



ST. LAWRENCE HIGH SCHOOL
A JESUIT CHRISTIAN MINORITY INSTITUTION
CLASS - XII
STUDY MATERIAL



TOPIC: THE EXECUTIVE

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President of India

The President of India, is the ceremonial head of state of India and the commander-in-chief of the Indian Armed Forces. The president is indirectly elected by an electoral college comprising the Parliament of India (both houses) and the legislative assemblies of each of India's states and territories, who themselves are all directly elected. Although the Article 53 of the Constitution of India states that the president can exercise his powers directly or by subordinate authority, with few exceptions, all of the executive powers vested in the president are, in practice, exercised by the prime minister (a subordinate authority) with the help of the Council of Ministers. The president is bound by the constitution to act on the advice of the prime minister and cabinet as long as the advice is not violating the constitution.

Duty

The primary duty of the president is to preserve, protect and defend the constitution and the law of India as made part of his oath (Article 60 of Indian constitution). The president is the common head of all independent constitutional entities. All his actions, recommendations (Article 3, Article 111, Article 274, etc.) and supervisory powers (Article 74(2), Article 78C, Article 108, Article 111, etc.) over the executive and legislative entities of India shall be used in accordance to uphold the constitution. There is no bar on the actions of the president to contest in the court of law.

Legislative powers

Legislative power is constitutionally vested in the Parliament of India of which the president is the head, to facilitate the lawmaking process per the constitution (Article 78, Article 86, etc.). The president summons both the houses (Lok Sabha and Rajya Sabha) of the parliament and prorogues them. He can dissolve the Lok Sabha. The president inaugurates parliament by addressing it after the general elections and also at the beginning of the first session every year per Article 87(1). The presidential address on these occasions is generally meant to outline the new policies of the government. All bills passed by the parliament can become laws only after receiving the assent of the president per Article 111. After a bill is presented to him, the president shall declare either that he assents to the Bill, or that he withholds his assent from it. As a third option, he can return a bill to parliament, if it is not a money bill, for reconsideration. President may be of the view that a particular bill passed under the legislative powers of parliament is violating the constitution, he can send back the bill with his recommendation to pass the bill under the constituent powers of parliament following the Article 368 procedure. When, after reconsideration, the bill is passed accordingly and presented to the president, with or without amendments, the president cannot withhold his assent from it. The president can also withhold his assent to a bill when it is initially presented to him (rather than return it to parliament) thereby exercising a pocket veto on the advice of prime minister or council of ministers per Article 74 if it is inconsistent to the constitution.[10] Article 143 gave power to the president to consult the supreme court about the constitutional validity of an issue. The president shall assent to constitutional amendment bills without power to withhold the bills per Article 368 (2).

Executive powers

Per Article 53, the executive power of the country is vested in the president and is exercised by president either directly or through officers subordinate to him in accordance with the constitution. When parliament thinks fit it may accord additional executive powers to the president per Article 70 which may be further delegated by the president to the governors of states per Article 160. Union cabinet with prime minister as its head, should aid and advice the president in performing his functions. Per Article 74 (2), the council of ministers or prime minister are not accountable legally to the advice tendered to the president but it is the sole responsibility of the president to ensure compliance with the constitution in performing his duties. President or his subordinate officers is bound by the provisions of the constitution notwithstanding any advice by union cabinet. Per Article 142, it is the duty of the president to enforce the decrees of the supreme court.

Judicial powers

The primary duty of the president is to preserve, protect and defend the constitution and the law of India per Article 60. The president appoints the Chief Justice of India and other judges on the advice of the chief justice. He dismisses the judges if and only if the two Houses of the parliament pass resolutions to that effect by a two-thirds majority of the members present. The Indian government's chief legal adviser, Attorney General of India, is appointed by the president of India under Article 76(1) and holds office during the pleasure of the president. If the president considers a question of law or a matter of public importance has arisen, he can also ask for the advisory opinion of the supreme court per Article 143. Per Article 88, the president can ask the attorney general to attend the parliamentary proceedings and report to him any unlawful functioning if any.

Appointment powers

The president appoints as prime minister, the person most likely to command the support of the majority in the Lok Sabha (usually the leader of the majority party or coalition). The president then appoints the other members of the Council of Ministers, distributing portfolios to them on the advice of the prime minister. The Council of Ministers remains in power at the 'pleasure' of the president. The president appoints 12 members of the Rajya Sabha from amongst persons who have special knowledge or practical experience in respect of such matters as literature, science, art and social service. The president may nominate not more than two members of Anglo Indian community as Lok Sabha members per Article 331. Governors of states are also appointed by the president who shall work at the pleasure of the president. Per Article 156, the president is empowered to dismiss a governor who has violated the constitution in his acts.

Financial powers

A money bill can be introduced in the parliament only with the president's recommendation. The president lays the Annual Financial Statement, i.e. the Union budget, before the parliament. The president can take advances out of the Contingency Fund of India to meet unforeseen expenses. The president constitutes a Finance commission after every five years to recommend the distribution of the taxes between the centre and the States.

Diplomatic powers

All international treaties and agreements are negotiated and concluded on behalf of the president. However, in practice, such negotiations are usually carried out by the prime minister along with his Cabinet (especially the Foreign Minister). Also, such treaties are subject to the approval of the parliament. The president represents India in international forums and affairs where such a function is chiefly ceremonial. The president may also send and receive diplomats, i.e. the officers from the Indian Foreign Service. The president is the first citizen of the country.

Military powers

The president is the Supreme Commander of the Indian Armed Forces. The president can declare war or conclude peace, on the advice of the Union Council of Ministers headed by the prime minister. All important treaties and contracts are made in the president's name.

Pardoning powers

As mentioned in Article 72 of the Indian constitution, the president is empowered with the powers to grant pardons in the following situations:-

Punishment is for an offence against Union law.

Punishment is by a military court.

A sentence that is of death.

Emergency powers

The president can declare three types of emergencies: national, state and financial, under articles 352, 356 & 360 in addition to promulgating ordinances under article 123.

National emergency

A national emergency can be declared in the whole of India or a part of its territory for causes of war or armed rebellion or an external aggression. Such an emergency was declared in India in 1962 (Indo-China war), 1971 (Indo-Pakistan war), and 1975 to 1977 (declared by Indira Gandhi). Under Article 352 of the India constitution, the president can declare such an emergency only on the basis of a written request by the cabinet of ministers headed by the prime minister. Such a proclamation must be approved by the parliament with an at least two-thirds majority within one month. Such an emergency can be imposed for six months. It can be extended by six months by repeated parliamentary approval-there is no maximum duration. In such an emergency, Fundamental Rights of Indian citizens can be suspended. The six freedoms under Right to Freedom are automatically suspended. However, the Right to Life and Personal Liberty cannot be suspended (Article 21). The president can make laws on the 66 subjects of the State List (which contains subjects on which the state governments can make laws). Also, all money bills are referred to the president for approval. The term of the Lok Sabha can be extended by a period of up to one year, but not so as to extend the term of parliament beyond six months after the end of the declared emergency. National Emergency has been proclaimed 3 times in India till date. It was declared first in 1962 by President Sarvepalli Radhakrishnan, during the Sino-Indian War. This emergency lasted through the Indo-Pakistani War of 1965 and up to 1968. It was revoked in 1968. The second emergency in India was proclaimed in 1971 by President V. V. Giri on the eve of the Indo-Pakistani War of 1971. The first two emergencies were in the face of external aggression and War. They were hence external emergencies. Even as the second emergency was in progress, another internal emergency was proclaimed by President Fakhruddin Ali Ahmed, with Indira Gandhi as prime minister in 1975. In 1977, the second and the third emergencies were together revoked.

State emergency

If the president is not fully satisfied, on the basis of the report of the governor of the concerned state or from other sources that the governance in a state cannot be carried out according to the provisions in the constitution, he can proclaim under Article 356 a state of emergency in the state. Such an emergency must be approved by the parliament within a period of 2 months. Under Article 356 of the Indian constitution, it can be imposed from six months to a maximum period of three years with repeated parliamentary approval every six months. If the emergency needs to be extended for more than three years, this can be achieved by a constitutional amendment, as has happened in Punjab and Jammu and Kashmir. During such an emergency, the president can take over the entire work of the executive, and the governor administers the state in the name of the president. The Legislative Assembly can be dissolved or may remain in suspended animation. The parliament makes laws on the 66 subjects of the state list.

A State Emergency can be imposed via the following:

By Article 356 – If that state failed to run constitutionally, i.e. constitutional machinery has failed. When a state emergency is imposed under this provision, the state is said to be under "President's rule. By Article 365 – If that state is not working according to the direction of the Union government issued per the provisions of the constitution. This type of emergency needs the approval of the parliament within 2 months. It can last up to a maximum of three years via extensions after each 6-month period. However, after one year it can be extended only if A state of National Emergency has been declared in the country or in the particular state. The Election Commission finds it difficult to organise an election in that state. The Sarkaria Commission held that presidents have unconstitutionally misused the provision of Article 356 many times for achieving political motives, by dismissing the state governments although there was no constitutional break down in the states.[32] During 2005, President's rule was imposed in Bihar state, misusing Article 356 unconstitutionally to prevent the democratically elected state legislators to form a government after the state elections. There is no provision in the constitution to re-promulgate president's rule in a state when the earlier promulgation ceased to operate for want of parliaments approval within two months duration. During 2014 in Andhra Pradesh, president's rule was first imposed on 1 March 2014 and it ceased to operate on 30 April 2014. President's rule was promulgated after being fully aware that the earliest parliament session is feasible at the end of May 2014 after the general elections. It was reimposed again unconstitutionally on 28 April 2014 by the president.

Financial emergency

Article 282 accords financial autonomy in spending the financial resources available with the states for public purpose. Article 293 gives liberty to states to borrow without any limit to its ability for its requirements within the territory of India without any consent from the Union government. However, Union government can insist for compliance of its loan terms when a state has outstanding loan charged to the consolidated fund of India or an outstanding loan in respect of which a guarantee has been given by the Government of India under the liability of consolidated fund of India. Under article 360 of the constitution, the president can proclaim a financial emergency when the financial stability or credit of the nation or of any part of its territory is threatened. However, until now no guidelines defining the situation of financial emergency in the entire country or a state or a union territory or a panchayat or a municipality or a corporation have been framed either by the finance commission or by the central government. Such an emergency must be approved by the parliament within two months by a simple majority. It has never been declared. A state of financial emergency remains in force indefinitely until revoked by the president. The president can reduce the salaries of all government officials, including judges of the supreme court and high courts, in cases of a financial emergency. All money bills passed by state legislatures are submitted to the president for approval. He can direct the state to observe certain principles (economy measures) relating to financial matters.

Role and power of the prime minister

Executive powers

Agencies under the prime minister.

The prime minister leads the functioning and exercise of authority of the government of India. The president of India—subject to eligibility—invites a person who is commanding support of majority members of Lok Sabha to form the government of India—also known as the central government or Union government—at the national level and exercise its powers. In practice the prime minister nominates the members of their council of ministers to the president. They also work upon to decide a core group of ministers (known as the cabinet), as in charge of the important functions and ministries of the government of India. The prime minister is responsible for aiding and advising the president in distribution of work of the government to various ministries and offices and in terms of the Government of India (Allocation of Business) Rules, 1961. The co-ordinating work is generally allocated to the Cabinet Secretariat. While the work of the

government is generally divided into various Ministries, the prime minister may retain certain portfolios if they are not allocated to any member of the cabinet. The prime minister—in consultation with the cabinet—schedules and attends the sessions of the houses of parliament and is required to answer the question from the Members of Parliament to them as the in-charge of the portfolios in the capacity as prime minister of India.

Legislative powers

The prime minister acts as the leader of the house of the chamber of parliament—generally the Lok Sabha—he/she belongs to. In this role, the prime minister is tasked with representing the executive in the legislature, he/she is also expected to announce important legislation, and is further expected to respond to the opposition's concerns. Article 85 of the Indian constitution confers the president with the power to convene and end extraordinary sessions of the parliament, this power, however, is exercised only on the advice of the prime minister and his/her council, so, in practice, the prime minister does exercise some control over affairs of the parliament.

Chief minister (India)

In the Republic of India, a chief minister is the elected head of government of each state out of 28 states and sometimes a union territory (currently, only the UTs of Delhi and Puducherry have serving Chief Ministers). According to the Constitution of India, the Governor is a state's head, but de facto executive authority rests with the chief minister.

Following elections to the State Legislative Assembly (Vidhan Sabha) in a state, the state's governor usually invites the party (or coalition) with a majority of seats to form the government. The governor appoints and swears in the chief minister, whose Council of Ministers are collectively responsible to the assembly. Based on the Westminster system, given that he retains the confidence of the assembly, the chief minister's term can last for the length of the assembly's life—a maximum of five years. There are no limits to the number of terms that the chief minister can serve. A chief minister heads a state government's council of ministers and can be deputed in that role by a deputy chief minister.

Governor

Powers and functions

The primary function of the governor is to preserve, protect and defend the constitution and the law as incorporated in his/her oath of office under Article 159 of the Indian constitution in the administration of the State affairs. All his/her actions, recommendations and supervisory powers (Article 167c, Article 200, Article 213, Article 355, etc.) over the executive and legislative entities of a State shall be used to implement the provisions of the Constitution. In this respect, the governor has many different types of powers:

Executive powers related to administration, appointments and removals,

Legislative powers related to lawmaking and the state legislature, that is State Legislative Assembly (Vidhan Sabha) or State Legislative Council (Vidhan Parishad),

Discretionary powers to be carried out according to the discretion of the governor

Executive powers

The Constitution vests in the governor all the executive powers of the state government. The governor appoints the chief minister, who enjoys the support of the majority in the State Legislative Assembly. The governor also appoints the other members of the Council of Ministers and distributes portfolios to them on the advice of the chief minister. The Council of Ministers remain in power during the 'pleasure' of the governor, but in the real sense it means the pleasure of obtaining majority in the Legislative Assembly. As long as the majority in the State Legislative Assembly supports the government, the Council of Ministers cannot be dismissed. The governor appoints the chief minister of a state. He or she also appoints the Advocate General and the chairman and members of the State Public Service Commission. Apart from this, State Election Commissioner is also appointed by the Governor (though removed by the President). The president consults the governor in the appointment of judges of the High Courts and the governor appoints the judges of the District Courts. All administrations are carried on his or her name, he or she also has the power to appoint staff for his or her tenure in class one and class four as per constitution of India.

Legislative powers

The state head summons the sessions of both houses of the state legislature and prorogues them. The governor can even dissolve the State Legislative Assembly. These powers are formal and the governor while using these powers must act according to the advice of the Council of Ministers headed by the Chief Minister. The governor inaugurates (to dedicate) the state legislature by addressing it after the assembly elections and also at the beginning of the first session every year. The governor's address on these occasions generally outlines new policies of the state government. A bill that the state legislature has passed, can become a law only after the governor gives assent. The governor can return a bill to the state legislature, if it is not a money bill, for reconsideration. However, if the state legislature sends it back to the governor for the second time, the governor must assent to it. The governor has the power to reserve certain bills for the president.

When the state legislature is not in session and the governor considers it necessary to have a law, then the governor can promulgate ordinances. These ordinances are submitted to the state legislature at its next session. They remain valid for no more than six weeks from the date the state legislature is reconvened unless approved by it earlier. Governor is empowered under Article 192 to disqualify a member of a House of the State legislature when the election commission recommends that the legislator is no longer complying with provisions of Article 191.

Financial powers

The governor causes to be laid before the State Legislature the annual financial statement which is the State Budget. Further no demand for grant shall be made except on his recommendation. They can also make advances out of the Contingency Fund of the State to meet any unforeseen expenditure. Moreover, he constitutes the Finance Commission of state.

A. Important questions :-

1. Discuss the ways to elect a president.
2. What is the qualification for a member to become a president.
3. How is a president removed.
4. What are the powers and functions of the president.
5. Analyse the constitutional position of the president.
6. Analyse the powers and functions of the vice president.
7. Discuss the powers and functions of the council of ministers.
8. what do you mean by no-confidence & cabinet dictatorship.
9. Discuss the powers and functions of the prime minister.
10. Discuss the position of the prime minister.
11. list the arguments in favour and against bureaucracy.
12. Discuss the role of bureaucracy in India.
13. Analyse the functions of the governor.
14. What are the functions of the council of ministers.
15. Discuss the role and function of the chief minister.
16. Analyse the position of the chief minister.
17. what are the limitations of chief minister becoming a real ruler.

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