
Unit–11: Executive

Structure

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11.0 OBJECTIVES

As in all parliamentary systems, India has both a nominal and real executive. This unit examines the office of the President of India and the Council of Ministers headed by the Prime Minister. After going through this unit you should be able to:

- Describe the powers the President of India.
- Explain the procedure for the election of the President of India.
- Describe the composition and functions of the Council of Ministers
- Identify the sources of power and influence of the Prime Minister
- Discuss the position of the President and Prime Minister in the Indian political system.

11.1 INTRODUCTION

The executive power of the government of India is vested in the President of India, who is both the formal head of the state and the symbol of the nation. The Constitution of India, however, bestows authority and dignity to the office of the President without providing adequate powers to rule. Instead, the President performs essentially a ceremonial role. The Prime Minister exercises real executive power. While the President is the head of the state, the Prime Minister is the head of the government. The President carries out the actual functions of the government only with the aid and advice of the Prime Minister. As one political scientist observed, for a President to use the executive powers formally vested in the office would be to misuse and abuse the trust reposed in the highest dignitary in the land. How are the incumbents of these two important offices of the executive elected or selected? What is the position of the President and the Prime Minister in the Indian political system?

states assemblies by the total number of elected members of both the houses of the Parliament.

Voting is by single transferable vote, with electors casting first and second preferences. A candidate who receives an absolute majority of votes cast by the Electoral College is declared the winner. In case no candidate secures absolute majority in the first counting, the second preference votes of the lowest polling candidate are transferred to the other remaining candidates until such time as one candidate crosses the threshold of 50 percent of the votes cast.

This method of election was intended to make the Presidential election broad based to achieve political balance between the Centre and the states. Consequently, the President represents not only the Union but also the States. This is in keeping with the federal character of the Indian polity.

11.2. 3 Term of Office and Removal of the President

The term of the office of the President of India is five years. His tenure commences from the date on which he assumes office after taking an oath administered by the Chief Justice of India. Though the constitution is silent, the President can seek a second term. For instance, Rajendra Prasad was elected as the President twice, though Jawaharlal Nehru, the Prime Minister was not in favour of Rajendra Prasad's second term. But the latter was supported by a large number of Congress leaders

The President remains in office until his successor enters office. However, if the President wishes to resign, he could send his resignation letter to the Vice President. If the post of the President falls vacant, the Vice-President takes over the charge. But the election for the post of President must be conducted within six months from the date of occurrence of vacancy.

Articles 56 and 61 deal with the procedure for impeaching the President of India. In this regard, the constitution lays down 'violation of the Constitution' as the ground for removal. The process of impeachment can be initiated in either house of parliament and must be passed by not less than two-thirds of the total membership of the house in which it has been moved. If the other house investigates the charge and two-thirds majority of that house find him guilty, then the President stands impeached from the office from the date of passing of the resolution. Thus, the procedure of removal of the President is difficult and has been made so to prevent misuse of this power by the Parliament. Till date, no President has been impeached.

11. 3 POWERS OF THE PRESIDENT

the same is passed by both the houses with or without modifications and returned to the President, the latter is bound to give his assent.

When the Parliament is not in session, the President can promulgate ordinances in public interest. These ordinances have the same force and effect as the laws passed by the Parliament. However, they have to be placed before the Parliament within a period of six weeks from the day of the reassembling of Parliament. Without the Parliament's approval, the ordinance will become invalid.

Article 254 empower the President to remove inconsistencies between laws passed by the Parliament and state Legislatures and the subjects included in the Concurrent list. Another legislative function President having a bearing on states is that the Governor of a state can reserve certain bills passed by the state Legislatures for the consideration of the President.

The judicial powers of the President of India include the appointment of the justices of the Supreme Court and High Courts, and the power to grant pardon, reprieve, suspension, remission or commutation of punishment or sentence of court. These powers of granting pardon are given to the President for removing the extreme rigidity in the criminal laws and for protecting the persons on humanitarian considerations. The President also has the right to seek the advice of the Supreme Court on some important constitutional, legal and diplomatic matters. In 1977, the President sought the advice of the Supreme Court for creating Special Courts to try the emergency excesses.

11.3 1 Emergency Power

With the intention of safeguarding the sovereignty, independence and integrity of Union of India, the constitution bestows the President of India with emergency powers. The President is empowered to declare three types of emergencies, namely, a) national emergency arising out of war, external aggression or armed rebellion, b) emergency arising due to the break down of the constitutional machinery in the States and c) financial emergency.

The President can make a proclamation of national emergency at any time if he is satisfied that the security of Indian any part of the country is threatened by war, external aggression or armed rebellion. This proclamation must be submitted to the Parliament for its consideration and approval. It must be accepted within one month by both the houses of Parliament by two-third of the members present and voting. If the Parliament fails to approve the proclamation bill, it ceases to operate. If approved, it can continue for a period of six months. However, it can continue for any length of time if the President

Note: Use the space below for your answer.

Check your answer with the model answer given at the end of this unit.

1) Explain within three sentences how the President of Indian Republic is elected.

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2) What are the legislative powers of the President of India?

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3) What are the effects of the emergency powers of the President?

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11.4 THE PRIME MINISTER

The real executive power under the constitution vests with the Union Council of Ministers with the Prime Minister at its head. The President is obliged to act according to the advice of the Council of Ministers which is responsible in the real sense of the term, not to the President but to the Lok Sabha.

As in Britain, the Prime Minister is usually a member of the lower house of Parliament. When Mrs Indira Gandhi was selected as a Prime Minister in 1966, she was a member of the Rajya Sabha. By getting elected to the Lok Sabha, she strengthened the convention of the Prime Minister being a member of the lower house.

The Prime Minister is appointed by the President. However, the President has hardly any choice in selecting the Prime Minister. He can only invite the leader of the party in majority in the Lok Sabha, or a person who is in a position to own the confidence of the majority in the house. The Prime Minister holds office during the pleasure of the President. The 'pleasure' of

administrative organisation committee and parliamentary and legal affairs committee. Ad-hoc Committees are constituted from time to time.

Next in rank are the **ministers of state** who hold independent charge of individual ministries and perform the same functions and exercise the same powers as a cabinet minister. The only difference between such a minister of state and a cabinet minister is that he/she is not a member of the cabinet, but attends cabinet meetings only when specially invited to do so in connection with the subject that he/she is given charge of. There are other ministers of state who work directly under cabinet ministers.

At the bottom of the hierarchy are the **deputy-ministers** who do not have specific administrative responsibilities. But their duties include: i) Answering of questions in parliament on behalf of the ministers concerned and helping to pilot bills, ii) Explaining policies and programmes to the general public and maintaining liaison with members of parliament, political parties and the press, and iii) Undertaking special study or investigation of particular problems, which may be assigned to them by particular minister.

From the above it is clear that the Cabinet is the nucleus of the Council of Ministers. Precisely because of this reason Walter Bagehot calls the Cabinet 'the greatest committee of the legislature'. It is the 'connecting link between the executive and legislative power'.

11.4.2 Collective Responsibility

The Council of Ministers function on the principle of collective responsibility. Under this principle, all ministers are equally responsible for each and every act of government. That is, under collective leadership each minister accepts and agrees to share responsibility for all decisions of the cabinet. Doubts and disagreements are confined to the privacy of the cabinet room. Once a decision has been taken, it has to be loyally supported and considered as the decisions of the whole government. If any member of the Council of Ministers is unable to support government policy in the Parliament or in the country at large, then that member is morally bound to resign from the Council of Ministers.

Even if the Council of Ministers is formed as a result of a coalition of various political parties, a minimum common programme becomes essential for maintaining the solidarity of the ministry, and the various political parties forming the coalition government have to stand behind that programme. Unless they do so the Cabinet cannot survive. Unity within Council of Ministers is not only essential for its very survival, but is also necessary for its

I.K. Gujral governments, the ministers were selected not by the Prime Minister but by the leaders of the 14 regional parties who formed the United Front.

The Prime Minister also derives power and influence from the fact that he/she is the leader of the majority party and sometimes even the leader of the parliamentary wing of the party. As a leader of the Lok Sabha, the Prime Minister has enormous control over parliamentary activities. The Prime Minister advises the President on summoning and prorogation of the sessions of Parliament. The Speaker consults the Prime Minister in finalising the agenda of the Lok Sabha. With the Council of Ministers sponsoring majority of the bills presented to the Parliament and with the Prime Ministers deciding on the strategies for presenting the bills before the Parliament, the Prime Minister's influence over the legislature gets reinforced. Moreover, the Prime Minister enjoys enormous legislative power in the form of recommending Ordinances to the President for promulgation when the Parliament is not in session. But the most important power of the Prime Minister with regard to Parliament is to recommend dissolution of Lok Sabha. The President has to accept the advice of the Prime Minister who is backed by the majority of the Lok Sabha. This is the power by which the Prime Minister controls even the opposition.

As the head of the government, the Prime Minister enjoys the power of patronage. All the major appointments of the Central government are made by the Prime Minister in the name of the President, which includes justices and judges of the Supreme Court and High Court, the Attorney-General, the Chiefs of the army, navy and air force, Governors, ambassadors and High Commissioners, the Chief and members of the Election Commission, etc. Further, the Prime Minister's control over the administration, including the intelligence agencies and other administrative wings of the government enhances his/her influence over other members of parliament and administration.

Apart from these structural factors, there are other factors that increase the power and authority of the Prime Minister. To begin with, in the post-Second World War period, the rise of executive has been a universal phenomenon, irrespective of the political system. Moreover, the general elections in most democratic systems have virtually become an election of the leader, and it is being interpreted as a popular mandate. Sometimes a leader derives strength from his/her charisma. Leaders like Jawaharlal Nehru and

President is a constitutional head performing a ceremonial role. However, there have been occasions when the President had differences of opinion with the Prime Minister on the policies of the government.

The first President of India, Rajendra Prasad, tried to break from the British convention that the head of the state is always bound by the advice of the Prime Minister and the Cabinet. For instance, he was unhappy with the Nehru government's attempt to reform Hindu personal law. Again in 1959, he declined to give his assent to the state emergency in Kerala. In these cases, he was prevailed upon in the end to accept the convention even in Indian conditions. On one occasion (28 November 1960, address to the India Law Institute, New Delhi) he remarked "there is no provision in the Constitution which in so many words lays down that the President shall be bound to act in accordance with the advice of the Council of Ministers". A few days later Prime Minister Nehru replied at a Press Conference "the President has always acted as a constitutional head. We have modelled our constitution on the parliamentary system and not a presidential system, although we have copied or rather adopted many provisions of the US Constitution, because ours is federal one. Essentially, our constitution is based on the UK parliamentary model. That is the basic thing. In fact, it is stated that whenever it does not expressly say anything, we should follow the practice of the House of Commons in UK".

In the 1960s, the theory of Independent Presidency gained some ground. KM Munshi who developed the theory argued that there is no provision in the constitution of India which expressly lays down that the President is bound by the advice of the Council of Ministers. Further, the President is elected by the Parliament as well as state legislatures. As such he is expected to protect the interests of the states. He also takes the oath to defend, protect and preserve the constitution. In other words, he safeguards the provisions of the constitution from violation and encroachment from any quarters including the government. As if to prevent such ideas from gaining ground, the 42nd Amendment act was passed which stipulated that the President shall be bound by the advice of the Council of Ministers. Thus, ended all misgivings about Independent Presidency. However, the 44th Amendment act, passed during the Janata government, restored the earlier position. Further, it also stated that the President is empowered to ask the Council of Ministers to reconsider its advice on any matter.

