

## Chapter 15 - Executive Branch

The Executive branch of the government is responsible for implementing and enforcing the laws passed by the legislature. It consists of the head of State (such as a President or Monarch), the head of Government (such as a Prime Minister), and the cabinet or ministers who lead various government departments. In parliamentary practice, ministers hold office during the pleasure of the President under Article 75(2) while the Council of Ministers is collectively responsible to the Lok Sabha under Article 75(3).

In a Presidential system, such as that of the United States, the President functions as both the Head of State and the Head of Government. The President appoints cabinet members and other executive officials to manage the administration, and they are directly accountable to the President. In contrast, in a Parliamentary system, as in India and the United Kingdom, the Prime Minister is the Head of Government, while the President or Monarch is the ceremonial Head of State. The Prime Minister, usually the leader of the majority party in Parliament, advises the Head of State in appointing ministers, who are themselves members of Parliament and collectively form the Council of Ministers. Additionally, Article 88 explicitly permits every Minister and the Attorney General of India to speak and participate in either House and its committees without a vote.

**Types of Executives:** In a democratic country, the Executive branch is composed of two categories:

- a) **Political Executive:** The political executive is made up of elected leaders who are responsible for making key decisions. These leaders are responsible for implementing the policies and are accountable to the people for their decisions. They assume more authority as the elected representatives of the will of the people.
- b) **Permanent Executive:** The Permanent Executive are civil servants consisting of individuals who are appointed on a long-term basis. These are highly educated experts appointed to assist the political executive in carrying out their duties. As they are appointed, not elected, they do not have the same level of accountability.

### Indian Executive:

The Executive branch of the Indian government has been outlined under Articles 52-78 of the Part V of the Constitution. It consists of the President, Vice President, Prime Minister, Council of Ministers and Attorney General of India. **The Attorney General is the highest law officer under Article 76 and enjoys rights of audience in all courts, but is not a government servant (UPSC CSE Prelims 2020).**

### The President:

The President of India is the formal head of State while the PM is the head of government. The Executive power of the Union is formally vested in the President, but the President exercises these powers through the Council of Ministers headed by the Prime Minister (PYQ 2015).

#### Article 52: The President of India

There shall be a President of India.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

According to Article 52 of the Constitution, there shall be a President of India who serves as the Head of the Union Executive. The word “shall” in this context implies that there will always be a President of India, and the post cannot be abolished. This means that the office of the President shall never lie vacant. Continuity is further secured by Article 56(1)(c), which allows the President to continue until the successor enters office, preventing an interregnum.

### Election of the President

#### A. Electoral College

##### Article 54: Election of President

The President shall be elected by the members of an electoral college consisting of-- (a) the elected members of both Houses of Parliament; and  
(b) the elected members of the Legislative Assemblies of the States.

\*[Explanation - In this article and in article 55, “State” includes the National Capital Territory of Delhi and the Union Territory of \*\*Pondicherry.]

\* Inserted by the 70th Amendment, 1992

\*\* Now, ‘Puducherry’ as per the Pondicherry (Alteration of Name) Act, 2006

The Electoral College consists of the following components:

- a) elected members of both the Houses of Parliament (Lok Sabha and Rajya Sabha)
- b) elected members of the State Legislative Assemblies.
- c) elected members of the Union Territories with legislatures, including the National Capital Territory of Delhi and the Union Territory of Puducherry. This was included in the Electoral College by the 70th Amendment, 1992.

Thus, the members nominated to either House of Parliament or the Legislative Assemblies of States are not eligible to be included in the Electoral College for President’s election (PYQ 2023). Notably, there is no role of members of the State Legislative Councils in the election of the President. Also, it must be highlighted that, in the present set up, the Assembly of the UT of Jammu & Kashmir cannot participate in the presidential election as it does not fall in the ambit of its Electoral College.

#### B. Manner of Election

##### Article 55: Manner of Election of President

(1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

(2) For the purpose of securing such uniformity among the States inter se as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:

(a) every elected member of the Legislative Assembly of a State shall have as many votes as there are

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly; (b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;

(c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

\*[Explanation - In this article, the expression “population” means the population ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year \*\*[2026] have been published, to be construed as a reference to the 1971 census.]

\* Substituted by the 42nd Amendment, 1976

\*\* Substituted by the 84th Amendment, 2001

Article 55 of the Indian Constitution lays down the method for electing the President which seeks to achieve the following objectives- (a) Uniformity in the scale of representation of the different States, and (b) Parity between the States as a whole and the Union.

### Value of votes:

To secure the above objectives the number of votes of MPs and MLAs in the electoral College are determined by the “value of votes.” The voting power of each representative is weighted to ensure that all states have a proportionate influence based on their population, leading to uniformity across different regions.

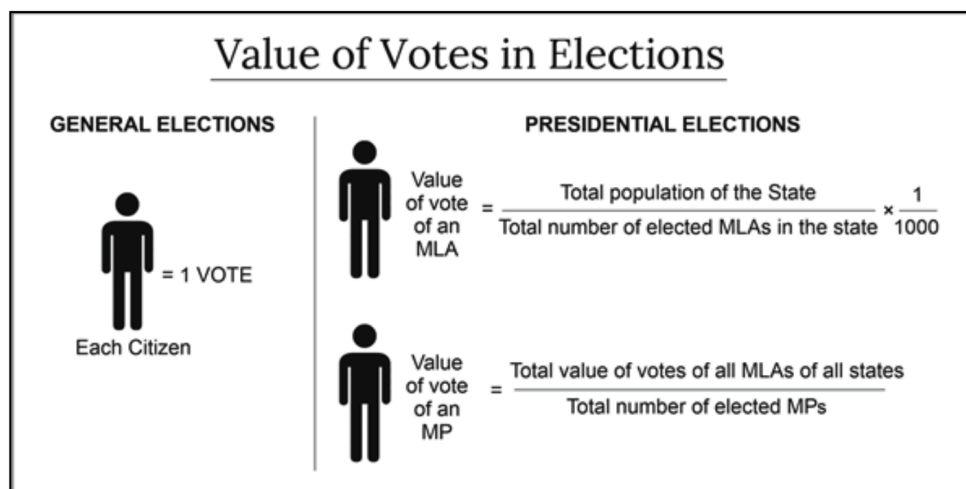
- a) **Value of the vote of an MLA:** To determine the value of each vote of an MLA, the total population of the state/UT is divided by the number of elected MLAs in its Assembly. The quotient is then divided by 1,000 to determine the number of votes each member gets.

Thus, the value of each MLA’s vote varies from state to state based on the population of the state/UT (PYQ 2018). In the 2022 Presidential elections, Uttar Pradesh, for instance, had the highest vote value for each of its MLAs, at 208. The value of one MLA’s vote in Maharashtra was 175, while that in Sikkim was just 7. As per the 84th Amendment, 2001, currently, the population of States/UTs is taken from the figures of the 1971 Census. This will change when the figures of the Census taken after the year 2026 are published.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

- b) **Value of Vote of an MP:** Each elected MP gets a number of votes equal to the total number of votes assigned to the MLAs of all the states and UTs, divided by the total number of elected members of both the Houses of Parliament. The value of vote of an MP for the first presidential election in 1952 was 494. It increased marginally to 496 in the 1957 presidential election, followed by 493 (1962), 576 (1967 and 1969). The presidential elections were held in 1969 due to the death of President Zakir Hussain on May 3, 1969. In the 1974 presidential election, this value was increased to 723. It was fixed at 702 for the presidential elections from 1977 to 1992 and was fixed at 708 from 1997 to 2017. In 2022, this value went down to 700, due to the absence of a legislative assembly in Jammu and Kashmir.



### Nomination Stage

Before the voting, comes the nomination stage, where the candidate intending to stand in the election, files the nomination. To discourage non-serious candidates, several rules have been formulated by the ECI and certain provisions are in place in the Representation of People's Act (RPA), 1951. Under this setup, each candidate is required to submit a security deposit of Rs. 15,000. This deposit is forfeited if the candidate does not secure at least one-sixth of the total valid votes in the election.

The nomination form of a candidate must be supported by 50 proposers and 50 seconders. These proposers and seconders can be anyone from the total members of the electoral college from the State and national level. An elector cannot propose or second the nomination of more than one candidate. This rule was introduced by the ECI in 1974, after the experience of the first five Presidential elections. In the 1967 Presidential elections, 9 of the 17 candidates did not win a single vote and in the 1969 elections, 5 of the 15 candidates did not secure any votes. Thus, it ensures that the candidate has a minimum level of support from the electorate before they can contest the election. The Presidential and Vice-Presidential Elections Act, 1952 and the 1974 Rules govern scrutiny, nomination, and counting; secret ballot and STV are statutory mandates often checked in objective sections (PYQ).

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

### Voting Stage:

The Presidential election is conducted through the system of proportional representation by means of the single transferable vote, with voting carried out by secret ballot. The Anti-Defection Law does not apply in this case, allowing electors to vote freely without being bound by party directions. This ensures that the election process is both fair and representative of India's diverse population. The Tenth Schedule governs post-election disqualification of legislators and has no application to the act of voting in a presidential election.

Unlike general elections where electors cast their vote for a single candidate, in the Presidential election, members of the Electoral College can indicate their preference for multiple candidates. A ballot paper is provided, and the electors are required to mark their choices in order of preference against the candidates' names. It is not mandatory to mark preferences for all candidates, giving electors the flexibility to rank as many or as few as they wish.

**Counting Stage:** A nominated candidate does not secure victory based on a simple majority but through a system of bagging a specific quota of votes. To win the election, a candidate must secure an absolute majority i.e., more than 50% of the total votes polled. This quota is determined by dividing the total valid votes polled divided by the number of seats to be elected plus one and adding one to the quotient.

$$\text{Electoral Quota} = \frac{\text{Total number of valid votes polled}}{\text{Seats} + 1} + 1$$

While counting, the EC totals up all the valid votes cast by the electoral college through paper ballots and the fractions exceeding one-half are counted as one, and other fractions are disregarded. The counting of votes takes place in rounds. In Round 1, only the first preference marked on each ballot is counted. If any of the candidates secures the quota at this stage, he or she is declared the winner. If no candidate secures the quota in the first round, then another round of counting takes place.

In Round 2, the votes cast to the candidate who secures the least number of votes in Round 1 are transferred. This means that these votes are now added to the second preference candidate marked on each ballot. This process is repeated till only one candidate remains. If no second preference is marked, then the ballots are treated as exhausted ballots in Round 2 and are not counted further.

### Trivia – Presidential Elections

- The election of President V.V. Giri, in 1969, is the only instance when a candidate did not secure the quota in the first round of counting. The second preference votes were then evaluated and Mr. Giri secured 4,20,077 of the 8,36,337 votes and was declared the President.
- India's sixth President, Mr. Neelam Sanjiva Reddy was the only President to be elected

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

unopposed in 1977. The nomination papers of 36 of the 37 candidates were rejected during scrutiny by the Returning Officer and Mr. Reddy was the only candidate standing.

### Disputes related to Presidential election

#### **Article 71: Matters relating to, or connected with, the election of a President or Vice-President**

- (1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.
- (2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason for that declaration.
- (3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.
- (4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

According to Article 71, the Supreme Court is the final authority in deciding any doubts or disputes related to the election of the President, and its decision is binding. If the Supreme Court declares the election of a President void, any actions taken by the President before the date of the decision remain valid and continue to be in force. This means that the President's actions, such as signing bills into law or appointing judges, are not affected by the subsequent declaration of the election being void (PYQ 2023).

The election of a President, however, cannot be challenged on the grounds of vacancies in the Electoral College. This means that even if some members of the Electoral College are not present or have not been elected, the election of the President is still valid. Furthermore, the election for the post of the President of India cannot be postponed on the ground that some Legislative Assemblies have been dissolved and the elections are yet to take place (PYQ 2023). Even if some assemblies are dissolved, the election can proceed with the remaining members of the Electoral College. To streamline the process of election, the Constitution allows the Parliament to make laws for regulating the election of the President, giving it the power to make changes to the process as required.

In 1974, the 182-member Gujarat assembly was dissolved in March following the Navnirman Andolan and could not be constituted before the Presidential election in which Fakhruddin Ali Ahmed was elected.

### Qualifications for the Office of President

#### **Article 58: Qualifications for election as President**

- (1) No person shall be eligible for election as President unless he:

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.



## Chapter 15 - Executive Branch

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

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

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

As per Article 58, to be eligible for election as the President of India, a person must meet certain qualifications:

- Be a Citizen of India
- Have Completed 35 Years of Age
- Be qualified for election as a member of the House of the People
- He shall not hold any other office of profit and need not be a sitting Member of Parliament, nor does the Constitution require party affiliation.

### Other conditions of President's office

#### Article 59: Conditions of President's office

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

(2) The President shall not hold any other office of profit.

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

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

Article 59 of the Constitution lays down important conditions governing the office of the President to uphold integrity and impartiality. Firstly, the President cannot be a member of either house of the Parliament or of the Legislature of any State. If a sitting Member of Parliament or State Legislature is elected as President, they must vacate their seat immediately upon assuming office. Secondly, this provision ensures that the President remains neutral, free from party affiliations or personal interests, and can discharge their duties with complete impartiality.

## Chapter 15 - Executive Branch

Thirdly, the President cannot hold any other office of profit. This means that the President cannot have any other job or position that generates income, ensuring that their primary focus remains on serving the nation. Fourthly, the President is entitled to use official residences without paying any rent. This allows the President to focus on their duties without worrying about the financial burden of maintaining a residence. Lastly, the President is entitled to emoluments, allowances, and privileges as determined by the Parliament by law. The president's emoluments and allowances cannot be diminished during their term of office. This means that the President's salary and benefits cannot be reduced while they are in office.

[Note: The Oath or Affirmation of the President is discussed in Appendices.]

### Term of President's office

#### Article 56: Term of office of President

- (1) The President shall hold office for a term of five years from the date on which he enters upon his office: Provided that-
- (a) the President may, by writing under his hand addressed to the Vice-President, resign his office;
  - (b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61;
  - (c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office;
- (2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

#### Article 57: Eligibility for re-election

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

The President serves a term of five years from the date s/he takes office. Article 57 authorises re-election of the President and does not put a cap on the number of tenures. However, in the United States, a person cannot be elected as President more than twice. The term of the President can end before the end of 5 years, if s/he resigns anytime by sending a resignation letter to the Vice-President. Also, s/he can be removed from office through the process of impeachment before the completion of their term.

### Impeachment of the President

#### Article 61: Procedure for impeachment of the President

- (1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.
- (2) No such charge shall be preferred unless-
- (a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing, signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and
  - (b) such resolution has been passed by a majority of not less than two-thirds of the total membership of

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.



## Chapter 15 - Executive Branch

the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated, and the President shall have the right to appear and to be represented at such investigation. (4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

Article 61 provides the procedure for impeachment of the President. The President can be removed from office through a process of impeachment only on the ground of “violation of the Constitution.” The Constitution, however, does not specify what constitutes such a violation. It is important to note that the impeachment has never been invoked against any President in India’s history.

### Process of Impeachment:

The impeachment process can be initiated in either the Lok Sabha or the Rajya Sabha (PYQ 1996). To begin the process, a notice of motion for impeachment must be submitted to the presiding officer (Speaker or Chairman) of the House. The notice must be signed by at least one-fourth of the total number of members of that House.

After the 14-day notice period, the motion is taken up in the House for discussion and debate. If it is approved by a special majority of two-thirds of the total membership, the resolution is sent to the other House for investigation. In this stage, the President is given an opportunity to present a defence, either personally or through legal counsel. If the second House also passes the resolution by a special majority of two-thirds of its total membership, the impeachment is carried through and the President is removed from office.

### A comparison of President’s Impeachment between India and United States

Aspect	India	United States
Ground of Impeachment	Violation of Constitution (Article 61)	Treason, bribery, or other high crimes and misdemeanors
Initiation of Impeachment Charge	Can be initiated in either Lok Sabha or Rajya Sabha	Starts in the House of Representatives
Minimum Number of Members of House Required to Support Resolution	At least 1/4th of the members of the house	Any member of the House or the entire House can vote to support it
Deciding Authority to Accept the	Chairman of Rajya Sabha or	House Judiciary Committee

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

Charge	Speaker of Lok Sabha	
Vote Needed in Introductory House	Special majority (2/3rd of total membership)	Simple majority (>50% of total membership)
Voting	Takes place in the House where the charges were initiated	House of Representatives debates and votes
After Voting in Introductory House	Report sent to the other house where charges were initiated	President is impeached, and the report is sent to the Senate
Voting in 2nd House	Special majority	Senate trial (jury of senators headed by US Chief Justice) + Special majority
Impeachment (Outcome)	President removed from office from the day of passing of resolution in the 2nd House	Conviction and removal of the President

### Vacancy in President's office:

#### Article 62: Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy

- (1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.
- (2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

A vacancy in the office of the President can happen in the following scenario:

- On the expiry of his tenure of five years.
- By his resignation.
- On his removal by the process of impeachment.
- By his death.
- If s/he becomes disqualified to hold office
- Presidential election is declared void.

When a vacancy is caused by resignation, removal, death of the President, or otherwise, the Vice-President acts as the president until a new President is elected. An election to fill such a vacancy should be held within 6 months. Also, when the sitting President is unable to discharge his/her functions due to absence, illness, etc, the Vice-President discharges his functions until the President resumes

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

his/her office.

In all the above cases, in case the office of Vice-President is vacant, the Chief Justice of India (CJI) would fulfil the duties of the President, or if the office of the CJI is also vacant, then the senior-most judge of the Supreme Court available acts as the President of India. When any person, i.e. the Vice President, the Chief Justice of India, or the senior most judge of a Supreme Court is acting as the President, he/she enjoys all the powers and immunities of a President and is entitled to such emoluments, allowances, and privileges as determined by the Parliament of India.

When a vacancy is caused by the expiration of the term of the sitting President, an election to fill such vacancy must be held before the expiration of the term, i.e. 5 years. In case of any delay in conducting the due election, the outgoing President continues to hold office beyond his term of 5 years, until his successor assumes charge. This is provided by the Constitution to prevent an interregnum. In this case, the Vice-President does not get the opportunity to act or discharge the functions of the President.

### Powers and Functions of the President

The President of India plays a crucial role in the functioning of the country, serving as both the ceremonial head of state and the guardian of the Constitution. Understanding the powers and functions of the President is essential for comprehending the intricacies of the Indian political system and the balance of power within the government. The President's powers and functions are outlined in the Constitution of India and can be categorized into several key areas:

#### Executive Powers:

The expression “executive power” is not defined in the Constitution. Article 73 merely defines the matters with respect to which the executive authority of the Union extends. Executive authority can be said to be the authority to carry out the executive functions of the government.

#### Article 53: Executive power of the Union

- (1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
- (2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defense Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.
- (3) Nothing in this article shall-
  - (a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or
  - (b) prevent Parliament from conferring by law functions on authorities other than the President.

Article 74 mandates that there shall be a Council of Ministers to aid and advise the President. The President is required to act on the advice of the Council of Ministers, except in certain specified cases. The President appoints the Prime Minister and other ministers, who hold office during his pleasure. He also appoints various other key officials, such as the Attorney General, Comptroller and Auditor General,

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

Chief Election Commissioner, Chairman and Members of the UPSC, Governors of States, and Judges of High Courts and the Supreme Court.

The President enjoys several important powers. Firstly, he can seek information from the Prime Minister and even require the Prime Minister to place certain matters before the Council of Ministers for discussion. Secondly, he can appoint commissions to investigate the conditions of Scheduled Castes, Scheduled Tribes, and other backward classes. Thirdly, he can establish an Inter-State Council to promote cooperation between the Centre and the states, as well as among states themselves. Lastly, the President directly administers the Union Territories through administrators appointed by him.

### President's Key power & responsibilities over Scheduled Areas

- **Power to declare any area as Scheduled Area:** The President of India has the power to declare any area as a Scheduled Area by issuing an order. (PYQ 2023)
- **Power to cease any area from being a Scheduled Area:** The President can direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area.
- **Power to constitute Tribal Advisory Committees:** States with Scheduled Areas must constitute a Tribal Advisory Council with up to 20 members, including at least three-fourths of Scheduled Tribes' representatives in the state legislative assembly.
- **Governor's regulations for Scheduled Areas:** The Governor of a state can make regulations for Scheduled Areas, but these regulations will have no effect unless they are submitted to the President for consideration and have received his assent.
- **President's requirement for a report:** The President can require the Governor to prepare a report every year on the administration of Scheduled Areas.
- **President's directions for administration:** The President can issue directions to the Governor regarding the administration of Scheduled Areas

### Legislative Powers

The President of India has significant legislative powers that allow him to play a crucial role in the functioning of the Parliament and the law-making process. Some of the key legislative powers of the President includes:

- **Summoning and Dissolving Parliament:** The President can convene or adjourn the Parliament and dissolve the Lok Sabha. Additionally, they have the authority to call for a joint session of both the Houses, presided by the Lok Sabha Speaker.
- **Addressing Parliament:** The President addresses the Parliament at the beginning of each new session and can send messages to either House on important matters.
- **Appointing Pro Tem Speakers:** In the absence of the Speaker or Deputy Speaker in the Lok Sabha, or the Chairman or Deputy Chairman in the Rajya Sabha, the President can appoint a member of the house to preside over proceedings.
- **Nominating Members:** The President nominates twelve members to the Rajya Sabha.
- **Sanctioning Legislation:** Certain bills require the President's prior approval before their introduction, including those related to creating new states and financial matters.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

---

- **Assenting Bills:** Once a bill is passed by both Houses of Parliament, it is sent to the President for assent. The President has three choices. Firstly, he may give his assent, in which case the bill becomes an Act of Parliament and a law. Secondly, he may withhold his assent, meaning the bill does not become law (except in the case of Money Bills, where assent is mandatory). Thirdly, he may return the bill for reconsideration, which is called the 'suspensive veto.' If the bill is passed again by both Houses, the President is then bound to give his assent.
- **State Bills:** When a state legislature passes a bill, the Governor has four options: (i) give assent, (ii) withhold assent, (iii) reserve it for the President's consideration, or (iv) return it for reconsideration (except a money bill). If the bill is reserved, the President may either assent, withhold assent, or direct the Governor to return it for reconsideration. In case the legislature re-passes the bill within six months, it is again sent to the President. However, unlike at the Union level, the President is not bound to give assent. This ensures a system of checks and balances between the Governor, the state legislature, and the central government.
- **Reporting Functions:** The President of India lays reports of various commissions and bodies, including the Finance Commission, the Union Public Service Commission, National Commission for Scheduled Castes and Scheduled Tribes, Central Vigilance Commission, Central Information Commission, and the Comptroller and Auditor-General, before the Parliament.
- **Disqualification of Members:** In accordance with Article 103 of the Constitution of India, if a member of Parliament is disqualified, the matter is referred to the President, who makes the final decision after consulting the Election Commission.
- **Regulations for Union Territories:** The President has the authority to make regulations for the governance of certain Union Territories under Article 240 of the Indian Constitution. This authority is applicable to the following Union Territories: Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu, Puducherry, Ladakh.

### Financial Powers:

The President of India exercises significant financial powers. Firstly, a money bill cannot be introduced in Parliament without the President's prior approval. Secondly, no demand for a grant can be made except on his recommendation. The President also ensures that the Union Budget (Annual Financial Statement) is presented before Parliament. In addition, the President can authorize advances from the Contingency Fund of India to meet unexpected expenses. To ensure a balanced distribution of revenues between the Centre and the States, the President constitutes a Finance Commission every five years to recommend the distribution of revenues. (PYQ 2010)

### Diplomatic Powers:

The President of India has important diplomatic powers in managing the country's foreign relations. He appoints ambassadors and high commissioners to other countries, who represent India abroad. The President also receives foreign diplomats in India by accepting their credentials before they begin their work. These powers help maintain and strengthen India's international relations.

The President also represents India in international forums and events, where he engages with foreign leaders and symbolizes India's presence in the global community. The President also negotiates and concludes international treaties and agreements, but these require Parliament's approval before

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

implementation. This ensures a balance between the President's diplomatic authority and parliamentary oversight.

### Military Powers:

The President of India is the supreme commander of the country's defence forces. In this capacity, he appoints the Chiefs of the Army, Navy, and Air Force. The President also has the authority to declare war or conclude peace, but this requires the approval of the Parliament. This ensures that the President's actions are subject to democratic oversight and accountability.

### Judicial Powers:

The President of India also plays a crucial role in the judiciary by appointing the Chief Justice and judges of the Supreme Court and the High Courts. The President can seek advice from the Supreme Court on any question of law or fact, as per Article 143 of the Constitution (PYQ 2003). However, this advice is not binding on the President, who has the discretion to act independently.

### Pardoning Powers of the President:

#### Article 72: Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence:

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

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed forces of the Union to suspend, remit or commute a sentence by a court martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

Article 72 grants the President the power to **pardon, reprieve, respite, or remit punishment or suspend, remit, or commute** the sentence of any person convicted of an offence. This power is exercised in specific circumstances:

- **Court Martial Cases:** The President can pardon, reprieve, respite, or remit punishment or suspend, remit, or commute the sentence of any person convicted by a court-martial.
- **Offences Against Union Laws:** The President can pardon, reprieve, respite, or remit punishment or suspend, remit, or commute the sentence of any person convicted of an offence against any law relating to a matter to which the executive power of the Union extends.
- **Death Sentences:** The President can pardon, reprieve, respite, or remit punishment or suspend, remit, or commute the sentence of any person sentenced to death.



## Chapter 15 - Executive Branch

These powers are exercised in a manner that ensures the President does not act arbitrarily. The President must also act on the advice of the Home Minister and the Council of Ministers under Article 74 of the Constitution.

### Types of pardoning powers:

- **Pardon:** A grant of pardon by the President removes both the sentence and the conviction, completely absolving the convict from all sentences, punishments, and disqualifications.
- **Commutation:** Commutation denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to simple imprisonment.
- **Remission:** Remission implies reducing the period of a sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.
- **Respite:** Respite denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender.
- **Reprieve:** Reprieve implies a stay of the execution of a sentence for a temporary period to enable the convict to have time to seek pardon or commutation from the President

### Pardoning Powers: A Comparative Analysis of President and Governor's Jurisdiction

The Constitution grants pardoning powers to both the President and the Governor under Articles 72 and 161, respectively. The President can grant pardons, reprieves, respites, remissions, or commute punishments for offences under Central laws, including those awarded by court-martial. The President alone has the authority to pardon a death sentence. The Governor, on the other hand, enjoys similar powers within the scope of State laws, such as suspending, remitting, or commuting sentences. However, the Governor cannot pardon a death sentence, making this power an exclusive privilege of the President.

The pardoning power of the President is wider than that of the Governor. Unlike the Governor, the President can exercise this power in cases where the punishment has been awarded by a court-martial. Further, the President alone can grant pardon in cases involving a death sentence, whereas the Governor's authority does not extend to pardoning capital punishment.

Recent judgments have clarified the scope of the pardoning powers of the President and the Governor. In the *A.G. Perarivalan* case, the Supreme Court ruled that the Governor cannot forward a mercy petition to the President for consideration. The Court emphasized that the pardoning power in such matters lies with the Governor, who must exercise it on the aid and advice of the State Council of Ministers.

### Judiciary - a watchdog of clemency powers of Executive

The scope of the judicial review in the context of remission and pardon is a crucial aspect of the Indian legal system. In the landmark case of *Maru Ram v. Union of India (1980)*, the Supreme Court emphasized

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

that the power of the President under Article 72 is subject to judicial review. The court maintained that the power cannot be exercised in an arbitrary manner and must be guided by specific considerations such as the length of the sentence already undergone, the prisoner's behaviour, and involvement in other crimes.

Recent judgments have further refined the scope of judicial review in this area. For instance, in *Shatrughan Chauhan v. Union of India* (2014), the Supreme Court held that the power of pardon is not a mere prerogative of the President and is subject to judicial review. The court also emphasized that the right to seek mercy is a constitutional right that cannot be subjected to the whims and fancies of the executive.

The court outlined several key principles in this regard. Firstly, it ruled that inordinate delay can be a justified ground for commutation of the death penalty into life imprisonment. Secondly, psychiatric conditions developed during incarceration are grounds for clemency. Thirdly, it ruled against the solitary confinement of death row prisoners. Also, the court mandated that at least 14 days prior notice be given to family members prior to execution and that legal aid be made available at all stages of the process.

Fourthly, the court emphasized that the rejection of a mercy petition must be intimated at the earliest and that the person has the right to seek judicial review. After the rejection of a mercy petition, the judiciary has the power to even invalidate a President's decision if there is any evidence of bias. These principles underscore the importance of judicial scrutiny in maintaining the rule of law and ensuring that the power of pardon is exercised in a fair and non-arbitrary manner.

### Vesting of Pardoning Power in the Executive: Balancing justice and democratic accountability

The grant of clemency powers to high-ranking executive authorities remains an issue of intense debate among legal scholars, resulting in sharply divided opinions. This constitutional provision raises fundamental questions about the balance between executive discretion and judicial independence, the role of mercy in modern justice systems, and the safeguards necessary to prevent abuse of power.

#### Arguments in favor of Executive Clemency:

- 1. Sovereign prerogative and error correction:** Clemency powers are viewed as an essential attribute of sovereignty, particularly in systems where high officeholders like the US President exercise this authority. These powers serve the critical purpose of correcting judicial errors that may have resulted in grave injustices, providing a final safety valve in the justice system when courts may have reached incorrect conclusions.
- 2. Addressing systemic biases:** Executive clemency helps temper the rigors and inherent biases of the criminal justice system, including racial and caste-based prejudices that may influence judicial proceedings. By introducing an element of mercy, clemency powers create space for reformatory justice within the legal framework.
- 3. Beyond legal boundaries:** Clemency serves as a means for achieving true justice in cases where rigid legal frameworks cannot adequately account for unique circumstances or moral factors that extend beyond the scope of traditional judicial proceedings. This flexibility allows for

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

consideration of humanitarian concerns, changed circumstances, or exceptional personal situations that formal legal processes might not accommodate.

### Arguments against Executive Clemency:

1. **Constitutional separation concerns:** Critics argue that clemency powers violate fundamental principles of separation of powers by granting judicial-like authority to the executive branch, potentially undermining legislative intent and judicial independence. The absence of definitive legal benchmarks for deciding clemency petitions creates substantial scope for arbitrariness.
2. **Personal bias and Lack of Transparency:** The potential for misuse increases significantly due to personal biases that may influence executive decision-making, with recent cases like Hunter Biden highlighting concerns about conflicts of interest. The lack of transparency in clemency procedures, combined with opacity in decision-making processes, leads to significant delays and undermines public confidence, as seen in cases like Balwant Rajoana.
3. **Inconsistent application and Deterrent effects:** Inconsistencies in the application of clemency powers create uncertainty regarding legal process outcomes and may undermine the rule of law. Such unpredictability can reduce the deterrent effect of criminal sanctions, as potential offenders may harbor unrealistic expectations of executive intervention that could compromise the integrity of the justice system.

Executive clemency powers represent both an essential safety valve in modern justice systems and a potential source of constitutional tension. While these powers serve important functions in correcting judicial errors and addressing systemic biases, their exercise must be governed by clear procedural frameworks that ensure transparency, consistency, and accountability. The challenge lies in preserving the humanitarian function of clemency while preventing its abuse, ultimately requiring ongoing reforms that maintain public confidence in both executive discretion and judicial independence.

### Powers with respect to allocation and transaction of business

#### Article 77: Conduct of Business of the Government of India

- 1) All executive action of the Government of India shall be expressed to be taken in the name of the President
- 2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument, which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President
- 3) The President shall make rules for more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business

Article 77 talks about the powers of the President with respect to the allocation and transaction of business within the Government of India. It says that all executive actions taken by the Government of India must be expressed to be taken in the name of the President (PYQ 2014). This means that every decision or action of the government is formally taken in the name of the President, thereby conferring legitimacy and accountability. For instance, if the Ministry of Finance introduces a new tax policy, it is issued in the name of the President, symbolizing that the decision carries the sanction of the highest

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

---

constitutional authority

Secondly, all orders and instruments made in the name of the President must be authenticated in a manner prescribed by rules framed by him. This authentication safeguards their validity, ensuring that they cannot be challenged on the ground that the President did not personally make or sign them. For instance, if an order allocating funds for a project is authenticated in the prescribed form, it is deemed to carry the President's authority, even if he has not personally signed it.

Thirdly, this Article also mandates the President to frame rules for the convenient transaction of the business and for allocation of such business among the Ministers. These are known as the *Government of India (Allocation of Business) Rules, 1961*. They serve as the framework for dividing responsibilities among various ministries and departments, ensuring clarity of accountability, promoting administrative efficiency, and enabling each ministry to focus on its specialized domain of governance.

### Veto Power:

The veto power of the President of India refers to the constitutional authority granted to the President to withhold or reject legislation passed by the Parliament or State Legislatures. This power is outlined in Articles 111 and 201 of the Indian Constitution and serves several objectives.

The President's veto power serves as a vital constitutional safeguard to ensure that legislation passed by Parliament is both sound and consistent with the Constitution. It helps prevent the enactment of hasty or ill-conceived laws, acts as a check against unconstitutional provisions, and reinforces the principle of rule of law. At the same time, it functions as a corrective mechanism by compelling deeper deliberation and more rigorous scrutiny of bills within Parliament, thereby enhancing the overall quality of legislation.

Historically, the veto power has been sparingly used in India, mainly to prevent the enactment of laws considered unsuitable or unconstitutional. For instance, President Zail Singh withheld assent to the Indian Post Office (Amendment) Bill, 1986, reflecting the President's role as a constitutional safeguard. Such instances highlight that the veto is not merely symbolic but an important check to ensure that legislative decisions align with constitutional principles and the nation's interests. The President of India is vested with the following three types of veto powers:

1. **Absolute Veto:** This refers to the power of the President to withhold his assent to a bill passed by the Parliament. When the President exercises this veto, the bill ends and does not become an act. The President typically uses this veto power in two cases - (a) with respect to the private members' bills (bills introduced by members of Parliament who are not ministers), and (b) with respect to government bills when the Cabinet resigns after the passage of the bill but before the President gives assent, and the new Cabinet advises the President not to give assent to such bills. For example, in 1954, President Rajendra Prasad withheld assent to the PEPSU Appropriation Bill as the President's Rule had been revoked in the state. Similarly, in 1991, President R. Venkataraman withheld assent to the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill as it was passed by Parliament without obtaining the previous recommendation of the President.

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

---

## Chapter 15 - Executive Branch

2. **Suspensive Veto:** When the President uses this veto, he returns the bill to the Parliament for reconsideration. If the Parliament passes the bill again, either with or without amendments, and presents it to the President again, it is obligatory for the President to give his assent to the bill. This means that the Presidential veto is overridden by a re-passage of the bill by the same ordinary majority, unlike in the United States where a higher majority is required for a qualified veto.

It is important to note that the President's veto power does not extend to money bills. In such cases, the President can either give assent or withhold it but cannot return the bill for reconsideration. In practice, money bills are almost always assented to, since they are introduced in Parliament with the President's prior approval. A notable example of the **suspensive veto** was in 2006, when President A.P.J. Abdul Kalam returned the *Office of Profit Bill* to Parliament for reconsideration, demonstrating the President's role in encouraging further scrutiny of legislation.

3. **Pocket Veto:** The pocket veto empowers the President to neither ratify nor reject a bill, but simply keep it pending indefinitely. This happens when the President takes no action on a bill presented for assent, effectively keeping it in their "pocket." Unlike the U.S. President, who must act within 10 days, the Indian President faces no such time limit, making the Indian version of this veto more extensive. The pocket veto was notably exercised by President Zail Singh in 1986, when he chose not to act on the *Indian Post Office (Amendment) Bill*, which sought to curtail press freedom. Importantly, the President cannot use any veto power against constitutional amendment bills. The 24th Constitutional Amendment Act, 1971 makes it mandatory for the President to give assent to such bills. Thus, the pocket veto remains a significant tool, enabling the President to safeguard constitutional values and ensure that ordinary legislation aligns with the larger interests of the nation.
4. **Qualified Veto:** The qualified veto refers to the power of the president to reject a bill passed by the legislature, but the legislature can override this veto by passing the bill again with a higher majority. The President of India does not possess a qualified veto power. This contrasts with the President of the United States, who has the authority to veto a bill and then send it back to Congress for reconsideration with a qualified veto.

### Ordinances:

#### Article 123: Power of President to promulgate Ordinances during recess of Parliament

- (1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require.
- (2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance:
  - (a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and
  - (b) may be withdrawn at any time by the President.
- (3) If and so far as an Ordinance under this article makes any provision which Parliament would not

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.



## Chapter 15 - Executive Branch

under this Constitution be competent to enact, it shall be void.

Article 123 grants the President the power to promulgate ordinances when either of the House of Parliament is not in session, and an immediate action is required (PYQ-2002, 2003). These ordinances have the same force and effect as an Act of Parliament but are temporary in nature.

The President can promulgate an ordinance only when satisfied that immediate action is necessary. This ordinance-making power is **coextensive with the legislative powers of Parliament**, meaning it can be exercised only on subjects where Parliament itself has authority to legislate. However, an ordinance cannot amend the Constitution and remains subject to the same limitations as a parliamentary law. For instance, it cannot be used to curtail or abridge Fundamental Rights.

An ordinance must be laid before Parliament and approved within six weeks of its reassembly; otherwise, it ceases to operate. The President may also withdraw an ordinance at any time, but only on the advice of the Council of Ministers. Ordinances can have retrospective effect and may amend or repeal existing laws, though they cannot be treated as a substitute for the regular legislative process. This power is a distinctive feature of the Indian Constitution, uncommon in many other democracies.

The Supreme Court, in *R.C. Cooper v. Union of India* (1970), held that ordinances are subject to judicial review, just like parliamentary laws. Later, in *D.C. Wadhwa v. State of Bihar* (1987), the Court criticized the practice of repromulgating ordinances without placing them before the legislature, declaring it unconstitutional. These rulings underline that ordinance-making is meant only for urgent situations, and not as a tool to bypass the legislature.

### Important judgments related to Ordinances:

The Supreme Court of India has delivered several judgments related to ordinances, which are laws promulgated by the executive in exceptional circumstances. These judgments provide clarity on the use of the ordinance mechanism and its limitations.

In the case of *D.C. Wadhwa* (1987), the court emphasized that the legislative power of the executive to promulgate ordinances should be used sparingly and not as a substitute for the law-making power of the legislature. The court noted that the ordinance mechanism is designed to address situations of legislative urgency when Parliament is not in session, but it should not be used to usurp legislative power.

In *RC Cooper v. Union of India* (1970), the court examined the constitutionality of the Banking Companies (Acquisition of Undertakings) Ordinance. The court held that the ordinance was valid as it was issued in exceptional circumstances and did not infringe on the legislative powers of the Parliament.

In *Krishna Kumar Singh v. State of Bihar* (2017), a seven-judge Constitution Bench of the Supreme Court examined the issue of re-promulgation of ordinances. The court held that unfettered

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.



## Chapter 15 - Executive Branch

re-promulgation of ordinances is unconstitutional. The court emphasized that the re-promulgation of ordinances without placing them before the legislature is a subversion of democratic legislative processes and constitutes a fraud on the Constitution.

### Constitutional Position of the President:

The President of India is the head of state and the first citizen of the country, but not the executive head. The Constitution vests the executive power of the Union in the President, but he exercises this power either directly or through the officers subordinate to him in accordance with the Constitution.

The President of India functions on the aid and advice of the Council of Ministers headed by the Prime Minister. Article 74 of the Constitution states that there shall be a Council of Ministers to aid and advise the President, and the President is bound to act in accordance with this advice while exercising his functions. Further, under Article 75, the Council of Ministers is collectively responsible to the Lok Sabha, ensuring parliamentary accountability in the working of the executive.

The framers of the Constitution adopted a parliamentary form of government in which the President functions as a nominal head, similar to the role of the British monarch. Dr. B.R. Ambedkar clarified that the President does not exercise real powers of administration and largely occupies a ceremonial position, with the actual authority resting in the Council of Ministers headed by the Prime Minister.

### Views of Dr. B.R. Ambedkar

Dr. B.R. Ambedkar, the chief architect of the Indian Constitution, clearly outlined the role of the President in the Indian system of government. He emphasized that the President is not the Chief Executive, unlike in the presidential system of the United States. Instead, the President in India is more akin to the role of the King under the English Constitution.

The President is the head of the state, representing the nation, but does not rule the nation. They are a symbol of the nation and their place in administration is ceremonial. The President is generally bound by the advice of their ministers and cannot act contrary to their advice or without their advice. This contrasts with the President of the United States, who has the power to dismiss any secretary at any time. The President of India, on the other hand, cannot dismiss ministers as long as they command a majority in the Parliament.

The President is generally bound by the advice of his ministers and cannot act contrary to their advice. The basis of this responsibility is embodied in Article 75(3) of the Constitution. The President's indirect election also reflects his role as a figurehead, as it was feared that a directly elected President might emerge as a centre of power in his own right.

### Evolving Role of the Indian President:

The Forty-second Amendment of the Constitution, enacted in 1976, significantly altered the role of the President in the Indian political system. Article 74 was amended to explicitly state that the President

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

---

would act in accordance with the advice of the Council of Ministers, led by the Prime Minister. This effectively removed any ambiguity about the President's role, making them a mere figurehead with no advisory or guiding influence.

The 44th Constitutional Amendment Act, 1978, brought an important change to Article 74 by allowing the President to return the advice of the Council of Ministers for reconsideration. However, once the Council reiterates its advice, the President is bound to act on it. This ensures that while the President has some space to express reservations, the ultimate authority lies with the elected executive. In *Shamsher Singh v. State of Punjab* (1974), the Supreme Court made it clear that the President is only a constitutional head and must act on the aid and advice of ministers in all but exceptional cases. The Court further emphasized that discretionary powers of the President are extremely limited. In *S.R. Bommai v. Union of India* (1994), the Court reiterated that the President's decisions, particularly in sensitive areas like imposing President's Rule, are subject to judicial review. Together, these rulings highlight that the 44th Amendment only created a mechanism for limited presidential influence, not an independent decision-making power. The Council of Ministers remains supreme in the executive domain, with the President functioning as a constitutional figurehead.

### **Situational Discretion of the President:**

The President of India, though generally bound by the aid and advice of the Council of Ministers, is not a mere ceremonial figure. In rare and exceptional circumstances, the President may exercise limited discretion. Such instances include dissolving the Lok Sabha when the government loses its majority, dismissing the Council of Ministers when they cannot prove their confidence, or appointing a Prime Minister in situations where no party or leader enjoys a clear majority. These discretionary powers are intended to preserve constitutional stability and ensure continuity of governance during political uncertainty. For Example- In 1979, Prime Minister Morarji Desai resigned during a no-confidence motion due to mass defections. President Sanjeeva Reddy first invited Y.B. Chavan formed the government, but he failed. Then, using his discretion, the President chose Charan Singh—who had more support than Desai—to become Prime Minister, though neither had a clear majority. These decisions can have a profound impact on the country's destiny, especially in times of crisis.

The President is constitutionally empowered to remain informed about the nation's affairs. Under Article 78, the Prime Minister is duty-bound to keep the President updated on all decisions of the Council of Ministers relating to Union administration and legislative proposals, provide information when sought, and, if required, place matters before the Council for reconsideration. Further, Article 111 grants the President discretion with respect to ordinary bills. He may return a bill for reconsideration along with his message, but once the bill is re-passed by Parliament, with or without amendments, the President is obliged to give assent.

The President's discretionary powers, though limited, carry significant weight. The 44th Constitutional Amendment (1978) empowered the President to return the advice of the Council of Ministers for reconsideration. However, if the Cabinet reiterates its advice, the President is constitutionally bound to accept it. This provision was notably exercised by President K.R. Narayanan, who returned the Union Cabinet's recommendation to impose President's Rule in Uttar Pradesh against the Kalyan Singh government. Since then, a constitutional convention has emerged that advice once reconsidered by the

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

---

## Chapter 15 - Executive Branch

Cabinet is not sent back to the President, reflecting the delicate balance between executive authority and constitutional propriety.

Former President R. Venkataraman aptly described the President's discretionary power as an "emergency light" that turns on automatically when the regular flow of constitutional power is disrupted, and switches off once normalcy is restored. This metaphor highlights that such discretion is not a routine constitutional authority but a situational necessity. The President, as a rule, is bound to act on the aid and advice of the Council of Ministers; however, in rare and exceptional circumstances, his intervention may be required to safeguard constitutional propriety and ensure the stability of governance.

### Is the President of India Merely a Rubber Stamp?

The President of India is often seen as a ceremonial figurehead – a rubber stamp – especially given the parliamentary structure of governance where real power lies with the Council of Ministers headed by the Prime Minister. This view is supported by several constitutional provisions.

Article 74(1) mandates that the President must act on the advice of the Council of Ministers, leaving little room for independent judgment. Even when a bill is returned for reconsideration, the President is bound to give assent if Parliament re-passes it. Moreover, the President can be impeached by Parliament, further underscoring the subordinate nature of the role. Additionally, the President is indirectly elected, lacking a direct mandate from the people. The Constitution offers no explicit discretionary powers, reinforcing the perception of the President as a symbolic authority.

However, this interpretation overlooks the nuanced role envisioned by the Constitution. The President is not entirely passive. They can counsel, caution, and encourage reconsideration of Cabinet decisions. Under Article 78, the President has the right to seek information and explanations from the Prime Minister, acting as a constitutional guardian. A significant example of independent authority is the pocket veto, where the President can withhold assent to a bill indefinitely. President Zail Singh notably used this power in 1986 to delay the Indian Post Office (Amendment) Bill. The Constitution also provides for situational discretion. Historical precedents, such as the assertive roles of Rajendra Prasad and S. Radhakrishnan, show that Presidents have exercised moral influence, offering critical feedback on government policies.

In conclusion, while the President's powers are limited and largely bound by constitutional advice, the office is not merely ornamental. In times of uncertainty or constitutional ambiguity, the President plays a crucial stabilizing and supervisory role, embodying the values of the Constitution and acting as its moral guardian.

### Vice-President:

The Vice-President of India is the second-highest constitutional office in the country, next to the President. The office is modelled on the lines of the American Vice-President, with similar powers and functions.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

**Article 63: The Vice-President of India**

There shall be a Vice President of India

**Article 64: The Vice-President to be ex officio Chairman of the Council of States**

The Vice President shall be ex-officio chairman of the council of States and shall not hold any other office of profit provided that, during any period when the Vice President acts as President or discharges the functions of the President under Article 65, he shall not perform the duties of the office of chairman of the council of States and shall not be entitled to any salary or allowance payable to the chairman of the council of States under Article 97

The Vice President of India is the ex-officio Chairman of the Council of States (Rajya Sabha), as outlined under Article 64. This means that the Vice President holds this position automatically without needing to be formally appointed or elected to it. However, there is a condition attached to this role. When the Vice President acts as the President of India or discharges the functions of the President under Article 65, they do not perform the duties of the Chairman of the Council of States. This means that during such periods, the Vice President does not have any responsibilities or duties related to the Council of States. When presiding as Chairman, the Vice-President does not vote in the first instance but has a casting vote in the case of an equality of votes by virtue of Article 100(1) (UPSC CSE Prelims 2018).

Additionally, the Vice President is not entitled to any salary or allowance payable to the Chairman of the Council of States under Article 97. This implies that the Vice President does not receive any compensation or benefits for their role as chairman of the Council of States when they are acting as President. In that period, the Vice-President is entitled to the emoluments, allowances and privileges of the President as provided by Article 65(3) read with the Second Schedule (CAPF AC 2016).

**Vice President Acting as President****Article 65: The Vice President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President**

(1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President, have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

When the President of India is unable to perform his duties due to death, resignation, removal, or any other reason, the Vice President takes over as the acting President until a new President is elected and sworn in. This ensures continuity in the functioning of the government during this period. Article 62 further mandates that an election to fill a vacancy in the office of President shall be held as soon as possible and in no case later than six months from the date of the vacancy, which limits the maximum duration of acting Presidency (UPSC CSE Prelims 2015).

Additionally, if the President is temporarily unable to discharge his duties due to absence, illness, or any other reason, the Vice President steps in to perform the President's functions until the President resumes his duties. During this period, the Vice President has all the powers and immunities of the President and is entitled to the same emoluments, allowances, and privileges as the President. These benefits are determined by the Parliament through legislation, and until such legislation is passed, the Vice President is entitled to the emoluments, allowances, and privileges as specified in the Second Schedule of the Constitution. During such periods, the duties of the Chairman of the Council of States are discharged by the Deputy Chairman under the Council of States' Rules and Article 64 proviso (PYQ 2017).

### Election of Vice President

#### Article 66: Election of Vice President

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

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

(3) No person shall be eligible for election as Vice-President unless he:

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

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

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

The Vice President of India is elected indirectly by an electoral college consisting of members of both houses of Parliament i.e. the Lok Sabha and the Rajya Sabha. The election follows the system of proportional representation by means of the single transferable vote, and voting is conducted by secret

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

ballot. Unlike the Presidential election, the electoral college here includes nominated members of both Houses and there is no concept of vote-value; each MP's vote carries equal weight (UPSC CSE Prelims 2017). To be eligible for the position, a candidate must be a citizen of India, at least 35 years old, and qualified to be elected as a member of the Rajya Sabha. Additionally, the candidate cannot hold any other office of profit under the central or state governments or any local authority. Further, the nomination of a candidate for election of Vice-President must be proposed by 20 electors and seconded by 20 electors as well. The security deposit is fifteen thousand rupees as per the Presidential and Vice-Presidential Elections Act, 1952 and Rules, 1974 (TNPSC 2019). Whips cannot be issued and the Tenth Schedule does not apply because this is not a vote in the House (BPSC 2020).

If an elected member of either house of Parliament or a state legislature is chosen as Vice President, they are deemed to have vacated their previous seat on the date they assume office as Vice President. The Vice President serves a five-year term, and an election to fill a vacancy caused by the completion of the term must be held before the outgoing Vice President's term expires. Any doubt or dispute arising out of the Vice-Presidential election is adjudicated by the Supreme Court whose decision is final under Article 71, and pending such decision the acts of a person declared elected are valid (UPPSC 2016).

### Difference between the Electoral Colleges for the President and the Vice-President

	President	Vice President
<b>Constitutional Basis</b>	Article 54	Article 66
<b>Electoral College Composition</b>	1. Elected members of Lok Sabha 2. Elected members of Rajya Sabha 3. Elected members of Legislative Assemblies of States & Union Territories	1. Elected members of Lok Sabha 2. Nominated members of Lok Sabha 3. Elected members of Rajya Sabha 4. Nominated members of Rajya Sabha
<b>State Legislatures' Role</b>	Yes, included (elected MLAs of States and UTs with legislatures)	No role of State Legislatures
<b>Nominated Members</b>	Not included	Included (from both Houses of Parliament)
<b>Level of Representation</b>	National + State level (wider and more diverse)	Only National level (narrower base)

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.



## Chapter 15 - Executive Branch

<b>System of Election</b>	Proportional representation by means of single transferable vote (secret ballot)	Proportional representation by means of single transferable vote (secret ballot)
<b>Body Size</b>	Larger and more representative	Smaller, confined to Parliament only

### Term of office of Vice President

#### Article 67: Term of office of Vice President

The Vice-President shall hold office for a term of five years from the date on which he enters upon his office. Provided that:

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

The Vice-President of India holds office for a term of five years from the date they take office. He is also eligible for re-election to that office. He may be elected for any number of terms. However, there are certain circumstances under which a Vice-President can leave office before the end of their term.

- **Resignation:** Vice-President can resign from their office by writing a letter to the President.
- **Removal:** Vice-President can also be removed from their office by a resolution passed by the Council of States (Rajya Sabha) and agreed to by the House of the People (Lok Sabha). However, at least fourteen days' notice must be given before the resolution is moved. Notably, no ground has been mentioned in the Constitution for his removal. (PYQ 2004). The expression "majority of all the then members" in Article 67(b) denotes an effective majority of the total membership excluding vacancies in the Rajya Sabha; while such a motion is under consideration, the Vice-President cannot preside but may speak and vote as a member, and the Lok Sabha need only agree by a simple majority (UPSC CSE Prelims 2016).
- **Continuation of Office:** Even if a Vice-President's term ends, they will continue to hold office until their successor takes office. This means that the Vice-President will remain in office until a new Vice-President is elected, ensuring continuity in the functioning of the government.

### Vacancy in office of VP

#### Article 68: Time of holding election to fill vacancy in the office of Vice President and the term of

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

### office of person elected to fill casual vacancy

- (1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.
- (2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

This article outlines the procedures for filling a vacancy in the office of the Vice- President. If the vacancy is due to the expiration of the Vice-President's term, the election to fill the vacancy must be completed before the term expires. If the vacancy occurs due to the Vice-President's death, resignation, removal, or other reasons, the election must be held as soon as possible after the vacancy arises. The person elected to fill a casual vacancy is entitled to hold office for the remainder of the original five-year term, subject to the provisions of Article 67.

### Oath or affirmation by the Vice President:

The oath is administered by the President or a person appointed by the President for this purpose. The Vice President swears to uphold the Constitution and faithfully carry out the duties of the office.

[Note: Text of the Oath or affirmation of the Vice President is discussed in the Appendices]

### Role of the Vice-President: Powers and Functions

The Vice-President of India has two primary functions. Firstly, he acts as the ex-officio Chairman of the Rajya Sabha, which is similar to the role of the Speaker of the Lok Sabha. This role is comparable to that of the American Vice-President, who also serves as the Chairman of the Senate. Secondly, the Vice-President acts as the President when a vacancy occurs in the office of the President due to his resignation, removal, death, or any other reason. He can serve as President for a maximum period of six months, during which time a new President must be elected. Additionally, if the sitting President is unable to discharge his duties due to absence, illness, or any other cause, the Vice-President takes over until the President resumes his office.

It is important to note that while acting as President or discharging the functions of President, the Vice-President does not perform the duties of the Chairman of the Rajya Sabha. Instead, the Deputy Chairman of the Rajya Sabha assumes these responsibilities during this period. Accordingly, any tie-breaking vote in that period would be exercised by the presiding Deputy Chairman and not by the Vice-President, preserving institutional continuity (BPSC 2021).

### American Vice-President vs. Indian Vice-President

The office of the Vice-President of India is modelled after the American Vice-President, but there is a difference in their roles. In the United States, the Vice-President becomes the President if there is a vacancy in the President's office and serves for the remainder of the predecessor's term. In contrast, the Indian Vice-President acts as an acting President only until a new President is elected and assumes

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

office. This implies that the Indian Constitution has not assigned significant powers to the Vice-President, and the office primarily serves to maintain the continuity of the Indian state.

### Prime-Minister

In India's parliamentary system of government, the President serves as the nominal executive authority or *de jure* executive, performing a ceremonial and symbolic role as the head of the State. In contrast, the Prime Minister is the real executive authority or *de facto* executive, functioning as the head of the Government and exercising actual power. The Prime Minister is responsible for day-to-day governance, policy decisions, and leading the Council of Ministers, while the President acts on their aid and advice, except in a few exceptional situations. In the words of *Sir Ivor Jennings*, a renowned constitutional scholar, "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 provides overall direction and leadership to the government while also directly supervising some key ministries and departments. These include the Appointments Committee of the Cabinet, the Ministry of Personnel, Public Grievances and Pensions, the Ministry of Planning, the Department of Atomic Energy, and the Department of Space. By retaining charge of these crucial areas, the Prime Minister ensures centralised control over appointments, administration, policy planning, and strategic sectors, reaffirming his role as the real executive authority in India's parliamentary system. For emergency proclamations, Article 352 requires the written advice of the Union Cabinet with the Prime Minister at the head, a safeguard inserted by the Forty-fourth Amendment, 1978 (UPSC CSE Prelims 2017).

### Appointment of PM:

The appointment of the Prime Minister of India is governed by the Constitution and follows conventions of the parliamentary system of government. Article 75 of the Constitution states that the Prime Minister shall be appointed by the President, but it does not specify the procedure for selection and appointment.

In practice, the President typically appoints the leader of the majority party in the Lok Sabha as the Prime Minister. However, if no party has a clear majority, the President may exercise personal discretion in the selection and appointment of the Prime Minister. In such cases, the President usually appoints the leader of the largest party or coalition in the Lok Sabha and asks them to seek a vote of confidence in the House.

### Term of the PM:

The term of the Prime Minister is not fixed, and he holds office during the pleasure of the President. However, this does not mean that the President can dismiss the Prime Minister at any time. So long as the Prime Minister enjoys the majority support in the Lok Sabha, he cannot be dismissed by the President. However, if he loses the confidence of the Lok Sabha, he must resign, or the President can dismiss him.

For example, VP Singh in 1990 and Deve Gowda in 1997 resigned after their defeat in the Lok Sabha elections, demonstrating that the Prime Minister must step down if s/he loses the confidence of the Lok Sabha. This ensures that the Prime Minister remains accountable to the people through their elected

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

---

representatives in the Lok Sabha.

### **Powers and Functions of the PM:**

The Prime Minister is the most powerful executive functionary, leading the government, shaping the policy, and coordinating the activities of the entire executive branch. The powers and functions of Prime Minister can be studied under the following categories:

### **In relation to the Council of Ministers:**

The Prime Minister is responsible for recommending individuals to be appointed as ministers, by the President. This means that the President can only appoint those individuals who have been recommended by the Prime Minister. The Prime Minister also has the authority to allocate and change portfolios among the ministers as he sees fit (PYQ 2009). This allows him to adjust the responsibilities of his ministers to suit the needs of the government and the country. For instance, if a particular minister is not performing well in a specific portfolio, the Prime Minister can transfer that minister to a different portfolio where they may be more effective.

In case of a disagreement between the Prime Minister and any minister, the Prime Minister can ask the minister to resign or advise the President to dismiss him. This power ensures the authority and unity of leadership within the Council of Ministers. The Prime Minister also presides over meetings of the Council, where he plays a central role in shaping and influencing decisions. By guiding, directing, controlling, and coordinating the work of all ministers, the Prime Minister ensures cohesion in government functioning and alignment with the overall policy goals of the government.

The resignation of the Prime Minister carries significant implications for the Council of Ministers. Once the Prime Minister resigns, the entire Council of Ministers stands dissolved, as the government is collectively responsible under his leadership. Individual ministers are not required to resign separately. In such a situation, if no alternative party or coalition is able to command a majority in the Lok Sabha, the President may dissolve the House and call for fresh elections.

### **In Relation to the President:**

The Prime Minister also plays a crucial role in the country's governance, serving as the head of the Council of Ministers. In relation to the President, the Prime Minister acts as the principal channel of communication between the President and the Council of Ministers. This means that he is responsible for informing the President about all decisions made by the Council of Ministers regarding the administration of the country's affairs and proposals for legislation (PYQ 2013). Additionally, if the President requests information on specific matters, the Prime Minister is obligated to provide it. Also, if the President requires reconsideration of a decision taken by a minister, the Prime Minister must submit the matter for the consideration of the Council of Ministers.

PM also advises the President on important appointments, such as those of the Attorney General of India, Comptroller and Auditor General of India, Chairman and members of the UPSC, Election Commissioners, and Chairman and members of the Finance Commission. This ensures that the President is well-informed and that the appointments are made in accordance with the country's needs and policies.

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

---

## Chapter 15 - Executive Branch

---

### **In Relation to Parliament:**

The Prime Minister plays a crucial role in parliamentary matters. S/he advises the President on matters such as summoning and proroguing sessions of the Parliament. This means that the Prime Minister has a major influence over the timing and duration of parliamentary sessions.

Another key power of the Prime Minister is the authority to recommend the dissolution of the Lok Sabha to the President at any time. The Prime Minister also plays a central role in announcing government policies on the floor of the House. This includes presenting the legislative agenda, the annual budget, and key policy initiatives before the members of the Lok Sabha. Such addresses are significant as they reflect the government's priorities and vision for the country. For instance, the Prime Minister's budget speech outlines the financial strategy and developmental priorities for the coming year, thereby setting the course for India's economic policies.

### **Other Powers and Functions:**

The Prime Minister of India holds a multitude of powers and functions that are crucial for the governance of the country. S/he is the chairman of several important councils, including NITI Aayog, National Developmental Council, National Integration Council, Inter-State Council, and National Water Resources Council. These councils play a key role in shaping various aspects of national policy, such as economic development, social integration, and resource management.

The Prime Minister plays a crucial role in shaping India's foreign policy and represents the nation on the global stage. As the chief representative of India, he is responsible for negotiating and maintaining diplomatic relations with other countries, often attending international summits and high-level meetings to safeguard India's interests. Domestically, the Prime Minister also functions as the chief spokesperson of the Union government. He communicates government policies and decisions to the public through speeches, addresses, and press interactions, ensuring transparency and keeping citizens informed about national initiatives.

During times of crisis or emergency, the Prime Minister functions as the nation's crisis manager-in-chief. He directs and coordinates the government's response to disasters, natural calamities, or other major incidents, ensuring timely relief and resource mobilization. For instance, Prime Minister Manmohan Singh took charge of the response during the 2004 Indian Ocean tsunami, overseeing international aid coordination and rehabilitation measures. Similarly, during the COVID-19 pandemic (2020), Prime Minister Narendra Modi announced the nationwide lockdown under the Disaster Management Act, 2005, and coordinated vaccination drives, symbolizing the central leadership role of the PM in emergencies.

Beyond emergencies, the Prime Minister also acts as a link between the people and the government. By meeting diverse groups, receiving memoranda, and touring states, he remains aware of the concerns of the common people. This practice ensures that policymaking reflects both national priorities and grassroots realities.

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

---

## Chapter 15 - Executive Branch

The judiciary has also recognized the Prime Minister's pivotal role in governance. In the **S.P. Gupta vs Union of India (1981)** case, the Supreme Court acknowledged that though the President is the constitutional head, it is the Prime Minister who holds the real executive authority, including during crises. Thus, the Prime Minister's leadership is not only practical but also constitutionally central to India's system of governance.

The PM is also the leader of the party in power, guiding and directing the party's policies and actions. He is responsible for allocating portfolios to ministers and ensuring that they work together effectively to achieve the party's goals.

### **Deputy Prime Minister:**

The Deputy Prime Minister in India is a position that has been intermittently occupied since its inception. The office is not explicitly mentioned in the Indian Constitution, but it is a member of the Union Council of Ministers. The Deputy Prime Minister is appointed by the President. The first Deputy Prime Minister of India was Sardar Vallabhbhai Patel, and the last was L. K. Advani.

In comparison, the deputy Chief minister is a position in the state governments. The deputy Chief minister is also not explicitly mentioned in the Constitution but is understood to be equivalent in rank to a Cabinet Minister. They are appointed by the Governor of the state on the advice of the Chief Minister.

### **Prime Minister's Office (PMO):**

The Prime Minister's Office (PMO) is the executive body responsible for providing secretarial assistance to the Prime Minister of India. It was established in 1947 and was initially known as the Prime Minister's Secretariat until it was renamed in 1977 during the Morarji Desai administration.

The Prime Minister's Secretariat (PMS) is headed politically by the Prime Minister and administratively by the Principal Secretary, whose relationship with the Prime Minister is key to the office's effectiveness. The Secretariat has evolved over time, shaped by the personalities and working styles of different Prime Ministers. For instance, during Jawaharlal Nehru's tenure, it was relatively low-key, while under Indira Gandhi, the role of the Principal Secretary expanded substantially, overseeing major policy decisions such as bank nationalisation and the Green Revolution.

The PMS performs several important functions as outlined in the Government of India (Allocation of Business) Rules, 1961. It provides secretarial support to the Prime Minister, acts as a think tank for policy formulation, assists the Prime Minister in his overall responsibilities as head of government, and manages public relations. For example, during the COVID-19 pandemic, the PMS coordinated nationwide lockdown strategies, resource mobilization, and communication between the Centre and states. The Secretariat also supports the Prime Minister in his role as chairman of the Planning Commission, now replaced by NITI Aayog, facilitating policy formulation such as the Make in India initiative and Atmanirbhar Bharat. Additionally, it examines cases submitted for orders under prescribed rules,

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.



## Chapter 15 - Executive Branch

functioning as a settlement house to resolve administrative uncertainties and ensure timely decision-making, such as during key cabinet approvals and inter-ministerial disputes.

### Chief Ministers who went on to become the Prime Minister

Six former chief ministers have gone on to become the Prime Minister of India:

1. Morarji Desai was the Chief Minister of the erstwhile Bombay State from 1952 to 1956 and later became the Prime Minister of India in March 1977.
2. Chaudhary Charan Singh was the Chief Minister of undivided Uttar Pradesh in 1967-1968 and again in 1970. He became the Prime Minister of India in December 1989.
3. V.P. Singh was the Chief Minister of Uttar Pradesh from 1980 to 1981 and again from 1985 to 1988. He became the Prime Minister of India in December 1989 as part of the National Front government.
4. P.V. Narasimha Rao was the Chief Minister of Andhra Pradesh from 1971 to 1973. He later became the Prime Minister of India from 1991 to 1996.
5. H.D. Deve Gowda the Chief Minister of Karnataka when he was chosen to lead the United Front government. He became the Prime Minister of India in June 1996.
6. Narendra Modi was the Chief Minister of Gujarat for four terms from 2001 to 2014. He became the Prime Minister of India in 2014.

### Council of Ministers:

The Council of Ministers is the supreme executive organ of the Union Government. It is headed by the Prime Minister and is responsible for advising the President on the exercise of his powers. The Council of Ministers is responsible for formulating policies, implementing government programs, and ensuring the smooth functioning of the executive branch of the government. The Prime Minister plays a key role in the Council of Ministers, as s/he is responsible for leading the council and making key decisions.

### Constitutional Provisions:

The constitutional provisions related to the Council of Ministers (CoM) in India are outlined in Articles 74, 75, 77, and 88 of the Constitution. These provisions define the structure, roles, and responsibilities of the Council of Ministers.

### Article 74: Council of Ministers to aid and advise President

(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice, provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

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

Article 74 outlines the role of the Council of Ministers in aiding and advising the President. It states that

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

there shall be a Council of Ministers headed by the Prime Minister to aid and advise the President in the exercise of his functions. The President is required to act in accordance with the advice given by the Council of Ministers, unless he requires them to reconsider such advice, in which case he shall act in accordance with the advice tendered after such reconsideration.

It provides that the question whether any advice was tendered by Ministers to the President shall not be inquired into in any court. This provision ensures that the advice given by the Council of Ministers remains confidential and is not subject to judicial review. This is significant because it allows the President to exercise his discretion without interference from the judiciary. But the action taken based on advice tendered is subject to judicial review.

### Other provisions related to the CoM

#### Article 75: Other provisions as to Ministers:

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

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

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

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

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

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

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

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

Article 75 outlines key provisions related to the appointment, tenure, and responsibilities of the Prime Minister and the Council of Ministers. The Prime Minister is appointed by the President, while the other Ministers are appointed by the President on the advice of the Prime Minister. The 91st Amendment, 2003, mandated that the total number of Ministers, including the Prime Minister, cannot exceed 15% of the total strength of the Lok Sabha (PYQ-2007, 2009, 2022). A Minister who is disqualified as a member of the Parliament is also disqualified from being a Minister for the remainder of their term.

Ministers hold office during the “pleasure” of the President, a term not explicitly defined in the

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

Constitution. However, the Council of Ministers is collectively responsible to the Lok Sabha, ensuring parliamentary accountability. Before assuming office, the President administers the oaths of office and secrecy to each Minister. If a Minister is not a member of either House of Parliament for six consecutive months, they cease to hold office at the end of that period. The salaries and allowances of Ministers are determined by Parliament, and until such determination, they are governed by the Second Schedule of the Constitution.

### Conduct of Business

#### Article 77: Conduct of business of the Government of India

- (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.
- (2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.
- (3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

Article 77 of the Constitution governs the conduct of business by the Government of India and consists of three key clauses. Firstly, it mandates that all executive actions of the Union government must be expressed to be taken in the name of the President, ensuring that the President remains the formal head of the executive. Secondly, it requires that all orders and instruments issued in the President's name be authenticated in a manner specified by the President, guaranteeing their validity and preventing disputes regarding their origin. Thirdly, the article empowers the President to frame rules for the convenient transaction of government business and the allocation of work among ministers, thereby streamlining operations and ensuring efficient distribution of responsibilities across the Council of Ministers.

### Rights of Ministers

#### Article 88: Rights of Ministers as respects Houses

Every Minister and the Attorney- General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member but shall not by virtue of this article be entitled to vote.

Article 88 grants specific rights to Ministers regarding their participation in the Houses of Parliament. According to this article, every Minister has the right to speak and participate in the proceedings of both the Houses of Parliament, including any joint sitting and any committee of Parliament to which they may be named a member. This provision ensures that Ministers can actively engage in the legislative process and are able to contribute to the decision-making within Parliament.

### Relationship between the President and the Council of Ministers:

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

---

**Article 74** of the Constitution defines the role of the Council of Ministers, headed by the Prime Minister, in aiding and advising the President. The Council is responsible for assisting the President in the exercise of his functions. The 42nd and 44th Amendments clarified that the advice given by the Council of Ministers is binding on the President, meaning that the President must act according to the advice tendered, except when he requests the Council to reconsider it, after which he is again bound by their advice. The advice of the Council is confidential and cannot be inquired into by any court, emphasizing the intimate and confidential relationship between the President and the ministers.

The Supreme Court has consistently reinforced this principle. In **S.R. Bommai (1994)** and related rulings, the Court emphasized that the President cannot exercise executive power independently of the Council. Earlier, in 1971, the Court held that even after the dissolution of the Lok Sabha, the Council of Ministers continues to hold office, and the President cannot act without their aid and advice. Similarly, in **A.D.M. Jabalpur vs Shiv Kant Shukla (1976)**, it was held that the satisfaction of the President is not personal, but reflects the satisfaction of the Council of Ministers on whose advice the President acts. These provisions and judicial pronouncements collectively ensure that while the President is the nominal executive, real executive authority rests with the Council of Ministers, maintaining the parliamentary balance of power.

### Appointment of Ministers:

The President of India appoints the Council of Ministers on the advice of the Prime Minister. The Prime Minister is usually the leader of the party or coalition that has the majority in the Lok Sabha. The Prime Minister then selects other ministers from among the members of the Parliament. If a minister is not an MP, they must become one within six months of their appointment, otherwise they cease to be a minister.

For example, H.D. Deve Gowda, who was not a member of either House of Parliament, was appointed as the Prime Minister in 1997. He was elected to the Rajya Sabha within the six-month period, ensuring he could continue in his role. A minister who is a member of one House of Parliament has the right to speak and to take part in the proceedings of the other House also, but he can vote only in the House of which he is a member.

### Salaries and allowances:

The salaries and allowances of ministers in India are determined by the Parliament through the Salaries and Allowances of Ministers Act, 1952. A minister receives a salary per month and an allowance for each day during their term, at the same rates as the members of Parliament. Additionally, they are entitled to a constituency allowance at the same rate as MPs.

Each minister is given a furnished residence without paying rent for their term and one month after, with the government bearing maintenance costs. Other benefits include medical facilities, travelling allowances, and a motor car advance. These allowances are intended to support the minister's official duties and provide a reasonable standard of living.

### Responsibilities of the CoM

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

---

## Chapter 15 - Executive Branch

---

1. **Collective responsibility:** The principle of collective responsibility is a fundamental tenet of the parliamentary system of government in India, as enshrined in clause (3) of Article 75 of the Constitution. It stipulates that the Council of Ministers, led by the Prime Minister, is collectively responsible to the “**House of People**”, the lower house of Parliament. This means that the ministers must function as a cohesive team, supporting each other and taking joint responsibility for their actions and decisions.

If the Lok Sabha passes a no-confidence motion against the Council of Ministers, all members, including those from the Rajya Sabha, must resign collectively. The principle of collective responsibility also binds all cabinet ministers and other ministers to support and defend the decisions made by the Cabinet, even if they had disagreed with them during the Cabinet meeting. The **doctrine of collective responsibility** serves to maintain the appearance of Cabinet unity and party discipline, ensuring that the government presents a united front to the public. As Prime Minister Nehru explained, “A Government after the parliamentary model is one united whole. It is a joint responsibility. Each member of the Government has to support the other so long as he remains in the Government.”

2. **Individual Responsibility:** Alongside collective responsibility, Article 75 also enshrines the principle of individual ministerial responsibility. Moreover, ministers serve at the pleasure of the Prime Minister and can be removed from office at any time. However, such removal would typically occur on the advice of the Prime Minister, who may request a minister’s resignation or advise the President to dismiss them if they are dissatisfied with the minister’s performance or have a difference of opinion.

This principle holds that ministers are accountable to the Parliament for the functioning of their respective departments. If a minister is found culpable for mistakes or wrongdoings in their department, they may be held individually responsible.

3. **No Legal Responsibility:** In Britain, the system of ministerial responsibility is well-established. Every order of the King for a public act is countersigned by a minister, which means that if the order is in violation of any law, the minister would be held responsible and liable in court. This is based on the principle that “the king can do no wrong,” which implies that the monarch cannot be sued in any court. This system ensures that ministers are accountable for their actions and decisions.

In contrast, India does not have a similar system of legal responsibility for its ministers. The Constitution does not require that an order of the President for a public act be countersigned by a minister. Additionally, the courts are barred from enquiring into the nature of advice rendered by the ministers to the President. This means that Indian ministers are not legally accountable for their actions in the same way as their British counterparts.

### Composition of the CoM:

The Council of Ministers in India is a body that includes all ministers, including Cabinet Ministers, Ministers of State, and Deputy Ministers. The composition of the Council of Ministers is determined by

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

---

## Chapter 15 - Executive Branch

the Prime Minister, who considers factors such as experience and seniority. The Council of Ministers is divided into three categories:

1. **Cabinet Ministers:** These are the senior ministers who hold important portfolios such as defence, home affairs, education, and finance. They are responsible for formulating and implementing major policies and are part of the Cabinet, which is the powerful policymaking and decision-making body of the government. Generally, the number of Cabinet Ministers may vary between 15 and 20.
2. **Ministers of State (MoS):** They are junior ministers in the government of India who are not part of the Cabinet. They can be categorized into two types:
  - a. **Minister of State (MoS):** These ministers assist a Cabinet Minister and do not have independent charge of any ministry. They do not participate in the Cabinet meetings.
  - b. **Minister of State with Independent Charge (MoS IC):** These ministers are responsible for a specific ministry and do not have an overseeing Cabinet Minister. They can participate in Cabinet meetings on important issues.
3. **Deputy Ministers:** These are the supporting ministers attached to Cabinet Ministers or Ministers of State. They do not hold independent charge of any department and assist the senior ministers in their administrative, political, and parliamentary duties.

### Functions of the Council of Ministers

The Council of Ministers (CoM) is the highest decision-making body in India, headed by the Prime Minister, and serves to aid and advise the President in the exercise of his functions. It determines all policies related to the administration of the country, including internal governance and foreign affairs, which are crucial for national peace and prosperity.

The CoM is responsible for formulating and implementing policies that promote the development, welfare, and progress of the nation. Each minister heads a specific department, overseeing its functioning, policymaking, and implementation. Working collectively, the CoM ensures coordination across ministries and effective governance. It also plays a vital role in shaping the country's economic activity, regulating sectors such as currency, banking, trade, commerce, and insurance, and implementing development plans. As per the **principle of collective responsibility**, the CoM is accountable to the Lok Sabha. This means that all ministers must act as a unified body, supporting Cabinet decisions publicly even if they disagreed during discussions. If the Lok Sabha passes a no-confidence motion, the entire Council must resign. This doctrine ensures Cabinet unity, party discipline, and accountability to the elected House, reinforcing the democratic and parliamentary nature of the Indian government.

### Cabinet:

The Cabinet is the chief policy-formulating body of the Central Government, comprising senior ministers who hold key portfolios such as Defence, Home Affairs, Finance, and Education. It is responsible for making major decisions and shaping the government's policies. As Ramsay Muir, the British political thinker, described, the Cabinet is the “**steering wheel of the ship of the state**,” guiding the direction of governance.

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.



## Chapter 15 - Executive Branch

The term “**Cabinet**” was formally added to the Constitution by the 44th Amendment, 1978. Before this amendment, the Constitution did not explicitly define or mention the Cabinet. It is now referenced in **Article 352(3)**, which stipulates that the President cannot issue a proclamation of emergency without the written advice of the Cabinet, highlighting its crucial role in decision-making at the highest level.

### **Difference between the Council of Ministers and the Cabinet:**

The words ‘council of ministers’ and ‘cabinet’ are often used interchangeably though there is a definite distinction between them. They differ from each other in respect of their composition, functions, roles, etc. The Council of Ministers is a larger body comprising all ministers, including Cabinet Ministers, Ministers of State (Independent Charge), and Ministers of State, with around 40-60 members. In contrast, the Cabinet is a subset of the Council of Ministers, consisting of senior ministers chosen by the Prime Minister, typically numbering 15-18 ministers.

The Council of Ministers participates in the decision-making collectively, but the real authority often rests with the Cabinet and the Prime Minister. The Cabinet, on the other hand, is the core decision-making body within the Council of Ministers, responsible for major policy decisions and crucial matters. Cabinet ministers are often considered the top tier in the ministerial hierarchy, holding key portfolios like Finance, Home Affairs, Defence, etc. The Council of Ministers serves in an advisory capacity to the Prime Minister and collectively aids in the administration and governance of the country.

The Cabinet, being the core decision-making body, plays a more direct and influential role in advising the Prime Minister on major policy matters. Both bodies share collective responsibility for the overall performance of the government and its policies, with the Cabinet emphasizing the principle of collective responsibility more strongly.

### **Kitchen Cabinet:**

The “Kitchen Cabinet” or “Inner Cabinet” is an informal advisory body that assists the Prime Minister in key decision-making. It typically consists of the Prime Minister and two to four trusted colleagues, though it may also include outsiders such as friends or family. Unlike the formal Cabinet, which is composed of senior ministers heading various portfolios and advising the President, the Kitchen Cabinet is smaller, more flexible, and can meet frequently to discuss urgent political and administrative matters.

This body is valued for its efficiency, ability to maintain secrecy, and quick decision-making. It allows the Prime Minister to deliberate sensitive issues without the procedural constraints of the full Cabinet. Historically, every Indian Prime Minister has relied on such an inner circle, with Indira Gandhi’s Kitchen Cabinet being especially influential. However, the system also has drawbacks, such as undermining the authority of the formal Cabinet and circumventing institutional processes by giving outsiders undue influence. The concept of a Kitchen Cabinet is not unique to India; similar arrangements exist in countries like the United States and the United Kingdom, where they play a significant role in shaping policy decisions.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

### Groups of Ministers (GoMs):

The concept of Groups of Ministers is a mechanism used by the government to address specific issues or policy matters. These groups are formed by the Prime Minister, usually in consultation with the Cabinet, to bring together relevant ministers to deliberate on and make recommendations on specific topics. The composition of GoMs can vary depending on the issue at hand, but they typically include senior ministers from various ministries. Some notable examples are- Group of Ministers on Bhopal Gas Leak Disaster, Group of Ministers for prevention and management of COVID-19, etc.

### Cabinet Secretariat:

The Cabinet Secretariat is responsible for the administration of the Government. It provides secretarial assistance to the Cabinet and facilitates smooth transaction of business between Ministries and Departments of the Government. The Cabinet Secretariat is headed by the Cabinet Secretary, who is the ex-officio head of the Civil Services Board, the Indian Administrative Service (IAS), and head of all the civil services under the Rules of Business of the Government.

### Civil Services Board:

A Civil Services Board (CSB) is responsible for managing transfers, postings, inquiries, promotions, rewards, punishments, and disciplinary matters of civil servants in India. The Supreme Court directed the Centre and states in 2013 to set up such boards to insulate the bureaucracy from political interference and to put an end to the frequent and arbitrary transfers by political bosses.

As per the rules, all states must have a CSB to decide on transfers and postings of bureaucrats. The board is mandated to decide on the transfer of a civil servant before completion of their fixed tenure, which is at least two years as per the Centre's guidelines. The CSB is headed by the Chief Secretary and includes senior additional chief secretaries or equivalent officers as members. (PYQ 2015).

The board's functions include submitting an annual report on January 1 to the central government about its meetings. The rules provide for the state to follow the Centre's guidelines on the fixed tenures for officers, with the Chief Minister as the final authority. The CSB aims to enable better administration by providing stability and insulating bureaucrats from political pressure.

### Cabinet Committees:

The Cabinet Committees are extra-constitutional bodies, established by the Rules of Business, specifically the Government of India (Transaction of Business) Rules, 1961. These rules are derived from Article 77(3) of the Constitution, which grants the President the power to make rules for the more convenient transaction of the business of the Government of India and for the allocation of business among ministers. Here are the key features of cabinet committees:

- **Extra-Constitutional:** Cabinet committees are not mentioned in the Indian Constitution. Instead, they are established by the rules of business.

## Chapter 15 - Executive Branch

---

- **Types:** There are two types of Cabinet committees—standing and ad hoc. Standing committees are permanent, while ad hoc committees are temporary, and they are formed to deal with specific issues.
- **Formation:** The Prime Minister sets up Cabinet Committees according to the needs of the situation. This means their number, name, and composition can change over time.
- **Membership:** The membership of Cabinet Committees varies from three to eight members. Typically, only Cabinet Ministers are included, but non-cabinet ministers can also participate under exceptional circumstances.
- **Chairmanship:** The Prime Minister usually chairs the committees. In some cases, other Cabinet ministers, such as the home minister or the finance minister, can also act as the chairperson. If the Prime Minister is a member of the committee, they invariably preside over it.
- **Functions:** Cabinet committees not only resolve issues and formulate proposals but also take decisions. The Cabinet can review these decisions.
- **Purpose:** The main purpose of Cabinet Committees is to reduce the Cabinet's workload by facilitating in-depth examination of policy issues and effective coordination. They are based on the principles of division of labour and effective delegation.

### Key Cabinet Committees:

- **Appointments Committee of the Cabinet:** This committee decides all higher-level appointments in the Central Secretariat, Public Enterprises, Banks, and Financial Institutions.
- **Cabinet Committee on Accommodation:** This committee deals with the allotment of government accommodation to various individuals and organizations.
- **Cabinet Committee on Economic Affairs:** This committee reviews economic trends, problems, and prospects, and coordinates all activities requiring policy decisions at the highest level. It also deals with fixation of prices of agricultural produce and prices of essential commodities, industrial licensing policies, and rural development.
- **Cabinet Committee on Parliamentary Affairs:** This committee draws the schedule for Parliament sessions and monitors the progress of government business in Parliament. It also scrutinizes non-government business and decides which official bills and resolutions are to be presented.
- **Cabinet Committee on Political Affairs:** This committee deals with all policy matters pertaining to domestic and foreign affairs and is often called the “Super Cabinet”.
- **Cabinet Committee on Security:** This committee deals with matters related to national security.
- **Cabinet Committee on Investment and Growth:** This committee is responsible for reviewing investment and growth policies. (established in 2019)
- **Cabinet Committee on Employment and Skill Development:** This committee focuses on employment and skill development policies. (established in 2019).

All the Cabinet Committees are headed by the PM with two exceptions: (a) the Cabinet Committee on Accommodation, headed by the union Home Minister, and (b) the Cabinet Committee on Parliamentary Affairs, headed by the union Defence Minister.

## Chapter 15 - Executive Branch

### Attorney General of India:

Article 76 of the Constitution deals with the Attorney General of India, who is the highest law officer of the country. The President of India appoints the Attorney General, who must be qualified to be appointed as a Judge of the Supreme Court (PYQ 2000). This qualification includes being a citizen of India and having been a judge of a high court for five years or an advocate of a high court for ten years or being an eminent jurist in the opinion of the President.

#### Article 76: Attorney-General for India

- 1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.
- 2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.
- 3) In the performance of his duties the Attorney General shall have the right of audience in all courts in the territory of India.
- 4) The Attorney-General shall hold office during the pleasure of the President and shall receive such remuneration as the President may determine.

The Attorney General's primary duties include giving advice to the Government of India on legal matters referred to him by the President and performing other duties of a legal character assigned by the President. He also discharges functions conferred on him by the Constitution or any other law.

The Attorney General holds office during the pleasure of the President and receives such remuneration as the President may determine. There is no fixed tenure for the Attorney General, and he can be removed by the President at any time without any procedure or grounds mentioned in the Constitution. Also, There is no mention in the Indian Constitution of the need for him to submit his resignation when the Government which appointed him resigns (PYQ 2022).

### Duties and Functions:

The Attorney General of India is the chief law officer of the Government of India, responsible for providing legal advice and assistance to the government in all legal matters. The President has assigned specific duties to the Attorney General, including:

- Appearing on behalf of the Government of India in all cases in the Supreme Court where the government is concerned.
- Representing the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution.
- Appearing in any High Court when required by the Government of India in cases where the government is concerned.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

The Attorney General of India (AGI) holds a unique constitutional position as the chief legal advisor to the Union government. One of the most significant rights of the AGI is the right of audience, which allows them to appear and participate in any court in India, including the Supreme Court, High Courts, and subordinate courts, ensuring effective representation of the government's legal interests.

The AGI also has the right to speak and participate in the proceedings of both Houses of Parliament, their joint sittings, and parliamentary committees of which they may be a member, though without the right to vote (PYQ 2013). This enables them to provide legal insights during legislative discussions. Additionally, the Attorney General enjoys all privileges and immunities of a Member of Parliament, including freedom of speech in Parliament, safeguarding the expression of legal opinions without fear of repercussions.

Unlike regular government servants, the AGI is not barred from private legal practice, allowing them to maintain professional expertise and provide specialized legal knowledge, which can benefit the government in complex legal matters.

### Limitations associated with the office of AGI:

The **Attorney General of India (AGI)**, despite being the highest law officer of the country, faces certain **restrictions to maintain the integrity of the office** and avoid conflicts of interest. **Firstly**, the AGI cannot advise or represent the Union Government in cases where a conflict of interest arises, such as holding a brief against the government. This ensures that the Attorney General's duties are not compromised.

**Secondly**, permission from the Government of India is required before the AGI can defend accused persons in criminal prosecutions, safeguarding impartiality and preventing perceived bias. **Thirdly**, the AGI must obtain approval before accepting appointments as a director in any company or corporation, preventing conflicts of interest and undue influence.

**Fourthly**, the Attorney General can provide legal advice to ministries, departments, statutory organizations, or public sector undertakings **only through the Ministry of Law and Justice, Department of Legal Affairs**. This ensures a proper channel of communication, oversight, and accountability in seeking the AGI's advice.

### Does the Office of AGI come under RTI Act?

The office of the Attorney General of India (AGI) has been subject to various interpretations regarding its status as a "public authority" under the Right to Information (RTI) Act. The Chief Information Commission (CIC) initially ruled that the AGI does not fall within the definition of "public authority" under the RTI Act because it does not have the authority to affect the legal relations of others and lacks the infrastructural wherewithal to meet the requirements of the Act.

However, a single judge bench of the Delhi High Court, in 2015, disagreed with this ruling, holding that the AGI is indeed a public authority. The court based its decision on the AGI's functions under Article 76(2) of the Indian Constitution, which it argued fulfills the definition of a public authority.

## Chapter 15 - Executive Branch

under the RTI Act.

This decision was later overturned by a division bench of the Delhi High Court in 2017. The bench ruled that the AGI is not a public authority because it has a lawyer-client relationship with the Indian Government, which means that the advice tendered by the AGI cannot be disclosed under the RTI Act. Additionally, the court noted that the AGI does not have any administrative or other authority that affects the rights or liabilities of persons.

### **Solicitor General of India (SGI):**

The Solicitor General of India (SGI) is the second-highest law officer of the Union, ranking just below the Attorney General of India (AGI). While the AGI derives authority from Article 76 of the Constitution, the Solicitor General is not a constitutional authority but a statutory one, governed by the Law Officers (Conditions of Service) Rules, 1987. The office was created to meet the increasing legal demands of a maturing democracy, where constitutional and statutory questions required constant representation of the Union before courts. The Solicitor General is appointed by the Appointments Committee of the Cabinet (ACC), chaired by the Prime Minister, generally for a three-year term. However, this tenure may be extended or curtailed at the government's discretion, reflecting the executive nature of the post. Unlike the Attorney General, the SGI does not enjoy the right to participate in the proceedings of Parliament (PYQ 2022).

The primary function of the Solicitor General is to assist the Attorney General and represent the Government of India in important legal matters before the Supreme Court, High Courts, and other judicial forums. The SGI advises ministries and departments on complex legal questions, ensures that legislation and executive policies are legally sound, and frequently appears in cases of constitutional interpretation. They also represent the Union in Presidential References under Article 143, such as the *Special Reference of 1964* on the Kerala Education Bill. Over time, Solicitors General have argued in cases of immense constitutional significance, including *Kesavananda Bharati v. State of Kerala* (1973), which laid down the basic structure doctrine, and *S.R. Bommai v. Union of India* (1994), which clarified the scope of President's Rule. In recent decades, the SGI has appeared in high-profile disputes concerning coal block allocation, spectrum allocation, environmental governance, and other policy-driven issues, thus shaping the judicial interpretation of executive action.

Given the sensitivity of the role, the Solicitor General is subject to stringent restrictions to avoid conflict of interest. They cannot hold briefs against the Government of India or its public sector undertakings, defend an accused in criminal matters without prior government consent, or accept offices of profit and external appointments without permission. Likewise, they cannot advise private parties against the Union or public undertakings. These restrictions preserve the integrity of the office and reinforce its role as the trusted legal advisor of the State.

In essence, while the Solicitor General is not a constitutional authority, the office has evolved into an indispensable pillar of India's legal framework. By balancing the responsibilities of legal representation,

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.



## Chapter 15 - Executive Branch

policy defense, and constitutional interpretation, the SGI ensures that executive decisions withstand judicial scrutiny, thereby contributing significantly to the functioning of the Indian polity.

**Additional Solicitors General of India:**

The Additional Solicitors General of India are appointed to assist the Solicitor General of India and the Attorney General of India in carrying out their duties.

**Permanent Executive:**

The permanent executive, commonly referred to as the bureaucracy, forms a vital component of the government machinery. It consists of trained officers who serve as permanent employees of the State and remain in service irrespective of the changes in the political leadership. Their primary role is to assist ministers in both the formulation and implementation of policies. While ministers provide political direction and are accountable to the legislature, the bureaucracy ensures administrative continuity, efficiency, and neutrality in carrying out the policies adopted by the government. Civil servants are bound by the principle of political neutrality and cannot act in violation of the policies framed by the legislature and the elected executive.

The Indian bureaucracy is broad-based and encompasses the All-India Services, Central Services, State Services, local government employees, and technical as well as managerial staff in public sector undertakings. Recruitment to these services is carried out through constitutional bodies. At the Union level, the Union Public Service Commission (UPSC) conducts examinations and makes recommendations for appointment to various services, while similar State Public Service Commissions (SPSCs) perform the same role at the state level. The members of these commissions are appointed for a fixed term, and their removal is subject to a rigorous process, which requires an inquiry by a judge of the Supreme Court, thereby safeguarding their independence.

Civil services in India are classified into three categories: All-India Services, Central Services, and State Services. The All-India Services include the Indian Administrative Service (IAS), the Indian Police Service (IPS), and the Indian Forest Service (IFS). These services operate under a unique cadre system. Officers are recruited and appointed by the central government but serve under both the Union and the states. Disciplinary control over them is shared by the Centre and the states, reflecting the federal character of the Indian polity. IAS and IPS officers in particular constitute the backbone of the higher-level bureaucracy in the states. They play a crucial role in implementing developmental schemes, maintaining law and order, and ensuring that decisions of the political executive are translated into action on the ground.

Thus, the permanent executive in India ensures administrative stability and continuity, even as political leadership changes from time to time. It acts as the steel frame of governance, a term famously used by Sardar Vallabhbhai Patel, highlighting its indispensable role in maintaining the unity and integrity of the country.

**State Executive:**

The State Executive in India consists of the Governor, the Chief Minister, the Council of Ministers, and the

## Chapter 15 - Executive Branch

Advocate General of the State. It closely resembles the structure of the Union Executive, with the Governor playing a role similar to that of the President at the state level. It is dealt with in Articles 153 to 167 in Part VI of the Indian Constitution.

### Governor:

The governor is the constitutional head of the state. He acts as the lynchpin of the federal polity by being the link between the central and the state governments.

#### Article 153: Governors of States

There shall be a Governor for each State:

\*[Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.]

\* Added by the 7th Amendment, 1956

Article 153 states that there shall be a Governor for each state, appointed by the President of India. The Governor acts as the constitutional head of the state and represents the President at the state level. It also allows for the appointment of the same person as Governor for two or more states (PYQ 2013). This provision was added by the 7th Amendment, 1956.

It defines the executive power of the State, which is vested in the Governor. The Governor exercises this power either directly or through officers subordinate to him, as per the Constitution. This provision ensures that the Governor is the highest authority in the state, responsible for executing the laws and policies of the state government.

The article also clarifies that it does not transfer any existing functions from other authorities to the Governor, nor does it prevent the Parliament or the State legislature from conferring functions on subordinate authorities. This ensures that the Governor's role is limited to exercising the executive powers as defined in the Constitution, while other authorities continue to perform their designated functions.

#### Article 154: Executive power of State

- (1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
- (2) Nothing in this article shall
  - (a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or
  - (b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

### Appointment of Governor

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

### Article 155: Appointment of Governor

The Governor of a State shall be appointed by the President by warrant under his hand and seal.

The Governor of a State is appointed by the President through a formal document called a warrant, which bears the President's signature and seal.

#### Term:

### Article 156: Term of office of Governor

- (1) The Governor shall hold office during the pleasure of the President.
- (2) The Governor may, by writing under his hand addressed to the President, resign his office.
- (3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

The term of the office of a Governor is governed by Article 156 of the Indian Constitution. The Governor holds office during the pleasure of the President, meaning the President can remove him at any time. The Governor can resign by writing to the President. The normal term of a Governor is 5 years from the date they assume office, but they continue in office until their successor assumes charge even after their term expires (PYQ 1995).

In *B.P. Singhal v. Union of India* (2010), the Supreme Court has criticised the politicisation of removal of Governors with the change of government at the Centre. If the removal is a consequence of the withdrawal of pleasure by the President, then the same is open to limited judicial review only on a limited ground of arbitrary and capricious exercise of pleasure, opined the court.

#### Qualifications:

### Article 157: Qualifications for appointment of Governor

No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

The qualifications for appointment as a Governor in India are outlined in Article 157 of the constitution. To be eligible for the position, a person must meet the following criteria:

- Citizenship: The person must be a citizen of India.
- Age: The person must have completed the age of thirty-five years.

These are the only two qualifications required for a person to be appointed as a Governor. There are no additional requirements or disqualifications mentioned in Article 157.

#### Conditions of the Office:

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

### Article 158: Conditions of Governors' Office

- (1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.
- (2) The Governor shall not hold any other office of profit.
- (3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.
- (3A) Where the same person is appointed as Governor of two or more States, the emoluments, and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.
- (4) The emoluments and allowances of the Governor shall not be diminished during his term of office

1.

Conditions of the Governor's office are outlined in article 158. It says that the governor cannot be a member of either House of Parliament or a state legislature. If a member of Parliament or state legislature is appointed as Governor, they are deemed to have vacated their seat on the date they assume office as Governor. Additionally, the Governor cannot hold any other office of profit.

The Governor is entitled to rent-free use of their official residence. Their emoluments, allowances and privileges are determined by the Parliament. Until Parliament makes such a law, the Governor is entitled to the emoluments, allowances and privileges specified in the Second Schedule of the Constitution. If the same person is appointed as Governor of two or more states, the President allocates their emoluments and allowances among the states in the proportion the President determines.

Further, it states that the Governor's emoluments and allowances cannot be diminished during their term of office. All these conditions ensure the Governor's independence by prohibiting them from holding other offices or seats, providing them with an official residence and fixed emoluments, and protecting their remuneration from being reduced during their tenure.

### Oath or affirmation by the Governor

Article 159 deals with the oath or affirmation taken by the Governor of a state before entering their office. The oath is to be made in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to that state, or in their absence, the senior-most judge of that Court available.

**Powers and Functions:** The Governor of a State has the following key powers and functions:

### Executive Powers:

## Chapter 15 - Executive Branch

---

2. **Vesting of Executive Power:** The executive power of the State is vested in the Governor and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution (Article 154).
3. **Formal Execution of Actions:** All executive actions of the government of a State are formally taken in the Governor's name. He can make rules specifying how the orders and other instruments made and executed in his name shall be authenticated (Article 166).
4. **Appointment of Key Officials:** The Governor appoints the Chief Minister, the other subordinate ministers, the Advocate General of the State, and they hold office during his pleasure.
5. **State Election Commissioner:** The Governor appoints the State Election Commissioner and determines their conditions of service and tenure of office. However, the SEC can be removed only in a manner and on the grounds as a judge of a high court.
6. **State Public Service Commission:** The Governor appoints the Chairman and members of the State Public Service Commission. However, they can be removed by the President of India and not by the Governor.
7. **Seeking Information:** The Governor can seek any information relating to the administration of the affairs of the state and proposals for legislation from the Chief Minister.
8. **Constitutional Emergency:** The Governor can make a recommendation to the President to impose a constitutional emergency in the state under Article 356.
9. **Chancellor of Universities:** The Governor acts as the chancellor of universities in the state. He also appoints the vice-chancellors of universities in the state.

### Legislative Powers:

1. **Summoning and Proroguing the State Legislature:** The Governor summons the sessions of both the houses of the state legislature. The Governor can also prorogue the State Legislature.
2. **Addressing the State Legislature:** The Governor addresses the first session of the state legislature after general elections and at the commencement of the first session of each year.
3. **Appointment of Members:** The Governor appoints 1/6 of the members of the State Legislative Council from amongst the people having special knowledge or practical experience in literature, art, science, cooperative movement, and social service.
4. **Disqualification of Members:** The Governor, in consultation with the Election Commission, can disqualify a member of the State legislature when the election commission recommends that the legislator is no longer complying with the provisions of Article 191.
5. **Passing of Bills:** All bills passed by the state legislature are sent to the Governor for his assent. The Governor can: Give assent to the bill, withhold assent, Return the bill to the legislature for reconsideration (if it is not a money bill) and reserve the bill for the President's consideration (in specific circumstances).
6. **Ordinance Making Power:** When the state legislature is not in session, the Governor can promulgate ordinances. These ordinances must be approved by the State Legislature within six weeks from its reassembly.
7. **Reports:** The Governor lays reports of the State Finance Commission, the State Public Service Commission, and the Comptroller and Auditor General relating to the accounts of the State, before the State Legislature.

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

---

### Financial Powers:

1. **Confirmation of the State Budget:** The Governor confirms that the state budget or the annual financial statement is laid before the State Legislature.
2. **Recommendation for Money Bills:** Money Bills can be introduced in the State Legislature only with the prior recommendation of the Governor.
3. **Recommendation for Demand for Grants:** Demand for a grant can be made only on the Governor's recommendation.
4. **Contingency Fund Advances:** To meet any unforeseen expenditure, the Governor can make advances out of the Contingency Fund of the State.
5. **Finance Commission:** The Governor constitutes a Finance Commission for the state after every five years to review the financial position of the Panchayats and the Municipalities.

### Judicial Powers

Consultation in case of appointments of Judges:

1. The President consults the Governor while appointing the judges of the High Court.
2. The Governor makes appointments, postings, and promotions of district judges in consultation with the State High Court.
3. The Governor appoints persons to the judicial service of the state (other than district judges) in consultation with the State High Court and the State Public Service Commission.

### Discretionary Powers of the Governor:

The discretionary powers of the Governor are the powers that he can exercise independently, without being bound by the advice of the Council of Ministers. Article 163 of the Constitution, which governs the relationship between the Governor and the Council of Ministers, is one of the most debated provisions. It allows the Governor to act in his discretion in matters where the Constitution explicitly requires such discretion. Notably, the Constitution makes it clear that if any question arises whether a matter falls within the governor's discretion or not, the decision of the governor is final and the validity of anything done by him cannot be called in question on the ground that he ought or ought not to have acted in his discretion.

However, the Supreme Court in *Nabam Rebia & Bamang Felix v. Arunachal Pradesh Legislative Assembly* (2016) clarified the extent of this discretionary power after examining Constituent Assembly Debates, Articles 161 to 174, and earlier judgments. The Court laid down the following key principles:

1. The Governor's discretionary power is limited to what is clearly stated in Article 163(1).
2. Discretion is valid only where the Constitution specifically says the Governor must act independently.
3. The Governor may act on his own only when a legitimate interpretation of a provision implies such intention.
4. The Governor may act independently when judicial precedent has ruled that doing so is necessary to avoid conflict of interest.
5. Importantly, any discretion exercised beyond the constitutional limits is open to judicial review, contrary to the belief that Article 163(2) provides blanket protection.

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

---



## Chapter 15 - Executive Branch

The discretionary powers of the governor can be divided into constitutional discretion and situational discretion.

### Constitutional Discretion: (PYQ 2014)

1. **Reservation of a bill for the consideration of the President:** The governor can reserve a bill for the President's consideration without the advice of the council of ministers.
2. **Recommendation for implementing President's Rule in the state:** The governor can recommend the imposition of President's Rule in the state without the advice of the council of ministers.
3. While performing his duties as the **administrator of a neighboring union territory** (in case of an additional charge): The governor can act at his discretion while performing his additional duties as the administrator of a neighboring union territory.
4. **Determining the amount payable** to an autonomous Tribal District Council as royalty from mineral exploration licenses by the governments of Assam, Meghalaya, Tripura, and Mizoram: The governor can determine the amount payable to the autonomous Tribal District Council without the advice of the council of ministers.
5. Seeking information from the chief minister about the state's administrative and legislative matters: The governor can seek information from the chief minister regarding administrative and legislative matters without the advice of the council of ministers.

**Situational Discretion:** The Governor also exercises the discretion in specific situations, such as:

1. **Deciding the Chief Minister:** When no party has won a majority in the state legislature, the Governor plays a crucial role in deciding who will be the Chief Minister.
2. **Dismissing the Council of Ministers:** If the Council of Ministers fails to demonstrate confidence of the legislative assembly, the Governor can dismiss it.
3. **Dissolution of the Legislative Assembly:** The Governor can dissolve the legislative assembly and call for fresh elections under certain circumstances, such as when the government has lost its majority.

The constitutional position of the Governor differs from that of the President in two key respects:

1. **Discretionary Powers:** The Constitution allows the Governor to act in his discretion at times, whereas there is no such provision for the President. This means that the Governor has more flexibility in his decision-making compared to the President.
2. **Ministerial Advice:** After the 42nd Amendment, 1976, the advice of the Union Council of Ministers became binding on the President. However, no such provision has been made for the State Council of Ministers or the Governor. This means that the Governor is not bound by the advice of the State Council of Ministers, unlike the President who is bound by the advice of the Union Council of Ministers.

### Rationale behind the discretionary power of the governor:

The discretionary powers of the Governor play a significant role in maintaining the balance between the Union and the states within India's federal framework. These powers are meant to ensure that the actions of state governments do not go against the larger national interest or violate the principles of state policy

## Chapter 15 - Executive Branch

---

under Part IV of the Constitution. For example, the Governor can reserve a bill passed by the state legislature for the consideration of the President if it threatens the independence of the judiciary or undermines the basic federal structure of the Constitution. In this sense, discretion serves as a constitutional safeguard.

Another important purpose of the Governor's discretion is to curb secessionist tendencies and to preserve the unity and integrity of the nation. Under Article 365, if a state government fails to comply with or give effect to directions from the Union, the Governor's report becomes the basis for recommending President's Rule under Article 356. Similarly, in Union Territories of strategic importance, the Governor or Administrator exercises discretion to keep governance insulated from excessive political pressures. In the Sixth Schedule areas, discretion is also exercised in safeguarding the welfare of people living in tribal and mineral-rich regions, thereby addressing regional imbalances and promoting equitable development.

At the same time, the Supreme Court has consistently underlined that the Governor is not free to act as an independent authority in all circumstances. In *Shamsher Singh v. State of Punjab* (1974), the Court clarified that the Governor must ordinarily act on the aid and advice of the Council of Ministers under Article 163, except in situations where the Constitution explicitly provides otherwise. In *S.R. Bommai v. Union of India* (1994), the Court placed significant limitations on the Governor's discretion in recommending President's Rule, holding that such reports are subject to judicial review and cannot be based on political whims. More recently, in *Nabam Rebia v. Deputy Speaker* (2016), the Supreme Court held that the Governor cannot unilaterally summon or dissolve the state assembly without the aid and advice of the Council of Ministers, except in constitutionally permitted circumstances.

These judicial pronouncements make it clear that while discretionary powers serve important purposes, such as preserving national unity, protecting judicial independence, and upholding constitutional directives—the Governor is not an unchecked authority. Their discretion must be exercised within the framework of constitutional morality, remain open to judicial scrutiny, and ultimately reinforce democratic governance rather than undermine it.

### Constitutional position of a Governor:

The constitutional position of the Governor in India closely resembles that of the President at the Union level. Both are formally the heads of their respective executive branches and are expected to exercise their powers with the aid and advice of their Councils of Ministers. However, there is a notable distinction: while the President is constitutionally bound by the advice of the Union Council of Ministers, the Governor enjoys a limited sphere of discretion under Article 163. This gives the Governor comparatively greater scope for independent action, although such discretion is expected to be exercised strictly within the framework of the Constitution.

In practice, the Governor has often come to be regarded as the “**man of the Centre**” in the states, as the Union government plays a decisive role in their appointment and removal under Article 155 and Article 156. This has made the office vulnerable to political misuse, with Governors frequently accused of advancing the interests of the ruling party at the Centre rather than acting as impartial constitutional authorities. The Sarkaria Commission (1988) and the Punchhi Commission (2010) both noted that the

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

---

## Chapter 15 - Executive Branch

misuse of the Governor's office has strained Centre-State relations. Scholars and constitutional experts have even described it as one of the most "abused" institutions of the Indian Constitution.

Ideally, the Governor's office was envisaged as a vital link in India's federal framework as a mechanism to promote cooperative federalism by bringing a national perspective to state-level governance while also representing the concerns of the states before the Union. Sardar Vallabhbhai Patel himself highlighted the Governor's role as one of impartiality and dignity, free from day-to-day politics. Yet, in practice, the institution has often evolved into a bargaining instrument for the Centre, particularly in times of political instability.

Historically, the Governor's role functioned relatively smoothly during the era of single-party dominance, when political alignment between the Centre and the states minimized conflict. However, with the rise of coalition governments and increasing regional assertion since the late 1960s, the office has frequently been drawn into controversy. This has been especially evident in instances relating to the dismissal of state governments under Article 356, where the Governor's report serves as the trigger. The Supreme Court, in *S.R. Bommai v. Union of India* (1994), sought to curb such misuse by bringing the Governor's actions under the purview of judicial review, affirming that the office cannot be allowed to function as an agent of political convenience.

Thus, while the Governor was originally conceived as a symbol of unity and federal balance, the actual working of the institution has often reflected the tensions between the Union and the states. Its effective functioning depends not merely on constitutional provisions but on the practice of healthy conventions and adherence to constitutional morality.

### President Vs Governor

#### A. Veto Making Powers

President	Governor
<p>Every ordinary bill, after it is passed by both the Houses of Parliament either separately or at a joint sitting, is presented to the President for his assent. He has three alternatives:</p> <ol style="list-style-type: none"> <li>1. He may give his assent to the bill; the bill then becomes an act.</li> <li>2. He may withhold his assent to the bill; the bill then ends and does not become an act.</li> <li>3. He may return the bill for the reconsideration of the Houses. If the bill is passed by both the Houses again with or without amendments, and presented to the President for his assent, the president must give his assent to the bill. Thus, the</li> </ol>	<p>Every ordinary bill, after it is passed by the legislative assembly in case of a unicameral legislature or by both the Houses in case of a bicameral legislature, is presented to the governor for his assent under Article 200. As per constitutional provisions and clarified by the <b>Supreme Court in State of Tamil Nadu v. Governor of Tamil Nadu (2025)</b>, the Governor has three mutually exclusive alternatives:</p> <ol style="list-style-type: none"> <li>1. He may give his assent to the bill; the bill then becomes an act.</li> <li>2. He may return the bill for reconsideration of the House or Houses. If the bill is passed again with or without</li> </ol>

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

<p>president enjoys only a ‘suspensive veto.’</p> <p>When a state bill is reserved by the governor for the consideration of the President, the President has three alternatives:</p> <ol style="list-style-type: none"> <li>He may give his assent to the bill; the bill then becomes an act.</li> <li>He may withhold his assent to the bill; the bill then ends and does not become an act.</li> <li>He may return the Bill for the reconsideration of the House or Houses of the state legislature. When a bill is so returned, the House or Houses must reconsider it within six months. If the bill is passed by the House or Houses again with or without amendments and presented to the president for his assent, the president is not bound to give his assent to the bill. He may give his assent or withhold it.</li> </ol>	<p>amendments and presented to the governor, he is constitutionally bound to give assent. Thus, the Governor enjoys only a suspensive veto, not an absolute one. The Court also held that this process must be completed within a reasonable time, and laid down specific timelines, as below:</p> <ol style="list-style-type: none"> <li>If the Governor withholds assent or reserves the bill for the President on the advice of the Council of Ministers – action must be taken within one month.</li> <li>If the Governor withholds assent contrary to the advice of the Council of Ministers – it must be sent back to the legislature within three months.</li> <li>If the Governor reserves the bill for the President contrary to ministerial advice – reservation must happen within three months.</li> <li>If the legislature re-passes and re-presents the bill – the Governor must grant assent within one month.</li> </ol> <p>3. He may reserve the bill for the consideration of the President, typically when it affects the powers of the High Court or involves matters requiring Presidential sanction. The Governor must record reasons for reservation. Once reserved, he has no further role in the enactment of the bill.</p> <p>Note: The Governor cannot reserve a bill for the President after having returned it once for reconsideration – unless the re-passed bill contains substantially new provisions unrelated to the earlier objections.</p>
--	---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

	<p>President's Assent (Article 201)</p> <p>When a bill is reserved for the consideration of the President:</p> <ol style="list-style-type: none"> <li>If the President returns it for reconsideration and the legislature passes it again, the bill must be presented only to the President for final assent.</li> <li>If the President gives assent, the bill becomes an Act. The Governor's assent is no longer required.</li> </ol> <p>The President, like the Governor, is expected to act within a reasonable time. As per the 2025 Supreme Court judgment, this is interpreted as a maximum of three months. Delays beyond this may invite judicial scrutiny, and a writ of mandamus may be issued if constitutional responsibilities are not discharged in time.</p>
<p>Every money bill, after it is passed by the Parliament, is presented to the President for his assent. He has two alternatives:</p> <ol style="list-style-type: none"> <li>He may give his assent to the bill; the bill then becomes an act.</li> <li>He may withhold his assent to the bill; the bill then ends and does not become an act. Normally, the President gives his assent to a money bill as it is introduced in the Parliament with his previous permission. Thus, the President cannot return a money bill for the reconsideration of the Parliament.</li> </ol>	<p>Every money Bill, after it is passed by the state legislature (unicameral or bicameral), is presented to the governor for his assent. He has three alternatives:</p> <ol style="list-style-type: none"> <li>He may give his assent to the bill; the bill then becomes an act.</li> <li>He may withhold his assent to the bill; the bill then ends and does not become an act.</li> <li>He may reserve the bill for the consideration of the president.</li> </ol> <p>Normally, the governor gives his assent to a money bill as it is introduced in the state legislature with his previous permission. When the Governor reserves a money bill for the consideration of the President, he will not have any further role in the enactment of the bill. If the President gives his assent to the bill, it becomes an act. This means that the assent of the Governor is no longer required.</p>

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

	Thus, the governor cannot return a money bill for the reconsideration of the state legislature.
<p>When a Money Bill is reserved by the Governor for the consideration of the President, the President has two Alternatives:</p> <ol style="list-style-type: none"> <li>He may give his assent to the bill; the bill then becomes an act.</li> <li>He may withhold his assent to the bill; the bill then ends and does not become an act.</li> </ol> <p>Thus, the President cannot return a money bill for the reconsideration of the state legislature (as in the case of the Parliament)</p>	

### B. Ordinance-Making Power

President	Governor
He can promulgate an ordinance only when both the Houses of Parliament are not in session or when either of the two Houses of Parliament is not in session.	He can promulgate an ordinance only when the legislative assembly (in case of a unicameral legislature) is not in session or (in case of a bicameral legislature) when both the Houses of the state legislature are not in session or when either of the two Houses of the state legislature is not in session.
His ordinance-making power is co-extensive with the legislative power of the Parliament. This means that he can issue ordinances only on those subjects on which the Parliament can make laws.	His ordinance-making power is co-extensive with the legislative power of the state legislature. This means that he can issue ordinances only on those subjects on which the state legislature can make laws.
An ordinance issued by him has the same force and effect as an act of the Parliament.	An ordinance issued by him has the same force and effect as an act of the state legislature.
His ordinance-making power is not a discretionary power. This means that he can	His ordinance-making power is not a discretionary power. This means that he can

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviat Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.



## Chapter 15 - Executive Branch

promulgate or withdraw an ordinance only on the advice of the council of ministers headed by the prime minister.	promulgate or withdraw an ordinance only on the advice of the council headed by the chief minister.
An ordinance issued by him ceases to operate on the expiry of six weeks from the reassembly of Parliament. It may cease to operate even earlier than the prescribed six weeks, if both the Houses of Parliament passes resolutions disapproving it.	An ordinance issued by him ceases to operate on the expiry of six weeks from the reassembly of the state legislature. It may cease to operate even earlier than the prescribed six weeks, if a resolution disapproving it is passed by the legislative assembly and is agreed to by the legislative council (in case of a bicameral legislature).
He needs no instruction for making an ordinance.	He cannot make an ordinance without the instructions from the President in three cases: <ul style="list-style-type: none"> <li>a) If a bill containing the same provisions would have required the previous sanction of the President for its introduction into the state legislature.</li> <li>b) If he would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President.</li> <li>c) If an act of the state legislature containing the same provisions would have been invalid without receiving the President's assent.</li> </ul>

### Contemporary Issues revolving around office of Governor

#### Appointment & Removal of Governor:

Under Articles 155 and 156 of the Constitution, the Governor of a state is appointed by the President and holds office "during the pleasure of the President." Though the Constitution prescribes a five-year tenure, this is subject to the overriding condition that the Governor may be removed earlier if the President withdraws pleasure. Since the President functions on the aid and advice of the Prime Minister and the Union Council of Ministers under Article 74, the power of appointment and removal of Governors, in effect, lies with the central government.

The absence of constitutional safeguards for a Governor's tenure has often led to tensions between the Union and the states. While the Constitution does not prescribe any specific procedure for the resolution of disputes between the Governor and the elected state government, healthy conventions and mutual respect for constitutional boundaries were expected to regulate the relationship. However, in practice, differences have often escalated into political controversies, prompting judicial scrutiny.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

---

In *Surya Narain Choudhary v. Union of India* (1981), the Rajasthan High Court held that the Governor enjoyed no security of tenure and that the President's withdrawal of pleasure could not ordinarily be questioned in a court of law. This position, however, was nuanced in *B.P. Singhal v. Union of India* (2010), where the Supreme Court elaborated on the scope of the pleasure doctrine. The Court held that while the President is not bound to give reasons for the removal of a Governor, the withdrawal of pleasure cannot be arbitrary, capricious, or motivated by extraneous political considerations. If challenged, the Union government would have to justify its action before the courts, and the decision would be subject to judicial review.

Through these pronouncements, the judiciary has attempted to strike a balance: affirming the central government's authority over the appointment and removal of Governors, while also ensuring that this power is exercised in line with constitutional morality and not misused for partisan purposes.

### **Governors altering prepared speeches:**

A Constitutional Conundrum Governors in India have the constitutional obligation to read out the speech prepared by the state government in the legislative assembly, as per Article 179(2)(b) of the Indian Constitution. However, there have been instances where governors have deviated from this convention and altered or omitted parts of the prepared speech.

In 2017, Tripura Governor made controversial remarks in his address to the state assembly, deviating from the prepared text. In 2018, Kerala Governor omitted portions of the speech submitted by the state government. In 2023, Tamil Nadu Governor omitted words such as "women empowerment," "secularism," "self-respect", "compassion" and references to B.R. Ambedkar and Dravidian leaders from the speech prepared by the state government. The Tamil Nadu Legislative Assembly passed a resolution stating that only the Governor's original speech, prepared by the state government, would be documented.

These incidents highlight the ongoing tensions between the state governments and the Governors appointed by the Central government, and the need for clarity on the constitutional obligations of both the parties in this regard.

### **Governor's authority to remove state ministers: Legal Precedents and Debates**

The Kerala Governor, in 2023, threatened to remove state ministers for criticizing him and lowering the dignity of his office, but his power to do so is limited. Article 164 of the Constitution states that the Chief Minister shall be appointed by the Governor, and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. Additionally, the CM and the Ministers hold office during the pleasure of the Governor.

However, the "pleasure of the Governor" is not clearly defined in the Constitution. Judicial precedents like *Mahabir Prasad v. Prafulla Chandra* (1969) and *Shamsher Singh & Anr v State of Punjab* (1974) emphasize that the Governor's power is subject to the support of the legislative assembly and the advice of ministers. The *Nabam Rebia* case (2016) reaffirmed that the Governor must act in accordance with the

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

---

## Chapter 15 - Executive Branch

advice of the Council of Ministers.

### States challenge Governors' role in withholding assent to Legislative Bills

#### Article 200: Assent to Bills

When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendments and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became a law, so derogate from the powers of the High Court as to endanger the position which that Court is, by this Constitution designed to fill.

#### Article 201: State Bills reserved for consideration of President

When a Bill is reserved by the Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom: Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first provision to Article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration.

The Supreme Court in *The State of Tamil Nadu v Governor of Tamil Nadu* (2025) delivered a strong message against constitutional inaction by Governors. The case arose when Tamil Nadu Governor R.N. Ravi kept 12 bills pending for over three years, primarily concerning state university governance and the appointment of Vice-Chancellors. These bills were passed by the elected legislature between January 2020 and April 2023 but saw no action from the Governor. Only after the State moved the Supreme Court in November 2023, did the Governor take sudden action – withholding assent to 10 bills and referring 2 to the President. The Tamil Nadu episode is not isolated. Similar issues were seen in Punjab (2023), where the Supreme Court had to remind the Governor to not stall the legislative process. The Court called this indefinite delay a misuse of constitutional power, likening it to a “pocket veto”, and declared it illegal and unconstitutional.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

---

### Legal Framework: Articles 200 and 201

Under Article 200, a Governor has four choices when a Bill is presented: grant assent, withhold assent, return it (unless it is a money bill), or reserve it for the President. Article 201 deals with the President's discretion on reserved Bills. However, the Supreme Court emphasized that these powers are not arbitrary or absolute. Critically, the Governor cannot withhold assent indefinitely without returning the bill to the legislature. Moreover, once the legislature re-passes a returned bill, the Governor is mandatorily required to grant assent. It cannot be used merely as a last resort to delay a bill after returning it has already failed. To bring in clarity, the Court also prescribed a structured timeline:

1. If the Governor withholds assent or reserves the Bill for the President, on the advice of the Council of Ministers, the Bill must be sent back to the legislature within one month.
2. If the Governor withholds assent contrary to the advice of the Council of Ministers, the Bill must be sent back to the legislature within three months.
3. If the Governor reserves the Bill for the President contrary to the advice, the Bill must be reserved within three months.
4. If the legislature re-passes and re-presents the Bill, the Governor is bound to grant assent within one month.

The Court decisively rejected the notion of an “absolute veto”, reaffirming that the Governor is not a parallel power center, but a constitutional authority bound by democratic norms. Drawing from precedents such as *State of Punjab v Principal Secretary to the Governor* (2023) and *Valluri Basavaiah Chowdhary* (1979), the judgment emphasized that the Governor’s powers are subject to judicial review. The Court made it clear that prolonged or mala fide inaction is not constitutionally protected, and a writ of mandamus may be issued in such cases. It also invoked MHA guidelines, which recommend that decisions by the President on reserved Bills be taken within three months, reinforcing the principle that executive silence cannot stall legislative will.

Further, In an extraordinary step, the Supreme Court used its Article 142 powers to grant deemed assent to the 10 long-delayed bills of Tamil Nadu.

### Way forward:

Over the years, several panels and commissions have recommended reforms in how Governors are appointed and their functioning. However, these recommendations were never made into law by Parliament. The Sarkaria Commission (1988) recommended that Governors should not be sacked before completing their five-year tenure, except in “rare and compelling” circumstances. The procedure of removal must allow the Governors an opportunity to explain their conduct, and the central government must give fair consideration to such explanation. It was further recommended that Governors should be informed of their removal grounds.

The Venkatachaliah Commission (2002) recommended that ordinarily, Governors should be allowed to complete their five-year term. If they have to be removed before completion of their term, the central government should do so only after consultation with the Chief Minister. The Punchhi Commission (2010) suggested the deletion of the phrase “during the pleasure of the President” from the Constitution,

## Chapter 15 - Executive Branch

---

because a Governor should not be removed at the will of the central government. Instead, he or she should be removed only by a resolution of the state legislature.

### Chief Minister

In the parliamentary system of government in India, the Chief Minister (CM) is the real executive authority at the state level, analogous to the Prime Minister at the national level. The Governor, on the other hand, is the nominal executive authority (de jure executive) and the head of the state.

### Appointment of the CM

The appointment of the Chief Minister is governed by Article 164 of the Constitution, which states that the Chief Minister shall be appointed by the governor. However, this does not imply that the governor is free to appoint anyone as the Chief Minister. Instead, the governor typically appoints the leader of the majority party in the state legislative assembly as the Chief Minister.

After state legislative assembly elections, the party with the majority of seats is invited by the governor to form the government. The leader of this majority party is usually appointed as the Chief Minister by the governor. However, the governor can use their personal discretion to appoint the Chief Minister from among a coalition government, provided the appointed person moves a vote of confidence within one month. Additionally, a person who is not a member of the state assembly can also become the Chief Minister, but they must be elected or nominated to any house of the State Legislature within six months of their appointment.

The Chief Minister is not directly elected but is nominated by the party with the highest number of MLAs in the state. The governor then appoints the nominated person as the Chief Minister. The Chief Minister serves at the pleasure of the governor and their tenure is not fixed. They can be removed if they lose the majority support of the State Legislature or if a no-confidence motion is passed against them. The oath of office is administered by the governor, and the Chief Minister must take an oath of secrecy as well.

### Eligibility:

To be eligible for the office of Chief Minister, an individual must be:

1. a citizen of India.
2. a member of the state legislative assembly or council. If not, they must be elected or nominated to the legislature within six months of their appointment, failing which they cease to be the Chief Minister.

### Term of Office:

The term of the Chief Minister is not fixed, and they hold office during the pleasure of the governor. The Chief Minister can be removed by the governor only if they lose the support of the majority in the legislative assembly.

### Powers and Functions:

The Chief Minister of a State in India is the head of the State government and has significant powers. The powers and functions of the Chief Minister can be categorized into several areas:

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

---

## Chapter 15 - Executive Branch

---

### **In Relation to Council of Ministers:**

The Chief Minister of a state plays a crucial role in the governance of the state, similar to the Prime Minister at the national level. The Chief Minister advises the Governor on the appointment of ministers, allocates and reshuffles portfolios among ministers, and can ask a minister to resign or advise the Governor to dismiss him in case of a difference of opinion. Additionally, the Chief Minister presides over the meetings of the council of ministers and influences its decisions, guiding, directing, controlling, and coordinating the activities of all the ministers.

Furthermore, the Chief Minister can bring about the collapse of the council of ministers by resigning from office, which automatically dissolves the council of ministers. This is in contrast to the Prime Minister's resignation or death, which does not automatically dissolve the Union Council of Ministers. Instead, it creates a vacancy that the President must fill by appointing a new Prime Minister.

### **In Relation to the Governor:**

The Chief Minister plays a crucial role in facilitating communication between the Governor and the Council of Ministers. This role is like that of the Prime Minister in relation to the President. The Chief Minister ensures that all decisions and proposals are effectively conveyed to the Governor, which includes reporting decisions taken by the Council of Ministers and providing information on state administration and proposals for legislation as requested by the Governor.

If the Governor requires, the Chief Minister must submit matters for consideration by the Council of Ministers. This process is similar to the Prime Minister's role in submitting matters for consideration by the President. The Chief Minister also advises the Governor on important official appointments, such as the Advocate General, Chairman and members of the State Public Service Commission, and State Election Commissioner. This is similar to the Prime Minister's role in advising the President on appointments like the Chief Justice of India, Attorney General of India, and other high-ranking officials.

### **In Relation to State Legislature:**

The Chief Minister enjoys significant powers in relation to the state legislature, similar to the Prime Minister's role in the Lok Sabha. As the head of the state government, the Chief Minister is responsible for guiding and leading the state's legislative agenda and policies. He advises the Governor on legislative sessions, recommending the dissolution of the legislative assembly when necessary. Additionally, he announces government policies on the floor of the house, playing a key role in policy formulation and decision-making. The Chief Minister works closely with the Council of Ministers to ensure effective governance and policy implementation, making him a crucial figure in the state's legislative process.

### **Other Powers and Functions:**

As the head of the state government, the Chief Minister holds a multifaceted role, extending beyond governance. In addition to leading the state administration, the Chief Minister serves as the Vice-Chairman of the zonal council on a rotational basis, assuming this responsibility for a one-year term. Moreover, they play a crucial part in the Governing Council of NITI Aayog, offering insights and recommendations on national policy matters. Acting as the primary spokesperson for the state, the Chief Minister communicates the government's stance on various issues to the public. During times of crisis,

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

---



## Chapter 15 - Executive Branch

they step into the role of crisis manager-in-chief, ensuring that the state's response is both effective and well-coordinated.

### Council of Ministers in the States:

The State Council of Ministers plays **important** role in the governance of the state. It is the executive authority in the political- administrative setup of a state, headed by the Chief Minister and they are collectively responsible to the state's legislative assembly. The council of ministers in the states is constituted and functions in the same way as the council of ministers at the Centre.

### Constitutional provisions relating to CoM:

#### Article 163: Council of Ministers to aid and advise Governor

There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

#### Article 164: Other provisions as to Ministers

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the States of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work

(1A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen percent of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister in a State shall not be less than twelve:

Provided further that where the total number of Ministers including the Chief Minister in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen percent or the number specified in the first provision, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification Appoint.

(1B) A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

Schedule, shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

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

(4) A Minister who for any period of six consecutive months is not a member of the legislature of the State shall at the expiration of that period cease to be a Minister.

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

### Union and State Councils of Ministers: A Comparative Analysis

The Union Council of Ministers and the State Council of Ministers, though similar in structure, differ in their composition, appointment, and responsibilities. At the Union level, the Prime Minister is appointed by the President, while in the states, the Chief Minister is appointed by the Governor. The President appoints other Union ministers on the advice of the Prime Minister, just as the Governor appoints state ministers on the advice of the Chief Minister. In both cases, ministers hold office “during the pleasure” of the President or Governor, as the case may be, though this pleasure is constitutionally subject to the requirement that ministers enjoy the confidence of the respective legislatures.

The size of the Council of Ministers is regulated by the **91st Constitutional Amendment Act, 2003**, which limits its strength to 15 percent of the total membership of the Lok Sabha at the Union level and of the Legislative Assembly at the state level. At the same time, the amendment prescribes a minimum strength of twelve ministers to ensure adequate representation.

The principle of **collective responsibility** is central to the functioning of both councils. Under Article 75(3), the Union Council of Ministers is collectively responsible to the Lok Sabha, while under Article 164(2), the State Council of Ministers is collectively responsible to the Legislative Assembly. This ensures that the executive remains accountable to the directly elected house of the legislature.

The conditions of service also reflect this duality. Salaries and allowances of Union ministers are determined by Parliament, while those of state ministers are decided by the respective State Legislatures. A constitutional limitation applies under Article 75(5) at the Union level and Article 164(4) at the state level: a person who is not a member of Parliament or the State Legislature may be appointed a minister, but if they fail to secure membership within six consecutive months, they must step down from office.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

Thus, while the Union and State Councils of Ministers are designed on the same constitutional model, they operate within different political contexts. Their accountability to the legislatures ensures the democratic principle of responsible government, both at the Centre and in the states.

### Special Provisions for certain states

In the states of Chhattisgarh, Jharkhand, Madhya Pradesh, and Odisha, there must be a Minister in charge of tribal welfare who may also handle the welfare of Scheduled Castes and backward classes or other responsibilities.

### Conduct of business of the Government of a State

#### Article 166 - Conduct of business of the Government of a State

- (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.
- (2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
- (3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

The conduct of business for both the Union Government and a State Government shares similarities. For the Union Government, the President makes rules for the more convenient transaction of business and allocation of business among ministers, as per Article 77(3) of the Constitution.

Similarly, for a State Government, the Governor must make rules for the more convenient transaction of the state's business and for the allocation of this business among the ministers. This ensures that all executive actions are expressed in the Governor's name, just like all executive actions of the Union Government are expressed in the President's name. For instance, the Government of India (Allocation of Business) Rules, 1961 the Governor of a State must make rules for the allocation of business among the ministers and departments of the state government.

#### Article 167: Duties of Chief Minister as respects the furnishing of information to Governor, etc.

It shall be the duty of the Chief Minister of each State-

- (a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;
- (b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

(c) if the Governor 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.

### Furnishing Information in Union and State Executives

In Union governance, the Prime Minister takes charge of the executive branch and maintains communication with the President. Similarly, at the state level, the Chief Minister oversees the executive branch and stays in touch with the Governor. The Prime Minister's responsibility includes updating the President on decisions made by the Council of Ministers and proposed legislations.

Likewise, the Chief Minister keeps the Governor informed not only about such decisions and legislative proposals but also about various state administrative matters. While operating within the Union Executive alongside the President and the Council of Ministers, the Prime Minister ensures cohesion and coordination. Similarly, the Chief Minister operates within the State Executive alongside the Governor and the Council of Ministers, ensuring effective governance at the state level.

This transparency and accountability in decision-making processes are facilitated by constitutional provisions like Article 78, which mandates informing the President about key Union government decisions and proposals, and Article 167, which ensures similar communication with the Governor regarding state government matters.

### Advocate General of the State

The Advocate General of a State is the highest law officer responsible for advising the State Government on legal matters.

#### Article 165:

- (1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.
- (2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.
- (3) The Advocate-General shall hold office during the pleasure of the Governor and shall receive such remuneration as the Governor may determine.

### Comparison of the Attorney General of India and State Attorney General

The Attorney General of India and the Attorney General of a state have similar roles but operate within different jurisdictions. The Attorney General of India advises the central government, including the President and the Union Cabinet, while the Attorney General of a state advises the state government, including the Governor. Their appointments differ as well. The President appoints the Attorney General of India, who serves at the President's pleasure, whereas the Governor appoints the Attorney General of a state, who similarly serves at the Governor's pleasure.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

### Article 177: Rights of Ministers & AGI as respects the Houses

Every Minister and the Advocate- General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

The qualifications for the Attorney General of India and the Advocate General of a state also differ. To become the Attorney General, one must be eligible to be appointed as a judge of the Supreme Court. This requires being an Indian citizen and having served as a High Court judge for at least 5 years or being an advocate of a High Court for at least 10 years or being recognized as an eminent jurist by the President. On the other hand, the Advocate General of a state needs to meet the eligibility criteria for a High Court Judge. Additionally, there is an age limit for the Advocate General of a state, set at 62 years, mirroring the age limit for High Court judges.

Both law officers serve as the principal legal advisors to their respective governments, representing them in legal matters and providing legal opinions. However, the scope of their work varies. The Attorney General of India deals with the national issues such as constitutional matters and inter-state disputes, while the Advocate General of a state focuses on legal issues within that state. Both the Attorney General of India and the state advocate general have the right to speak and take part in proceedings of their respective legislative bodies but cannot vote. The Attorney General of India has the right to audience in all courts in the territory of India, while state advocate general has the right to audience in their respective state courts

PYQs

**“The growth of the cabinet system has practically resulted in the marginalization of parliamentary supremacy”. Elucidate. PYQ 2024**

**“The growth of the cabinet system has practically resulted in the marginalization of parliamentary supremacy”. Comment. MGP 2026**

The Cabinet, though **not defined** in the Constitution, represents the **core decision-making body** of the Indian Parliamentary system, operating on the principles of **collective responsibility** (Article 75(3)), **prime ministerial leadership**, and **political homogeneity**.

The **changing power dynamics** between the **Cabinet and Parliament** have sparked debates about the **institutional balance** in India's democracy. The debate centers around whether **Cabinet's growing influence** has diminished the Parliament's supremacy:

## Chapter 15 - Executive Branch

Evidence of marginalization of parliamentary supremacy	Evidence that parliamentary supremacy stands
<ol style="list-style-type: none"> <li>1. The <b>cabinet</b> emerges from the legislature and is backed by a <b>parliamentary majority</b>. Hence, it <b>effectively controls</b> the legislative agenda (predominance of government business); b) transfer of <b>financial control</b> through control over <b>budget-making process</b> and strategic use of <b>supplementary grants</b>; c) frequent usage of <b>ordinance powers</b> under Article 123 <b>circumventing legislative process</b>.</li> <li>2. a) <b>Centralization of policy-making</b> due to <b>concentration of power</b> in the Cabinet diminishes other parliamentarians' role; b) <b>bureaucratization of decision-making</b> through external experts undermines parliamentary committees; c) <b>information asymmetry</b> between cabinet and parliament affects <b>oversight quality</b> (restricted access to information, delayed information sharing with DRSCs).</li> <li>3. a) The Cabinet influences <b>key legislative functionaries</b> (Speaker's decisions on adjournments, money bills, guillotine); b) <b>cabinet-drafted laws</b> grant greater control over <b>subordinate legislation</b> to the Executive.</li> </ol>	<ol style="list-style-type: none"> <li>1. a) The <b>Constitution</b> (checks and balance) establishes parliamentary supremacy through multiple <b>accountability mechanisms</b> (Question Hour, Zero Hour, Adjournment motions); b) cabinet's dependence on <b>Lok Sabha's confidence</b> for its survival (Article 75); c) exclusive authority over <b>Money Bills</b> (Article 110) and comprehensive <b>financial oversight</b> through specialized committees (PAC conducting post-expenditure audit).</li> <li>2. a) The <b>coalition politics</b> and <b>multi-party system</b> promote <b>consensus-building</b> through broader consultation and compromise b) Parliament's inherent <b>diversity</b> and continuous <b>constituent contact</b> makes it more attuned to ground realities; d) emergence of <b>parliamentary innovations</b> (Speaker's Research Initiative) enabling <b>objective criticism</b>.</li> <li>3. a) <b>External instruments</b> of check (judiciary, media, public opinion, periodic elections) prevent <b>arbitrary exercise</b> of cabinet authority; b) impact of <b>social media</b> increases transparency; c) role of <b>inter-parliamentary cooperation</b> (sharing best practices) strengthens legislative capacity.</li> </ol>

While the Cabinet system has evolved into a **powerful institution**, the **constitutional framework**, **democratic processes**, and **institutional checks** effectively preserve **parliamentary supremacy** in India's governance structure.

**“The Attorney General of India plays a crucial role in guiding the legal framework of the Union Government and ensuring sound governance through legal counsel.” Discuss his responsibilities, rights and limitations in this regard. PYQ 2025**

**Describe the appointment process, duties, and functions of the Attorney General of India. Also, highlight the limitations placed in the office. MGP 2026**

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.



## Chapter 15 - Executive Branch

*Approach: Introduce the answer by giving a brief background about the post of Attorney General of India. In the body, describe the appointment process, duties and functions of the Attorney General of India. Next, highlight the limitations placed in the office. Conclude the answer by impressing on the fact that despite being a part of the Union Executive, the Attorney General is not a government servant.*

Article 76 of the Constitution creates the **office of Attorney General for India**, who is the **highest law officer** in the country. **Appointed by the President**, the AGI must be **qualified to become a judge of the Supreme Court**. She holds office **during the pleasure of the President**. As a **convention**, AGI **submits her resignation to the President** upon the **change of government**.

As the **chief law officer of the Government of India**, the Attorney General has been assigned the following **duties and functions**:

1. a) **Advise the government on legal matters** referred by the **President** (advice on grant of full GST compensation to states). Performs **duties of a legal character** that are assigned to her by the **President**.
2. a) **Appear on behalf of the Union Government** in all cases in the **Supreme Court** where the Government of India is a party (e.g., *Anuradha Bhasin case 2020*); b) represent the Union Government in **High Courts**, when required.
3. a) Represents the Government of India in **any reference** made by the **President** to the **Supreme Court** under **Article 143** (Presidential reference in 2G case); b) discharge the **functions** conferred on her by the **Constitution or any law** (Contempt of Courts Act 1971).
4. a) **Participate in parliamentary proceedings** as and when required, without any **voting rights**; b) **assist the Court** in the interest of **rightful administration of justice** (Taj Corridor case).

However, certain **limitations** have been placed in the office:

1. a) The Attorney General is **disallowed** to advise or argue **cases against the Union Government**; b) she must not **advise or argue** in cases where she is supposed to advise **for the Union Government**.
2. a) She must not **defend accused persons in criminal proceedings** without the **permission of the Union Government**; b) to prevent **conflict of interests**, she must not accept **appointment as a director in any company** without government permission.
3. a) The Attorney General must refrain from **advising any government body** unless the **proposal** or a reference in this regard is **received through the Ministry of Law and Justice**.

Despite being a **member of the Union Executive**, the Attorney General of India **does not fall** under the category of **government servants**. As a result, **neither** is she a **full-time legal counsel** for the Union Government **nor** is she **debarred from private practice**.

**Compare and contrast the President's power to pardon in India and in the USA. Are there any limits to it in both the countries? What are 'preemptive pardons'? PYQ 2025**

**Differentiate between the clemency powers of the Presidents of India and the USA. MGP 2025**

Both the President of India (**Article 72**) and the President of the USA (Article II, Section 2 of US Constitution) are granted **clemency** (pardoning) **powers**. However, there exist several **differences** between the same:

---

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

## Chapter 15 - Executive Branch

President of India	President of the USA
<ol style="list-style-type: none"> <li>Can grant clemency for convictions arising out of the violation of both <b>Union and state laws</b>; exercise of power is done based on the <b>advice of the Union Government (Maru Ram v. UoI 1981)</b>.</li> <li>Pardon results in <b>complete erasure of conviction</b>; pardon is <b>unconditional</b> in nature; <b>can be questioned in a court of law</b> [for arbitrariness, malafide intent, or ignorance of relevant facts- <b>Epuru Sudhakar (2006)</b>].</li> <li>Deals only with <b>specific cases and persons</b>; <b>no pre-emptive pardons</b> can be issued (pardon only after the conviction is awarded).</li> </ol>	<ol style="list-style-type: none"> <li>Can grant clemency for convictions arising out of violations of <b>only federal laws</b>; exercise of power is done at the <b>discretion of the President</b>.</li> <li>Pardon <b>does not result in erasure of conviction</b>; it can impose <b>conditions</b> (expected norms of behaviour); the pardon is <b>not subject to override</b> ('Plenary power')</li> <li>Can take into consideration an <b>undefined set of cases</b> (Michael Flynn case) and unidentified <b>class of persons</b> (Pennsylvania Whiskey Rebellion case); <b>pre-emptive</b> pardons can be given (before or during the criminal prosecution).</li> </ol>

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.