
UNIT 5 (B) EXECUTIVE

INTRODUCTION

A basic feature that characterizes the Parliamentary model is the presence of dual executives. The President of India is the constitutional head of the state whereas the Prime Minister (PM) and his/her Cabinet are the real executive. The PM and Council of Ministers are chosen from the majority party in the Parliament and are responsible to it for their policies and actions. They remain in office, as long as, they enjoy the confidence of the latter.

At the head of the central executive is the President of India. Article 53 of the Constitution formally vests in the President the executive powers of the Union, which are exercised by him/her either directly or through officers subordinate to him/her, in accordance with the Constitution. In practice, he/she is aided and advised by the Cabinet which is headed by the PM. Therefore, the executive at the centre consists of the President, the PM, and Cabinet.

In this Unit, we will discuss about political executive at the central level in detail. To begin with, is a discussion on President of India.

PRESIDENT

The President is a Constitutional head of the State in the sense that he/she represents the nation. All actions of the Government are carried out in his name but he is not the ultimate deciding, directing, or determining factor. Article 52 of the Indian Constitution states ‘there shall be a President of India,’ and, as per Article 53(1) in him/her shall be vested the executive powers of the Union, which are exercised by him/her either directly or through officers subordinate to him in accordance with the Constitution.’ In practice he/she is aided and advised by the Council of Ministers headed by the PM.

Election

The post of the President is the highest executive post in the country. The qualifications for the post are mentioned in Article 58 of the Constitution. The qualifications are that he/she should be:

- 1) A citizen of India
- 2) Above 35 year of age
- 3) Qualified for election to the lower house of the Parliament
- 4) Not holding any office of profit under the Union or State Governments.

The President is elected by indirect election, that is, by an Electoral College, in accordance with the system of proportional representation by means of a single transferable vote system. The Electoral College shall consist of elected members of both houses of Parliament, the elected members of the legislative assemblies of the states, and the elected members of the legislative assemblies of Union

Term of Office and Impeachment Procedure

The term of office is of five years from the date on, which he/she assumes the office. He/She is eligible for re-election to the post for only one time. The President may/ have to leave his/her office before completion of the five years term on two grounds:

- 1) By resignation in writing under his/her hand addressed to the Vice-President of India.
- 2) By the process of impeachment for violation of the Constitution.

An impeachment is a quasi-judicial procedure in Parliament. Either of the houses may refer a charge against the President of violation of the Constitution before the other house, which shall then either investigate the charge itself or cause the charge to be investigated. For the charges to be leveled, it is required that a resolution containing the proposal is moved after a 14 days' notice in writing signed by not less than $\frac{1}{4}$ of the total number of members of that House; and the resolution is then passed by a majority of not less than $\frac{2}{3}$ of the total membership of the House.

The President shall have a right to appear and be represented in such an investigation. If, as a result of the investigation, a resolution is passed by not less than $\frac{2}{3}$ of the total membership of the House (before, which the charge has been referred to) declaring that the charge has been sustained, such resolution shall have the effect of removing the President from his/her office with effect from the date on, which such resolution is passed.

Till a new President is elected, the Vice President will be incharge of the office of the President.

We will now discuss the powers of the President.

POWERS

The following are the powers of the President:

1) Executive powers

Executive power may be defined, as the power of carrying on the business of government or the administration of the affairs of the state, excepting functions, which are vested by the Constitution in any other authority.

The list of executive powers is given below:

- 1) All executive actions of the GoI are formally carried out in the President's name.
- 2) He/She Makes rules specifying the manner in, which the orders and other instruments made and executed in his name, shall be authenticated.
- 3) Appoints the PM and the other ministers. They all hold office at his/her pleasure.

- 4) Appoints the Attorney-General of India, Comptroller and Auditor-General of India, the Chief Election Commissioner and other Elections Commissioners, the Chairperson and members of the Union Public Service Commission, Governors states, and the Chairperson and members of Finance Commission. They all hold office at his/her pleasure.
- 5) Can seek any information from the PM on matters relating to the administration of affairs at the Union level.
- 6) Can appoint a commission to investigate into the conditions of SCs, STs, and OBCs.
- 7) Appoints inter-state councils to promote relations between the Centre and states and also inter-state.
- 8) Administers the union territories through administrators appointed by him/her.
- 9) Can declare any area, as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas.

2) Legislative Powers

The President of India enjoys the following legislative powers on the advice of the PM and Cabinet. The President.

- 1) Can summon or prorogue the Parliament and even dissolve the lower house. He/she can summon a joint sitting of both the houses of Parliament, to be presided over by the Speaker of the Lok Sabha.
- 2) Addresses the Parliament at the commencement of the first session after each general election and the first session of each year.
- 3) Can send messages to the houses of parliament with respect to a bill that is pending.
- 4) Can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both, the Speaker and the Deputy Speaker are vacant. Similarly, he/she can also appoint any member of the Rajya Sabha to preside over its proceedings when the offices of both, the Chairman and the Deputy Chairman are vacant.
- 5) Nominates 12 members to the Rajya Sabha from amongst the persons of eminence in fields of literature, science, art, and social service.
- 6) Nominates two members to the Lok Sabha from the Anglo-Indian community, if the community is not represented.
- 7) Decides on the disqualification of members of Parliament in consultation with the Election Commission.
- 8) Gives his/her prior recommendation or permission to introduce certain types of bills in the Parliament. These bills pertain to expenditure from the Consolidated Fund of India and alteration of boundaries of states

or creation of a new state.

- 9) When a bill is sent to the President, after it has been passed by the Parliament,
 - a) gives assent to the bill, or
 - b) withhold his/her assent to the bill, or
 - c) return the bill (if it is not a money bill) for reconsideration of the Parliament.

However, if the bill is passed again by the Parliament, with or without amendments, the President has to give his/her assent to the bill. It should be noted here that the President has no veto power in respect of a constitutional amendment bill. The 24th Amendment Act (1971) made it obligatory upon the President to give his/her assent to a constitutional amendment bill.

- 10) When a bill passed by a state legislature is reserved by the Governor for consideration of the President, the President can:
 - a) give his/her assent to the bill, or
 - b) withhold his/her assent to the bill,
 - c) direct the governor to return the bill (if it is not a money bill) for reconsideration of the state legislature. It should be noted here that it is not obligatory for the President to give his/her assent, even if the bill is again passed by the state legislature and sent again to him for his re-consideration. Thus, the President enjoys absolute veto power over state bills.
- 11) He/She can promulgate ordinances, when the Parliament is not in session. These ordinances must be approved by the Parliament within six weeks from its reassembly. H/She can also withdraw an ordinance at any time.
- 12) He/She calls for reports of the C&AG, UPSC, Finance Commission, and others to be laid before the houses of the Parliament.
- 13) He/She can make regulations for governance of the Union Territories.

3) Financial Powers

The financial powers are, as follows:

- 1) Money bills can be introduced in the Parliament only with his/her prior permission.
- 2) No demand for a grant can be made except on his/her recommendation.
- 3) He/She can make advances out of the Contingency Fund of India to meet any unforeseen expenditure.
- 4) He/She constitutes a Finance Commission in every five years to recommend the distribution of taxes between the Centre and states.

4) Judicial Powers

The judicial powers are given, as follows:

- 1) He/She can appoint the chief justice and the Judges of Supreme Court and High Courts.
- 3) He/She has the power to pardon, reprieve, respite, and remission of punishment; or suspend, remit, or commute¹ the sentence of any person, where the punishment or sentence is by a court martial

5) Emergency Powers

The President can declare three types of emergencies.

- 1) National Emergency (Article 352)
- 2) State Emergency (Article 356 & 365)
- 3) Financial Emergency (Article 360) -

• National Emergency

Under Article 352 the President can declare a national emergency on the basis of a written request by the Cabinet. The proclamation of emergency must be approved by the Parliament (both houses) within one month. If approved, the emergency shall continue for six months. It can also be extended for every six months with approval of the Parliament. A national emergency has been proclaimed three times so far-in 1962, 1971, and 1975.

The President acquires the following powers during a national emergency:

- 1) He/she can give directions to any state with regard to the manner in which its executive power has to be exercised.
- 2) He can modify the pattern of the distribution of financial resources between the Union and the states.
- 3) He can suspend the Fundamental Rights of citizens except the right to life and personal liberty (Article 21) and the right to protection in respect of conviction for offenses (Article 20). Moreover, the right to six freedoms (Article 19) can only be suspended in case of an external emergency (i.e. on the grounds of war or external aggression) and not in case of internal emergency owing to failure Constitution.

Parliament retains certain powers during a national emergency:

- 1) It can make laws on any subject mentioned in the state list. Such laws cannot continue beyond six months after the emergency is over.
- 2) It can extend the normal tenure (five years) of the Lok Sabha as well as State Legislative Assembly by one year. Such extensions cannot continue beyond six months after the emergency is over.

• State Emergency

¹ Pardon sets free a person from all punishment imposed on him by a court of law for some offence. Reprieve implies a stay of the execution of a sentence for a temporary period. Respite denotes awarding of a lesser sentence instead of the penalty otherwise prescribed by law. Remission implies reducing the amount of sentence without changing its character. Commutation denotes the substitution of one form of punishment for another form, which is of a lighter character.

If the President is not fully satisfied on the basis of a report of the Governor of a concerned state or from other sources that the governance in a state cannot be carried out according to the provisions of the Constitution, he can proclaim an emergency under Article 356. Such an emergency must be approved by the Parliament within a period of 2 months. By Article 365, if the state is not working, according to the direction of the Union government an emergency can be proclaimed. Such an emergency must be approved by the Parliament within a period of 2 months and can last up to maximum of three years via extensions after every 6 months period.

When the President's rule is imposed in a state, the President dismisses the state's council of ministers headed by the chief minister. The state governor, on behalf of the President, carries out the state administration activities with the help of chief secretary of the state or the advisors appointed for the purpose. When the state legislative assembly is dissolved or suspended, it is the Parliament that passes the state legislative bills and state budget. It needs to be mentioned here that the constitutional status, position, powers, and functions of the state's High Court are not affected by such a proclamation. In other words, the President cannot interfere in the jurisdiction of the state's High Court.

- **Financial Emergency**

Under Article 360 the President can proclaim financial emergency, if he is satisfied that the financial stability of the country or any part thereof is financially threatened. Such a proclamation must be approved by the Parliament within two months of its coming into force by a simple majority. The President can then give direction to the states to observe financial propriety. He/She can issue directions for reduction of salaries and allowances of all or any particular class serving under the state. This applies to levels serving in connection with the affairs of the union, including the judges of the Supreme Court and High Courts. He/She can require all money bills and other financial bills be reserved for his/her consideration.

This type of emergency has never ever been declared.

6) **Diplomatic Powers**

Diplomatic power is spoken, as identical with foreign or external affairs that bring the Union into a relation with a foreign country. International treaties and agreements are negotiated and concluded on behalf of the President. subject to Parliaments approval of the Parliament. He/She represents India in international forums and sends and receives diplomats like ambassadors and high commissioners.

7) **Military Powers**

He is the supreme commander of the defence forces of India. In this capacity, he appoints the chiefs of the army, navy, and air force. He can declare a war or conclude a peace treaty subject to Parliament's approval.

Now, we will take up with a discussion on the Prime Minister of India in the

PRIME MINISTER

The Indian Parliamentary democracy provides for a nominal and real political executive. These are the President and the PM respectively. The real executive is the PM and Council of Ministers. Articles 74, 75, and 78 broadly govern the relationship between the PM and President. The function of the PM, as per Article 74 is that of rendering aid and advice to the President. Article 75(1) of the Indian Constitution provides that PM shall be appointed by the President and other ministers shall be appointed by the President on the advice of the PM. Article 75(2) governs that ministers shall hold office at the pleasure of the President of India. Article 78 places an obligation on the PM to inform the President about all decisions relating to administration of affairs of the Union and also proposals pertaining to future legislations.

Roles

The PM enjoys power and influence, both in the executive and legislature. He/She is the key person in the government. The structure of the Cabinet is built around him/her. According to Gladstone (former PM of the UK) PM is the keystone of the Cabinet 'arch.' Ivor Jennings (British Lawyer) describes him/her as 'the sun around, which planets revolve'. According to Peter G. Richard 'Prime Minister is Primus Inter Pares first among equals, As per Ramsay Muir² "Cabinet is the steering wheel of the state and Prime Minister is the steersman (person)."

The PM, by virtue of being the leader of the majority party in the Lok Sabha, is the head of the Council of Ministers. He/She is also the leader in the Parliament. He/She serves, as a channel of communication between the President and the Council of the Ministers. He/She is a spokesperson of the country on all matters of foreign policy. Besides, he/she distributes the portfolios and can go in for a reshuffle of the same among ministers. He/She can ask a minister to resign.

In the following Section, we will take up a discussion of the Office of the PM of India, known, as Prime Minister's Office-PMO.

PRIME MINISTER'S OFFICE

The Prime Minister's office (PMO) provides secretarial assistance to the PM. It is headed by a Principal Secretary. Earlier known, as the PM's Secretariat when it came into existence on August 15, 1947, since 1977 it is known, as the PM's Office'. The Office was created with an aim to render all aid and assistance to the PM in performance of his/her duties.

Organization

The PMO is headed by a Principal Secretary to the PM. The organizational hierarchy of the office is, as follows:

² John Ramsay Bryce Muir was a British historian, Liberal Party politician and thinker, who made significant contribution to the development of liberal political philosophy in the 1920s and 1930s through his work on domestic industrial policy and promotion of international policy of interdependency.

- 1) Principal Secretary: He/She heads the hierarchy at the PMO and deals with all governmental files in the office. He/She also looks into the affairs of the various ministries that the PM may ask him/her to handle.
- 2) Additional Secretary: He/She looks after the personnel and policy matters of the ministries that the PM may ask him/her to look into.
- 3) Joint Secretary (I): He/She looks after Home Affairs, and Law and Justice.
- 4) Joint Secretary (II): He/She handles the administration of the PMO and the Ministries of Surface Transport, Communications, Railways, and Civil Aviation.
- 5) Joint Secretary (III): He/She looks after the Ministries of External Affairs, Defence, and Department of Atomic Energy.
- 6) Director (I): He/She is an Officer on Special Duty, who looks after rural development and civil supplies.
- 7) Director (II): He/She is incharge of Home Affairs.
- 8) Director (III): He/She performs jobs that are given by the PM.
- 9) Director (IV): He/She is assigned with the matters concerning the States of North-East.

This nature of job assigned to the officials is subject to the discretion of the PM.

Besides the above, there are functionaries, belonging to Class I, II, III, and IV Services.

Functions

Broadly, the jurisdiction of the PMO covers all such subjects and activities that have not been allocated to any of the departments. These pertain to:

- 1) Deal with all references pertaining to Rules of Business that come to the PM.
- 2) Help the PM in the discharge of his/her overall responsibilities, as the head of the government. Also, it maintains liaison with the Union ministries and state governments.
- 3) Deal with the matters relating to public relations of PMO.
- 4) Render assistance in assessment of cases that are submitted to the PM for action.
- 5) Handles the correspondence of the PM.

Increasing importance of PMO

The idea behind its creation was to process all proposals so as to leave the PM with enough time to concentrate on major policy decisions. In contemporary times, it has become a think tank of the PM. Major policies of the country like foreign policy, defence policy are worked out together with PMO and respective ministries. For instance, the formulation of foreign policy of the country is worked out together by both the Ministry of External Affairs and PM in consultation with his office.

When we discuss about the role of PMO, we can find that PMO has evolved to the present form owing to its working under different PMs. Under Nehru the size of the office was limited, so was its role. Under his tenure, there was a great reliance on the Ministries.

It was Nehru's successor PM Shastri, who took the first step towards establishment of a powerful Secretariat in the PMO. This led to a formidable influence of PMO in making decisions in future regimes that became a trend. Gradually, the PMO's Secretariat became an executive force. Much of the domestic and foreign policy started taking shape here and gradually it assumed lot of authority. Imposition of emergency in 1975-1977 ushered in concentration of more authority in the Office that all ministries, departments, and other executive agencies were to adhere to its strictures. PMO's Secretariat became a national policy formulation body and the Cabinet Secretariat its enforcement arm.

During the Janata Party regime, the existing concentration of power was diffused and it started performing functions that were secretarial in nature. The Secretariat was divested of its various policy making cells. However during the UPA regime, policy making power again started getting reinstalled in the Secretariat and the same continues today.

Hence, PMO seems like a 'mini Cabinet,' as it attempts to supplant the Cabinet in all major policy making functions.

COUNCIL OF MINISTERS

The Council of Ministers includes the Cabinet ministers, state ministers, and deputy ministers with PM, as its head. Sub-clause 1A has been inserted to Article 75, which provides the total number of ministers along with the Prime Minister shall not exceed 15% of the total number of the members of the House of People w.e.f. 1.1.2004.

It is the prerogative of the PM that governs the selection of ministers. The Constitution lays down that a person joining the Council of Ministers must be a Member of Parliament. The PM can take in a person, who is not a Member of Parliament, but in such cases, the person has to contest and win election to a parliamentary seat within six months of assumption of office.

The Prime Minister takes note of several factors when selecting the ministers, such as: a) geographical representation, b) political base of a member, c) representation of a social mix of the electorate, d) individual capacity and capability, e) reward for loyalty, f) representation of backward classes, g) adequate representation to states in terms of population, and (h) a member's earlier performance, as a minister, if he had been one.

The PM is at the apex, followed by Cabinet rank minister, who wields an independent charge of a ministry. Ministers of State usually are accorded second rank within the portfolios assigned to the Cabinet Ministers. Sometimes, rather than having a minister of Cabinet rank, the PM may assign an independent charge of a portfolio to a minister of State. The Deputy Ministers are within the portfolio in the third rank and may look after various functions³. Parliamentary secretaries are also there to render aid and assistance to the Council of Ministers.

The entire Council of Minister work according to the principle of collective responsibility. They all swim and sink together. If a no-confidence motion gets passed the entire government has to resign.

Roles of Cabinet

The Cabinet performs the following roles:

- **As Prime Policy Maker**

The Cabinet is the prime policy making body of the government. It looks into the areas that require formulation of new policies or incremental modifications to an existing policy/programme. The initiative in this regard is taken by the minister in charge of the department or ministry. The provisions in the proposed policy or a programme are reviewed in detail by the department/ministry concerned and once finalized it is placed before the Cabinet for approval.

- **As Prime Legislative Body**

It is an integral part of the legislative system. Although the Parliament is the supreme law making body of the nation, legislation is essentially the handiwork of the Cabinet. It is the Cabinet that gives final shape to all government bills. It prepares the legislative agenda at the very start of every parliamentary session and decides upon the bills to be put forth. The inaugural speech of the President is also prepared by Cabinet. The President summons, prorogues, and dissolves the House on the advice of the Cabinet headed by the PM. All ordinances issued by the President are also prepared by the Cabinet. Thus, we see that Cabinet not only executes the policies but also provides leadership in most of the matters pertaining to legislation.

- **As an Advisory Body**

The Cabinet is an advisory body to the President of India. Its advice is binding on the President in matters pertaining to his/her assent on a bill. It is the sole decision-making body on all policy matters and these decisions are conveyed to the President, who endorses them.

- **As a Coordinating Agency**

The Cabinet is the coordinating agency for all ministries. All ministries/ departments do work in a harmonious and coordinating environment.

- **As Chief Executive Organ**

Each Cabinet minister is the political head of his/her department. The principal aide is the Secretary, who functions, as the administrative head of the department. The Secretary is responsible for carrying out the policies. Though the minister does not interfere in the day-to-day working of the department, the secretary must keep him posted of all major developments, as the ultimate responsibility rests on the minister.

- **As Coordinator of Foreign and Defence Policies**

Conduct of foreign relations, reception of diplomats, appointment of diplomats, and recognition or non-recognition of new states are done with 3. It is not necessary to have Deputy Ministers.

approval of the Cabinet. Treaties are negotiated and signed and Parliament is duly informed about these. The Cabinet also controls the foreign tours of the President and other ministers.

The Department, which is concerned with the defence of the country, is called the Defence Department. It is responsible for the organization of the entire forces and in making key appointments to the Army, Navy, and Air Force. It is this Department which, in consultation with the Cabinet, can take action on matters such as declaration of war, mobilization of troops, and calling off wars.

- **As Crisis Manager**

Emergencies whether pertaining to external aggression or failure of constitutional machinery in any state, its declaration is based on the recommendation of the Cabinet.

Activity

Highlight the grounds that make India a Republic.

CONCLUSION

A basic feature that characterizes the Parliamentary model is the presence of dual executives. The President of India is the constitutional head of the Indian State whereas the PM and his Cabinet are the real executive. The real executive remains in office, as long as it enjoys the confidence of the legislature. The PMO provides secretarial assistance to the Prime Minister. It is headed by the Principal Secretary. The role of PMO has evolved and varied under different Prime Ministers.

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