohan Singh	21.3.1998	21.5.2004
14	Shri Jaswant Singh	3.6.2004 5.7.2004	4.7.2004 16.5.2009
15	Shri Arun Jaitley	3.6.2009	26.5.2014
16	Shri Ghulam Nabi Azad	8.6.2014 16.2.2015	10.02.2015 15.2.2021
17.	Shri Mallikarjun Kharge	16.2.2021	till date

Rajya Sabha plays a very constructive and effective role in our polity. Its performance in the legislative field and in influencing the Government policies has been quite significant. Rajya Sabha has, in fact, worked in a spirit of cooperation with Lok Sabha as per the Constitutional mandate. Rajya Sabha has prevented hasty legislation and has served as dignified chamber representing the federal principle. As a federal chamber, it has worked for the unity and integrity of the nation and has reinforced the faith of the people in parliamentary democracy.

THE UNION EXECUTIVE [PART V, ARTICLES 52-72]



THE PRESIDENT

Article 52 provides that there shall be a President of India.

- The president is the head of Indian state. He is first citizen of India

Executive power of union article 53

- Article 53 provides that 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 the constitution.
- The president shall be **supreme commander of Defence forces in India**.

Election of president article 54

- Article 54 provides that president shall be elected by the members of electoral college consisting of:
 - A. Elected members of both houses of parliament and
 - B. Elected members of Legislative assemblies of state
- State includes the national capital territory of **Delhi** and union territory of **Pondicherry**. It means that elected members of Legislative assemblies of NCT of

Delhi and union territory of Pondicherry shall also be eligible to vote in the election of president.

- **Member who do not participate in election of president: it is to be noted that**

1. nominated members of both the houses of parliament; and
2. nominated members of state legislative assembly; and
3. members both elected and nominated of state legislative council[in case of bicameral Legislature] and
4. Nominated members of legislative assemblies of Delhi and Puducherry do not participate in the election of president.

- **Article 55**

- Provides that there shall be uniformity in the scale of Representation of different states as well as parity between the state as whole and union at the election of the president.

- the president election is held in accordance with the system of proportional representation by the means of Single Transferable Vote and the voting is by secret ballot[article 55(3)]

- **Term, Resignation And Re Election [Article 56]**

- Provides that president shall hold office for the term of five years from the date on which he enters upon his office.
- the president may resign by addressing his resignation to the vice president
- The president may for violation of constitution be removed from office by impeachment in the manner provided in article 61.
- The president shall not withstanding the expiration of his term, continue to hold the office until his successor enters upon his office.
- Resignation address to vice president shall be communicated by him to the speaker of the house of people.

- **Resignation**

- **President —————→ Vice President —————→ Speaker**

- **Article 57** provides that the person who holds or has held the office of president shall subject to the other provisions of the Constitution be eligible for re-election to that office.

Qualification for the election of president [article 58]

- **Article 58** provides that following shall be the qualification for election of president.
 1. He should be a citizen of India.
 2. He should have completed 35 years of age.
 3. He should be qualified for election as a member of Lok Sabha.
 4. He should not hold any office of profit under the union government or any State government or any local authority or any other public authority.
- A sitting president or vice president of the union, the governor of any state and a Minister of the union or any state is not deemed to hold any office of profit and hence qualified as presidential candidate.

Conditions of president's office [article 59]

- Article 59 provides that the president shall not be a member of either the House of Parliament or of the House of Legislature of any state.
- If a member of either House of Parliament or of house of the Legislature of any state be elected president, he shall be deemed to have vacated his office in that house on the date on which he enters upon his office as a president.
- The president shall not hold any other office of profit.
- The president shall be entitled without payment of rent to the use of his official residence and shall be also entitled to search emoluments, Allowances and privileges as maybe determined by the Parliament by law.
- The emoluments and allowances of president shall not be diminished during his term of office.

Oath or affirmation by president [article 60]

- Article 60 provides that before entering upon his office, the president has to make and subscribe to an oath or affirmation. In his oath the president swears:
 1. To faithfully execute the office.

2. To preserve, protect and Defend the constitution and law; and
 3. To devote himself to the service and well-being of the people of India.
- The Oath of the office of president is administered by Chief Justice of India and in his absence, the senior most judge of Supreme Court available.
 - Any other person acting as a president or discharging the functions of the president also undertake the similar oath or affirmation.

Impeachment of the president [article 61]

- Article 61 provides the procedure for impeachment of president.
- Grounds: president is impeached on the ground of violation of constitution. The constitution does not define the meaning of phrase 'violation of the constitution'.
- The impeachment charges can be initiated by either House of the Parliament.
- 14 days prior notice
- These charges should be signed by one fourth member of the house (that framed the charges).
- The president has the right to appear and to be represented at such investigation.
- If the other house also sustains the charges and passes the impeachment resolution by a majority of two third and total memberships, then the president stands removed from his office from the date on which the resolution is so passed.
- in context of impeachment, two things should be noted:-
 1. The nominated members Of either House of Parliament can participate in impeachment of the president though they do not participate in his election;
 2. The elected member of legislative assemblies of the states and union territories of Delhi and Puducherry do not participate in the impeachment of president do they participate in his election.
- Till date no president has been impeached.

Vacancy, time for holding election etc [article 62]

- Article 62 provides that an election to fill a vacancy caused by expiration of the term of office of president shall be completed before the expiration of the term of the president.
- vacancy in president's office
 1. On expiry of his tenure of 5 year
 2. by his resignation
 3. on his removal by the process of impeachment
 4. by his death
 5. Otherwise [when he becomes disqualified to hold the office or when his election is declared void].
- In the case of any delay in conducting the elections of new president by any reason, the outgoing president continues to hold office the on his term of 5 years until his successor assumes the charge. It is to be noted that in this situation the Vice-President does not get an opportunity to act as a president.
- If the office false vacant by resignation, removal, death or otherwise, then the election to fill the vacancy should be held within six months from the date of occurrence of such a vacancy.
- The newly elected president remains an office for a full term of five years from the date he assume the charge of his office.

Situations where vice president act as a president article 65

- When a vacancy occurs in the office of president due to his resignation, removal, death or otherwise, the vice president acts as the President until our new President is elected article 65(1).
- When the sitting president is unable to discharge is function due to absence, illness or any other cause the vice president discharges his functions until the president resumes his office article 65(2)
- in the case of office of vice president is vacant, the Chief Justice of India for if his office is also vacant the senior most judge of Supreme Court available acts as the President of discharges the functions of president.

Powers of president

1. Executive Power
2. Legislative Power
3. Financial Powers
4. Judicial Power
5. Military Powers
6. Diplomatic Powers

- **Executive powers:**

- Powers of the union Vest in the president. few important executive powers and functions of President are:
 - i. All executive actions of Government of India are formally taken in the name of president [article 77]
 - ii. Appoints the Prime Minister and other ministers. they hold office during his pleasure [article 75 (1)]
 - iii. He appoints office bearers of constitutional post like the governor of state, Attorney General of India, Comptroller and Auditor General of India, the election commissioner and other Election Commissioner, the Chairman and members of Union Public Service Commission the Chairman and member of finance commission etc.
 - iv. he can appoint commissions to investigate into conditions of SC ST and other backward classes[article 338, 338 a 338 b]
 - v. He can appoint the Interstate Council to promote Centre state and interested Corporation.[263]
 - vi. He directly administers union territories through administrator appointed by him.[239]
 - vii. He can declare any area as scheduled area and has powers with respect to administration of Scheduled Areas and tribal areas.[244(1) V SCHEDULE]

- **Legislative powers**

Following are the few important legislative powers of the president:-

1. He can summon or prorogue the Parliament and dissolve the Lok Sabha. article 85 [1]
2. He can summon a joint sitting of both the houses of parliament [article 108]
3. He can appoint any member of Lok Sabha to preside over its proceedings when the offices of both the speaker and deputy speaker fall vacant. Similarly he can also appoint any member of Rajya Sabha to preside over its proceedings when the offices of both the Chairman and Deputy Chairman fall vacant.
4. nominates 12 members of Rajya Sabha from person having special knowledge or practical experience in Literature, science, art and social service [article 80(3)]
5. He can nominate two members of Lok Sabha from Anglo Indian community **article 331**. Repealed by 104th constitutional amendment 2019.
6. He decides on question as to disqualification of members of parliament in consultation with election commission (article 103).
7. when a bill is sent to the president after it has been passed by the parliament he can Give his assent to the bill or
 - a. withhold his assent to the bill or
 - b. Return the bill [if it is not a money bill] for reconsideration of the Parliament.
 - c. if the bill is passed Again by the parliament, with or without amendment, the president has to give his assent to the bill [article 111]
8. He can promulgate Ordinance is when Parliament is not in session

Military Powers

Article 53 also states that the President shall be the Supreme Commander of all the Armed Forces of the Union of India. It also states that no specific provisions can reduce the scope of this general principle.

As the Supreme Commander of the Armed Forces of the Union, President has powers regarding:

- Appointment of all the officers, including the appointment of the chiefs of the forces;
- Wars are waged in the name of the President;
- Peace is concluded in the name of the President.

Diplomatic Powers

The President forms the face of Indian diplomacy and helps the nation to maintain cordial relationships with countries across the globe.

- All the Ambassadors and high commissioners in foreign nations are his representatives;
- He receives the credentials of the Diplomatic representatives of other nations;
- Prior to ratification by Parliament, the treaties and agreements with other nations are negotiated by the President.

Ordinance making power of the President: Article 123

Article 123 talks about the presidential powers to promulgate ordinances. An ordinance can be promulgated if:

- neither of the House of the Parliament is in session;
- And the President feels a need for immediate action.

The ordinance which is promulgated by the President will have the same effect as that of an act or law of the Parliament.

The essential conditions to be met by an ordinance are:

- It shall be presented before both the Houses of Parliament for passing when it comes to the session;

- The ordinance shall cease to **operate six weeks** after the date of reassembling of the parliament;
- The ordinance may also expire if the resolutions disapproving it are passed by both the Houses of Parliament;
- Therefore every Ordinance issued by the president during the Recess of Parliament must be laid before both the houses of Parliament when it reassembles. if the ordinance is approved by both the houses it becomes an act and if Parliament takes no action at all, all the ordinance ceases to operate on expiry of 6 Weeks from reassembly of parliament.
- It can be withdrawn at any time by the President;
- **The ordinance must be in consonance to the Constitution of India else it shall be declared void.**
- It is to be noted an ordinance made when both the houses are in session is void. Thus the power of the president to legislate by Ordinance is not a parallel power of legislation.
- **Grounds of promulgation** he can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action.
- In **RC Cooper vs. Union of India 1970** the supreme court held that the president's satisfaction can be questioned in a court on the ground of malafide.
- In **A K Roy versus Union of India** the supreme court held that Ordinance would be subject to the test of vagueness, arbitrariness, reasonableness and Public Interest.
- Scope of Ordinance making power is coextensive with that of Legislative powers of parliament. It means that an ordinance can be issued only on those subjects on which Parliament can make laws.
- The ordinance making power of the president is not a discretionary power, and he can promulgate or withdraw an ordinance only on the advice of Council of Ministers headed by the Prime Minister.
- In **D C Wadhwa vs. State of Bihar 1987** the Supreme Court ruled that successive Re promulgation of Ordinance without any attempt to get the Bill passed by the Assembly would amount to fraud on constitution and the ordinance so promulgated is liable to be struck down. it held that the

exceptional power of law making through Ordinance cannot be used as a substitute for legislative powers of state legislative assembly.

Financial Roles

- Money bills can be introduced in the Parliament only with the prior recommendation of president [article 109 and 110]
- He Causes to be laid before the Parliament the annual financial statement that is the union budget [article 112]
- The Contingency Funds of India are at the disposal of the President. He can make advances out of the contingency fund of India to meet any unforeseen expenditure. [ART 267]
- He also causes the presentation of audits in the Parliament. [151]
- He constitutes a finance commission after every five years to recommend the distribution of revenues between the centre and the states [article 280]

Judicial powers

The President enjoys the following privileges as his judicial powers:

- He can rectify the judicial errors;
- He exercises the power of grant of pardons and reprieves of punishments; or suspend, remit or commute sentences of any person convicted of any offence.
- President can seek the advice of Supreme Courts on: article 143
 1. Legal matters,
 2. Constitutional matter,
 3. Matters of national importance.

So he can seek advice from the Supreme Court on any question of law or fact. However the advice tendered by the Supreme Court is not binding on the president.

Pardoning power: Article 72

Article 72 provides for the provisions relating to the pardoning powers of the President. President can grant pardons, respites, reprieves, and remissions of punishments or

remit suspend or commute the sentence given to a person by the court in the following cases:

- When the sentence is granted through a court-martial;
- When the sentence or punishment is given for offense of violation of any law relating to matters that fall in the ambit of Union's executive powers;
- When a death sentence is passed by a court.
- **Pardon:** it removes both the sentence and the conviction and completely absolved the Convict from all sentences punishments and disqualification
- **Commutation:** it denotes the substitution of one form of punishment for a lighter form. For example a death sentence may be commuted to rigorous imprisonment.
- **Remission:** it applies reducing the period of sentence without changing its character. for example sentence of rigorous imprisonment for two years may be limited to a rigorous imprisonment for one year
- **Respite:** it denotes awarding a lesser sentence in place of one originally awarded due to some special facts such as physical disability of a Convict for pregnancy of a women offender.
- **Reprieve:** it implies a stay of execution of sentence [especially that of death] for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the president.

In **Maru Ram v Union of India**, Supreme Court held that pardoning power under Article 72 is to be exercised by the President, on the advice of the Central Government and not on his own will and that the advice is binding on the head of the Republic.

Pardoning Power: subject to judicial review

In **Kuljit Singh Alias Ranga Vs Lt. Governor of Delhi & Ors** In this case, death sentence of one of the appellants was confirmed by the Supreme Court. His mercy petition was also rejected by the President. Then, the appellant filed a writ petition in the Supreme Court challenging the discretion of the President to grant pardon on the ground that no reasons were given for rejection of his mercy petition. The court dismissed the petition and observed that the term “pardon” itself signifies that it is entirely a discretionary remedy and grant or rejection of it need not to be reasoned.

In **Kehar Singh vs. Union of India and Anr 1989**: the Supreme Court held that while exercising the pardoning power of president can scrutinize the evidence on record and can come to a different conclusion. In doing so the president does not modify or supersede the judicial records. The petition for Mercy has no right to an oral hearing by the president.

In **Epuru Sudhakar vs. government of Andhra Pradesh 2006** the Supreme Court held that pardoning power of president under article 72 and of governor under article 161 are subject to judicial review. Pardoning cannot be exercised on the basis of caste and political reasons.

Articles 72 and 161 of Constitution

Article 161 grants the power to the Governor of the state to suspend, remit or commute sentences of the offenders in certain cases relating to a violation of provisions or laws to which the executive power of the state extends.

<u>Article 72</u>	<u>Article 161</u>
Grants power to the President of India.	Grants powers to the Governor of state.
The power is wider in scope.	The scope of powers is narrower.
The powers of pardon extend to cases of Court Martial as well.	Power cannot interfere with cases of Court Martial.
Allows the President to grant pardon in cases of death sentence.	Governor cannot grant pardon in cases of death sentence.

Emergency Powers

Article 352 of the Constitution of India grants President, three kinds of emergency powers as well:

- When a National Emergency is declared in case of external aggression or internal armed rebellion, the President holds the powers to declare a state of

emergency. Thus the President's rule gets established in the country. However, the prime minister and the Council of Ministers must recommend such an emergency;

- When there exists a constitutional or law and order breakdown situation in a state, the President may declare a state of emergency in such cases. The state would then come under Governor's rule;
- Whenever the financial stability of the nation or any country is seriously affected, the President has the right to intervene and direct the state to check and maintain public expenditure.

Privileges of the President: Article 361

Under Article 361, the President is protected from being answerable to any court for:

- For exercise and performance of his powers and duties of his office;
- For doing any act or claimed of doing any act in the exercise of those powers and duties;

The conduct of the President can be reviewed only if either House of Parliament designates or appoints any court tribunal or any other body to investigate the charges under Article 61.

But it bars no person from bringing any valid proceeding against the Governor or Government of India.

This Article immunes the President against all types of **criminal proceedings** during the term of his office.

No issuance of any order relating to the arrest and imprisonment of the President can be made by any court during his term of office.

A civil proceeding can be constituted against the president during his term of office if:

- The act is done or alleged to have been done, whether before or entering the office of the President, by him was in his personal capacity;
- Two months prior notice is provided, to the president or was sent to his office, stating:
 1. The nature of the proceeding;
 2. The cause of action;

3. The details of the other party including name, description, and place of residence;
4. The relief claimed by the other party;

Position of the President [art. 74(1)]

The position of the President has changed, with respect to his discretion to use his power, has changed since the inception of the Constitution. The two major changes came through the 42nd and 44th Amendment Act of the Constitution.

Prior to the 42nd Amendment Act of 1976

Prior to the 42nd amendment to the Constitution, the President was free to make decisions based on his wisdom. He may also consider the Council of Ministers for their advice on the action. As the Constitution at that time talks about constituting a Council of Ministers with a Prime Minister, as its head, to aid and advise the President in carrying out his duties.

After the 42nd Amendment Act, 1976

Later, the Constitution was amended to add the phrase that the President shall act on the aid and advice of the council of ministers. But the provision was still ambiguous whether the advice given by the Council of Ministers is binding on the president or not.

44th Amendment Act, 1978

This amendment was brought to swipe off the ambiguity created by the 42nd amendment. This provision said that:

- President can send back the advice to the Council of Ministers for reconsideration once;
- If the same advice is sent again without modifications by the Council then the President is bound to accept it.