

PRESIDENT OF INDIA

Election of the President

The President of India is elected by an electoral college consisting of:

- elected members of the two Houses of Parliament and Legislative Assemblies of the States - Article 54
- It includes the national capital territory of Delhi and the Union territory of Pondicherry
- The President's election is held in accordance with a system of proportional representation by means of a single transferable vote
- there shall be uniformity in the scale of representation of the different states at the election of the President - Article 55

Eligibility

Conditions as per Article 58:

- The candidate should be a Indian citizen.
- Should have completed the age of thirty-five (35) years.
- Should be qualified for election as a member of the Lok Sabha.
- Should not hold any office of profit under the Union Government or any state government or any local or other authority

Condition as per Article 59:

- The President should not be a member of any house of Union or State legislature.

Presidents' Term of Office

- The oath of office to the President is administered by the Chief Justice of India and in his absence, by the senior most judge of the Supreme Court available.
- An election should be held to fill the vacancy of Presidential post before the expiration of President's term - Article 62(1)
- The President holds office for a five year term from the date on which he enters the office.
- President can resign at any time by addressing the resignation letter to the Vice-President of India.
- When a vacancy occurs in the President's office due to his death, resignation or removal or otherwise, the Vice-president acts as the President until a new President is elected.
- An election to fill such vacancy should be held within six months from the date of occurrence of such vacancy.
- A person is eligible for re-election to Presidential office.

Presidents Impeachment

- President may be impeached from his office for violation of the Constitution - Article 61
- The impeachment charges may be initiated by either Lok Sabha or Rajya Sabha and it should be signed by at least 1/4th members.
- Regarding the charges a 14 days' notice should be given.
- The resolution of the charges for impeachment of the President should be passed by at least 2/3rd majority

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- Afterwards the charges are investigated in the other House of the Parliament. If the resolution is passed in this House also with a 2/3rd majority, then the President stands removed from his office from the date on which the bill is so passed.

The Powers and Functions of the President

Executive Powers - Article 53

All executive powers of the Union are vested in him. These powers are exercised by him either directly or through subordinate officers in accordance with the Constitution. The Supreme Command of the Defence Force is vested on the President and he exercises it in accordance with law.

- Executive powers of the President must be exercised in accordance with the Constitution. In particular it includes the provisions of article 14 (equality before law)
- President appoints the Prime Minister and other ministers; and they hold office during his pleasure.
- He appoints the Attorney General of India, Comptroller and Auditor General of India, the Chief Election Commissioner and other Election Commissioners, the Chairman and Members of the UPSC, the Governors of the states, the Chairman and the members of the Finance Commissions etc.
- The President can appoint a commission to investigate into the conditions of SCs, STs and OBCs.
- The President also receives the credentials of Ambassadors and High Commissioners from other countries.
- The President is the Commander in Chief of the Indian Armed Forces.
- The President of India can grant a pardon to or reduce the sentence of a convicted person for one time, particularly in cases involving punishment of death.

The Legislative Powers

- The President can summon or end a session of the Parliament and dissolve the Lok Sabha.
- He can address the Parliament at the commencement of the first session after the general election and the first session of each year.
- He can also summon a joint sitting of both the houses of Parliament which is presided over by the Speaker of the Lok Sabha.
- The President can appoint a member of the Lok Sabha to preside over its proceedings the positions of Speaker as well as Deputy Speaker are vacant.
- He also can appoint any member of the Rajya Sabha to preside over its proceeding when both the Chairman's and Deputy Chairman's office fall vacant.
- He can nominate 12 members to the Rajya Sabha with extraordinary accomplishments in literature, science, art and social service and two members to the Lok Sabha from the Anglo-Indian Community.
- President's prior recommendation or permission is needed for introducing bills in the parliament involving expenditure from Consolidated Fund of India, alteration of boundaries of states or creation of a new state
- When a bill is sent to the Parliament after it has been passed by the parliament, the President can give his assent to the bill or withhold his assent to the bill or return the bill (if it is not a Money Bill or a Constitutional Amendment Bill) for reconsideration of the Parliament.
- When a bill is passed by a State legislature is re-served by the Governor for consideration of the President, the President can give his assent to the bill, or withhold his assent to the bill or direct the Governor to return the bill (if it is not a Money bill) for reconsideration of the State Legislature.
- President can promulgate ordinances when both the Houses of the Parliament are not in session. These ordinances must be approved by the Parliament within the six weeks of its reassembly. The ordinance can be effective for a maximum period of six months and six weeks – Article 123

Emergency Powers of the President

President may proclaim a state of emergency in the whole or part of India if he realises/feels that a grave situation has arisen in which the security of India on part of its territory might get threatened by war or external aggression or rebellion. - Article 352

The President can declare three types of emergencies:

National Emergency:

- National emergency is caused by war, external aggression or armed rebellion in the whole of India or a part of its territory.
- President can declare national emergency only on a written request by the Cabinet Ministers headed by the Prime Minister and the proclamation must be approved by the Parliament within one month.
- National emergency can be imposed for six months. It can be extended by six months by repeated parliamentary approval, up to a maximum of three years.
- Under national emergency, Fundamental Rights of Indian citizens can be suspended.
 - The six freedoms under Right to Freedom are automatically suspended.
 - The Right to Life and Personal Liberty cannot be suspended.

Such an emergency has been invoked at three instances:

- 1962 (Indo-China war)
- 1971 (Indo-Pakistan war)
- 1975 to 1977 (declared by Indira Gandhi on account of "internal disturbance").

State Emergency or President's Rule

A State Emergency can be imposed via the following:

1. If that state failed to run constitutionally i.e. constitutional machinery has failed - Article 356
2. If that state is not working according to the given direction of the Union Government – Article 365

Such an emergency must be approved by the Parliament within a period of two months.

- It can be imposed from six months to a maximum period of three years with repeated parliamentary approval every six months.
- If needed, the emergency can be extended for more than three years, by a constitutional amendment, for example in the case of Punjab and Jammu and Kashmir.
- During such an emergency, 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. All money bills have to be referred to the Parliament for approval.

Financial Emergency: Article - 360

- President can proclaim a Financial Emergency if financial stability or credit of India or any part thereof is threatened.
- This proclamation must be approved by the Parliament within two months.
- This type of Emergency has not been declared so far.

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.
- President can make advances out of the Contingency Fund of India to meet unforeseen expenses
- The President continues a Finance commission after every five years to recommend the distribution of the taxes between the centre and the States.

Diplomatic powers

- International treaties and agreements are signed on behalf of the President. However, they are subject to approval of the parliament.
- The president represents India in International forms and affairs and may send and receives diplomats like ambassadors, high commissioners

Military powers

- The President is the supreme commander of the defence forces of India
- The President can declare war and conclude peace, subject to Parliaments' approval.
- The President appoints the chiefs of Army, Navy and Air Force.

Judicial powers

- The president appoints the Chief Justice of the Union Judiciary and other judges on the advice of the Chief Justice.
- The President dismisses the judges if and only if the two Houses of the Parliament pass resolutions to that effect by two-thirds majority of the members present.
- The president has the right to grant pardon.
- The president enjoys the judicial immunity
 - No criminal proceedings can be initiated against the president during the term in office
 - The president is not answerable for the exercise of his/her duties.

Veto Power of the President

When a bill is presented to the President for his assent, he has three alternatives (under Article 111 of the Constitution):

1. He may give his assent to the bill, or
2. He may withhold his assent to the bill, or

He may return the bill (if it is not a Money bill) for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, the President must give his assent to the bill.

The veto power enjoyed by the executive in modern states can be classified into the following four types:

1. Absolute veto that is, withholding of assent to the bill passed by the legislature.
2. Qualified veto, which can be overridden by the legislature with a higher majority.
3. Suspensive veto, which can be overridden by the legislature with an ordinary majority.
4. Pocket veto, that is, taking no action on the bill passed by the legislature.

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- Of the above four, the President of India is vested with three—absolute veto, suspensive veto and pocket veto.
- There is no qualified veto in the case of Indian President

Absolute Veto

- ✓ refers to the power of the President to withhold his assent to a bill passed by the Parliament.
- ✓ The bill then ends and does not become an act.
- ✓ Usually, this veto is exercised in the following two cases:
 - (a) With respect to private members' bills (i.e., bills introduced by any member of Parliament who is not a minister); and
 - (b) With respect to the government bills when the cabinet resigns (after the passage of the bills but before the assent by the President) and the new cabinet advises the President not to give his assent to such bills.

Suspensive Veto

- The President exercises this veto when he returns a bill for reconsideration of the Parliament.
- However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, 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 (and not a higher majority as required in USA).
- the President does not possess this veto in the case of money bills.
- The President can either give his assent to a money bill or withhold his assent to a money bill but cannot return it for the reconsideration of the Parliament.
- Normally, the President gives his assent to money bill as it is introduced in the Parliament with his previous permission.

Pocket Veto

- In this case, the President neither ratifies nor rejects nor returns the bill, but simply keeps the bill pending for an indefinite period.
- This power of the President not to take any action (either positive or negative) on the bill is known as the pocket veto.
- The President can exercise this veto power as the Constitution does not prescribe any time-limit within which he has to take the decision with respect to a bill presented to him for his assent.
- In USA, on the other hand, the President has to return the bill for reconsideration within 10 days. Hence, it is remarked that the pocket of the Indian President is bigger than that of the American President.
- It should be noted here that the President has no veto power in respect of a constitutional amendment bill.
- The 24th Constitutional Amendment Act of 1971 made it obligatory for the President to give his assent to a constitutional amendment bill.

Presidential Veto over State Legislation

- The President has veto power with respect to state legislation also.
- A bill passed by a state legislature can become an act only if it receives the assent of the governor or the President (in case the bill is reserved for the consideration of the President).
- When a bill, passed by a state legislature, is presented to the governor for his assent, he has four alternatives (under Article 200 of the Constitution):
 1. He may give his assent to the bill, or
 2. He may withhold his assent to the bill, or
 3. He may return the bill (if it is not a money bill) for reconsideration of the state legislature, or
 4. He may reserve the bill for the consideration of the President.

Veto Power of the President At a Glance

<i>Central Legislation</i>	<i>State Legislation</i>
With Regard to Ordinary Bills	
1. Can be ratified	1. Can be ratified
2. Can be rejected	2. Can be rejected
3. Can be returned	3. Can be returned
With Regard to Money Bills	
1. Can be ratified	1. Can be ratified
2. Can be rejected (but cannot be returned)	2. Can be rejected (but cannot be returned)
With Regard to Constitutional Amendment Bills	
Can only be ratified (that is, cannot be rejected or returned)	Constitutional amendment bills cannot be introduced in the state legislature.

Ordinance-making Power of the President

- Article 123 of the Constitution empowers the President to promulgate ordinances during the recess of Parliament.
- These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws.
- The ordinance-making power is the most important legislative power of the President.
- It has been vested in him to deal with unforeseen or urgent matters.
- But, the exercises of this power is subject to the following four limitations:

1. 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. An ordinance can also be issued when only one House is in session because a law can be passed by both the Houses and not by one House alone. An ordinance made when both the Houses are in session is void. Thus, the power of the President to legislate by ordinance is not a parallel power of legislation.
2. He can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action. The decision of the President to issue an ordinance can be questioned in a court on the ground that the President has prorogued one House or both Houses of Parliament deliberately with a view to promulgate an ordinance on a controversial subject, so as to bypass the parliamentary decision and thereby circumventing the authority of the Parliament. The 38th Constitutional Amendment Act of 1975 made the President's satisfaction final and conclusive and beyond judicial review. But, this provision was deleted by the 44th Constitutional Amendment Act of 1978. Thus, the President's satisfaction is justiciable on the ground of malafide.
3. His ordinance-making power is coextensive as regards all matters except duration, with the law-making powers of the Parliament. This has two implications:
 - (a) An ordinance can be issued only on those subjects on which the Parliament can make laws.
 - (b) An ordinance is subject to the same constitutional limitation as an act of Parliament. Hence, an ordinance cannot abridge or take away any of the fundamental rights
4. Every ordinance issued by the President during the recess of Parliament must be laid before both the Houses of Parliament when it reassembles. If the ordinance is approved by both the Houses, it becomes an act. If Parliament takes no action at all, the ordinance ceases to operate on the expiry of six weeks from the reassembly of Parliament. The ordinance may also cease to operate even earlier than the prescribed six weeks, if both the Houses of Parliament pass resolutions disapproving it. If the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks is calculated from the later of those dates. This means that the maximum life of an ordinance can be six months and six weeks, in case of non-approval by the Parliament (six months being the maximum gap between the two sessions of Parliament). If an ordinance is allowed to lapse without being placed before Parliament, then the acts done and completed under it, before it ceases to operate, remain fully valid and effective.
 - The President can also withdraw an ordinance at any time. However, his power of ordinance-making is not a discretionary power, and he can promulgate or withdraw an ordinance only on the advice of the council of ministers headed by the prime minister.
 - An ordinance like any other legislation, can be retrospective, that is, it may come into force from a back date.
 - It may modify or repeal any act of Parliament or another ordinance. It can alter or amend a tax law also.
 - However, it cannot be issued to amend the Constitution.
 - The ordinance-making power of the President in India is rather unusual and not found in most of the democratic Constitutions of the world including that of USA, and UK.
 - It must be clarified here that the ordinance-making power of the President has no necessary connection with the national emergency envisaged in Article 352.
- The President can issue an ordinance even when there is no war or external aggression or armed rebellion.
- The rules of Lok Sabha require that whenever a bill seeking to replace an ordinance is introduced in the House, a statement explaining the circumstances that had necessitated immediate legislation by ordinance should

also be placed before the House. So far, no case has gone to the Supreme Court regarding repromulgation of ordinance by the President.

Pardoning Power of the President

- Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases where the:
 1. Punishment or sentence is for an offence against a Union Law;
 2. Punishment or sentence is by a court martial (military court); and
 3. Sentence is a sentence of death.
- The pardoning power of the President is independent of the Judiciary; it is an executive power.
- But, the President while exercising this power, does not sit as a court of appeal.
- The object of conferring this power on the President is two-fold: (a) to keep the door open for correcting any judicial errors in the operation of law; and, (b) to afford relief from a sentence, which the President regards as unduly harsh.

The pardoning power of the President includes the following:

1. Pardon It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.

2. Commutation It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.

3. Remission It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.

4. Respite It 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.

5. Reprieve It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President. Under Article 161 of the Constitution, the governor of a state also possesses the pardoning power. Hence, the governor can also grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against a state law. But, the pardoning power of the governor differs from that of the President in following two respects:

1. The President can pardon sentences inflicted by court martial (military courts) while the governor cannot.
2. The President can pardon death sentence while governor cannot. Even if a state law prescribes death sentence, the power to grant pardon lies with the President and not the governor. However, the governor can suspend, remit or commute a death sentence. In other words, both the governor and the President have concurrent power in respect of suspension, remission and commutation of death sentence.

The Supreme Court examined the pardoning power of the President under different cases and laid down the following principles:

1. The petitioner for mercy has no right to an oral hearing by the President.
2. The President can examine the evidence afresh and take a view different from the view taken by the

court.

3. The power is to be exercised by the President on the advice of the union cabinet.
4. The President is not bound to give reasons for his order.
5. The President can afford relief not only from a sentence that he regards as unduly harsh but also from an evident mistake.
6. There is no need for the Supreme Court to lay down specific guidelines for the exercise of power by the President.
7. The exercise of power by the President is not subject to judicial review except where the presidential decision is arbitrary, irrational, *mala fide* or discriminatory.
8. Where the earlier petition for mercy has been rejected by the President, stay cannot be obtained by filing another petition.

VICE-PRESIDENT OF INDIA

Introduction

- The Vice-President of India is the second highest constitutional office in the country. He serves for a five-year term, but can continue to be in office, irrespective of the expiry of the term until the successor assumes office.

Art. 63 declares: "There shall be a Vice-President of India That is the office cannot remain vacant.

Election-

- The Vice-President, like the president, is elected not directly by the people but by the method of indirect election. He is elected by the members of an electoral college consisting of the members of both Houses of Parliament. Thus, this electoral college is different from the electoral college for the election of the President in the following two respects:
 1. It consists of both elected and nominated members of the Parliament (in the case of president, only elected members).
 2. It does not include the members of the state legislative assemblies (in the case of President, the elected members of the state legislative assemblies are included)

Qualifications

A person cannot be elected as Vice-President unless he

- is a citizen of India
- has completed the age of 35 years, and
- is qualified for election as a member of the Council of States (Rajya Sabha).

Under Article: 102.

- a person cannot become a Member of Lok Sabha or Rajya Sabha if he is of unsound mind and a competent court has declared so, an undischarged insolvent, has voluntarily acquired the citizenship of a foreign state or if he has been disqualified under any parliamentary law.

A person is not eligible if he holds any office of profit under the Government of India or a State Government or any subordinate local authority (Art. 66.4)

The Vice-Presidents not a member of either House of Parliament or of a House of a legislature of any state.

- If a member of either House of Parliament or of a House of a legislature of any state is elected as Vice-President, he is deemed to have vacated his seat in that House on the date he/she enters his office as Vice-President (Art.66.2).

Superintendence of the Election of the Vice-President

- The Election Commission of India conducts the election to the office of the Vice- President.

Important Provisions relating to the Election of the Vice-President are:

- The election of the next Vice-President is to be held within 60 days of the expiry of the term of office of the outgoing Vice-President.
- The Returning Officer appointed to conduct the Vice-Presidential sections is the Secretary-General of either House of the Parliament by rotation.
- Any person qualified to be elected and intending to stand for election as Vice-President is required to be nominated by at least 20 MPs as proposers and at least 20 MPs as seconders.
- A candidate seeking election as Vice-President is required to make a security deposit of Rs. 15,000/-. He loses the security deposit if he does not secure 1/6th of the valid votes.

Disputes Regarding Election of the Vice-President

- An election petition calling in question an election to the office of Vice-President may be presented by any candidate at such election or by any ten or more electors joined together as petitioners.
- According to Article 71 of the Constitution, 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.
- Further, according to Presidential and Vice-Presidential Elections Act, 1952, an election petition can be filed only before the Supreme Court.
- A petition challenging the election of the Vice-President is heard by a five-judge bench of the Supreme Court of India.
- The petition has necessarily to be accompanied by a security deposit of Rs 20,000/-.
- An election petition may be presented within 30 days from the date of publication of the declaration containing the name of the returned candidate.

Oath of the Vice President

Oath of Affirmation by the Vice-President:

- bear true faith and allegiance to solemnly affirm the Constitution of India as by law established and
- to faithfully discharge the duties of his office

Conditions of Office

The Constitution lays down the following two conditions of the Vice-President's office:

1. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is elected Vice-President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.
2. He should not hold any other office of profit

Term of office

- It is five years from the date of assumption of office. Even after the expiration of the term, the vice-President shall continue in office until his successor assumes office.
- Art. 67(c). The Vice-President may resign his office by writing to the President. The resignation becomes effective from the day it is accepted.

Removal

- The Vice-President can be removed from office by a resolution of the Council of States (Rajya Sabha), passed by a majority of its members at that time and agreed to by the House of the People (Lok Sabha).
- A resolution for this purpose may be moved only after a notice of at least a minimum of 14 days has been given of such an intention.
- It may be noted that for Impeachment of the President, the cause or reason is "violation of the Constitution". But for the removal of Vice-President, no cause or reason has been mentioned in the Constitution.

Vacancy

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- An election to fill a vacancy caused by the expiry of the term of office of Vice- President is completed before the expiry of the term. In case a vacancy arises by reasons of death, resignation or removal or otherwise, the election to fill that vacancy is held as soon as possible after the occurrence.
- In contrast, the Constitution provides an outer limit of six months (Article 62) for election to the office of the President of India under these circumstances.
- The person so elected is entitled to hold office for a full term of 5 years from the date he enters office. The Constitution is silent on who performs the duties of the Vice-President, when a vacancy occurs in the office of the Vice-President of India, before the expiry of his term, or when the Vice-President acts as the President of India.
- The only provision in the Constitution is with regard to the Vice-Presidents function as the Chairperson of the Council of States (Rajya Sabha), which is performed, during the period of such vacancy, by the Deputy Chairperson of the Rajya Sabha, or any other member of the Rajya Sabha authorised by the President of India (Protem Chairman).

Powers and Functions

The functions of Vice-President are two-fold:

1. He acts as the ex-officio Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha. In this respect, he resembles the American vice-president who also acts as the Chairman of the Senate—the Upper House of the American legislature.
2. He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise.⁷ He can act as President only for a maximum period of six months within which a new President has to be elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.

PRIME MINISTER

- Prime Minister is the real executive authority (*de facto* executive).
- Is the head of the government

Appointment of the Prime Minister

- The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister.
- Article 75 says only that the Prime Minister shall be appointed by the president.
- the President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister.
- But, when no party has a clear majority in the Lok Sabha- the President may exercise his personal discretion in the selection and appointment of the Prime Minister.
- In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month.
- There is also one more situation when the president may have to exercise his individual judgement in the selection and appointment of the Prime Minister, that is, when the Prime Minister in office dies suddenly and there is no obvious successor.
- In 1997, the Supreme Court held that a person who is not a member of either House of Parliament can be

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appointed as Prime Minister for six months, within which, he should become a member of either House of Parliament; otherwise, he ceases to be the Prime Minister.

Oath, Term and Salary

Quite similar.

Powers and Functions of the Prime Minister

In Relation to Council of Ministers

1. recommends persons who can be appointed as ministers by the president. The President can appoint only those persons as ministers who are recommended by the Prime Minister.
2. allocates and reshuffles various portfolios among the ministers.
3. ask a minister to resign or advise the President to dismiss him in case of difference of opinion.
4. presides over the meeting of council of ministers and influences its decisions.
5. guides, directs, controls, and coordinates the activities of all the ministers.
6. bring about the collapse of the council of ministers by resigning from office.

In Relation to the President

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

In Relation to Parliament

1. advises the President with regard to summoning and proroguing of the sessions of the Parliament.
2. recommend dissolution of the Lok Sabha to President at anytime.
3. announces government policies on the floor of the House.

Other Powers & Functions

1. the chairman of the Planning Commission, National Development Council, National Integration Council, Inter-State Council and National Water Resources Council.
2. plays a significant role in shaping the foreign policy of the country.
3. the chief spokesman of the Union government.
4. the crisis manager-in-chief at the political level during emergencies.
5. As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and soon.
6. leader of the party in power.

7. political head of the services. Relationship with the President

The following provisions of the Constitution deal with the relationship between the President and the Prime Minister:

1. Article 74 - a council of ministers with the Prime Minister at the head to aid and advise the President the President may require the council of ministers to reconsider such advice and the President shall act in accordance with the advice tendered after suchreconsideration.

2. Article 75 (a) 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;

(b) The ministers shall hold office during the pleasure of the president; and

(c) The council of ministers shall be collectively responsible to the House of the People.

3. Article 78 It shall be the duty of the Prime Minister:

(a) to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(c) if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

CENTRAL COUNCIL OF MINISTERS

Constitutional Provisions

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
2. The advice tendered by Ministers to the President shall not be inquired into in any court.

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.
 2. The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. The provision was added by the 91st Amendment Act of 2003.
- A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.
1. The ministers shall hold office during the pleasure of the President.
 2. The council of ministers shall be collectively responsible to the Lok Sabha.
 3. The President shall administer the oaths of office and secrecy to a minister.
 4. A minister who is not a member of the Parliament (either house) for any period of six consecutive months shall cease to be a minister.
- **The salaries and allowances of ministers shall be determined by the Parliament**
- #### **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.
 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 78—Duties of Prime Minister

1. To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation
2. If the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council

Nature of Advice by Ministers

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- The 42nd and 44th Constitutional Amendment Acts have made the advice binding on the President.
- Further, the nature of advice tendered by ministers to the President cannot be enquired by any court.
- This provision emphasises the intimate and the confidential relationship between the President and the ministers.
- In 1971, the Supreme Court held that ‘even after the dissolution of the Lok Sabha, the council of ministers does not cease to hold office.
- Article 74 is mandatory and, therefore, the president cannot exercise the executive power without the aid and advice of the council of ministers.
- Any exercise of executive power without the aid and advice will be unconstitutional as being violative of Article 74’.
- Again in 1974, the court held that ‘wherever the Constitution requires the satisfaction of the President, the satisfaction is not the personal satisfaction of the President but it is the satisfaction of the council of ministers with whose aid and on whose advice the President exercises his powers and functions’.

Appointment 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.
- Means that the President can appoint only those persons as ministers who are recommended by the Prime minister.
- A person who is not a member of either House of Parliament can also be appointed as a minister.
- But, within six months, he must become a member (either by election or by nomination) of either House of Parliament; otherwise, he ceases to be a minister.
- 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.

Oath and Salary of Ministers

- Quite Similar
- In 1990, the oath by Devi Lal as deputy prime minister was challenged as being unconstitutional as the Constitution provides only for the Prime Minister and ministers.
- The Supreme Court upheld the oath as valid and stated that describing a person as Deputy Prime Minister is descriptive only and such description does not confer on him any powers of Prime Minister.
- It ruled that the description of a minister as Deputy Prime Minister or any other type of minister such as minister of state or deputy minister of which there is no mention in the Constitution does not vitiate the oath taken by him so long as the substantive part of the oath is correct.

Responsibility of Ministers

Collective Responsibility

- Article 75 clearly states that the council of ministers is collectively responsible to the Lok Sabha.
- all the ministers own joint responsibility to the Lok Sabha for all their acts of omission and commission.
- When the Lok Sabha passes a no-confidence motion against the council of ministers, all the ministers

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have to resign including those ministers who are from the Rajya Sabha.

- Alternatively, the council of ministers can advise the president to dissolve the Lok Sabha on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections.
- The President may not oblige the council of ministers that has lost the confidence of the Lok Sabha.
- the Cabinet decisions bind all cabinet ministers (and other ministers) even if they differed in the cabinet meeting.
- If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign.

Individual Responsibility

- the ministers hold office during the pleasure of the president, which means that the President can remove a minister even at a time when the council of ministers enjoys the confidence of the Lok Sabha.
- However, the President removes a minister only on the advice of the Prime Minister.
- In case of a difference of opinion or dissatisfaction with the performance of a minister, the Prime Minister can ask him to resign or advise the President to dismiss him.

No Legal Responsibility

- In India, there is no provision in the Constitution for the system of legal responsibility of a minister.
- It is not required that an order of the President for a public act should be countersigned by a minister.
- Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the president.

Composition of the Council of Ministers

Already Covered

Council of Ministers Vs 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 respects of composition, functions, and role.

Role of Cabinet

1. It is the highest decision-making authority in our politico-administrative system.
2. It is the chief policy formulating body of the Central government.
3. It is the supreme executive authority of the Central government.
4. It is chief coordinator of Central administration.
5. It is an advisory body to the president and its advice is binding on him.
6. It is the chief crisis manager and thus deals with all emergency situations.
7. It deals with all major legislative and financial matters.
8. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.

9. It deals with all foreign policies and foreign affairs.

Kitchen Cabinet

- Kitchen Cabinet consists an informal body of the Prime Minister and 2-4 influential colleagues in whom he has faith and with whom he can discuss every problem.
- not only cabinet ministers but also outsiders like friends and family members of the prime minister.
- Also called as Inner Cabinet

CABINET COMMITTEES

Features of Cabinet Committees

The following are the features of Cabinet Committees:

1. They are extra-constitutional in emergence. In other words, they are not mentioned in the Constitution. However, the Rules of Business provide for their establishment.
2. They are of two types—standing and *ad hoc*. The former are of a permanent nature while the latter are of a temporary nature. The *ad hoc* committees are constituted from time to time to deal with special problems. They are disbanded after their task is completed.
3. They are set up by the Prime Minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature, and composition varies from time to time.
4. Their membership varies from three to eight. They usually include only Cabinet Ministers. However, the non-cabinet Ministers are not debarred from their membership.
5. They not only include the Ministers in charge of subjects covered by them but also include other senior Ministers.
6. They are mostly headed by the Prime Minister. Some times other Cabinet Ministers, particularly the Home Minister or the Finance Minister, also acts as their Chairman. But, in case the Prime Minister is a member of a committee, he invariably presides over it.
7. They not only sort out issues and formulate proposals for the consideration of the Cabinet, but also take decisions. However, the Cabinet can review their decisions.

They are an organisational device to reduce the enormous workload of the Cabinet. They also facilitate in-depth examination of policy issues and effective coordination. They are based on the principles of division of labour and effective delegation.

List of Cabinet Committees

1. *In 1994, there were the following 13 Cabinet Committees* Cabinet Committee on Political Affairs
2. Cabinet Committee on Natural Calamities
3. Cabinet Committee on Parliamentary Affairs
4. Appointments Committee of the Cabinet
5. Cabinet Committee on Accommodation
6. Cabinet Committee on Foreign Investment
7. Cabinet Committee on Drug Abuse Control
8. Cabinet Committee on Prices

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9. Cabinet Committee on Minority Welfare
10. Cabinet Committee on Economic Affairs
11. Cabinet Committee on Trade and Investment
12. Cabinet Committee on Expenditure
13. Cabinet Committee on Infrastructure

At present (2013), the following 10 Cabinet Committees are functional:

1. Cabinet Committee on Economic Affairs
2. Cabinet Committee on Prices
3. Cabinet Committee on Political Affairs
4. Appointments Committee of the Cabinet
5. Cabinet Committee on Security
6. Cabinet Committee on World Trade Organisation (WTO) Matters
7. Cabinet Committee on Investment
8. Cabinet Committee on Unique Identification Authority of India (UIDAI) related issues
9. Cabinet Committee on Parliamentary Affairs
10. Cabinet Committee on Accommodation

Functions of Cabinet Committees

The following four are the more important cabinet committees:

1. The Political Affairs Committee deals with all policy matters pertaining to domestic and foreign affairs.
 2. The Economic Affairs Committee directs and coordinates the governmental activities in the economic sphere.
 3. Appointments Committee decides all higher level appointments in the Central Secretariat, Public Enterprises, Banks and Financial Institutions.
 4. Parliamentary Affairs Committee looks after the progress of government business in the Parliament.
- The first three committees are chaired by the Prime Minister and the last one by the Home Minister. Of all the Cabinet Committees, the most powerful is the Political Affairs Committee, often describe as a "Super-Cabinet".
 - The Narendra Modi government reconstituted six cabinet committees, including the one on appointments and on security.
 - "The government has reconstituted six committees of the Cabinet i.e. Appointments Committee of the Cabinet, Cabinet Committee on Accommodation, Cabinet Committee on Economic Affairs, Cabinet Committee on Parliamentary Affairs, Cabinet Committee on Political Affairs and Cabinet Committee on Security,".
 - The Appointments Committee would comprise the prime minister and the home minister, according to an official statement.
 - The Cabinet Committee on Security would comprise Prime Minister, Home Minister , External Affairs Minister and Finance and Defence Minister .
 - The Cabinet Committee on Economic Affairs would comprise of the prime minister, home minister, external affairs minister, finance minister, Urban Development Minister , Transport Minister , Railways Minister,

Communications and IT Minister , Civil Aviation Minister, Food Processing Industries Minister and Agriculture Minister.

- The Cabinet Committee on Accommodation, on political affairs and parliamentary affairs were also reconstituted.

PARLIAMENTARY COMMITTEES

a parliamentary committee means a committee that:

1. Is appointed or elected by the House or nominated by the Speaker / Chairman
 2. Works under the direction of the Speaker / Chairman
 3. Presents its report to the House or to the Speaker / Chairman
 4. Has a secretariat provided by the Lok Sabha / Rajya Sabha
- The consultative committees, which also consist of members of Parliament, are not parliamentary committees as they do not fulfill above four conditions.
 - Broadly, parliamentary committees are of two kinds—Standing Committees and *Ad Hoc* Committees. The former are permanent (constituted every year or periodically) and work on a continuous basis, while the latter are temporary and cease to exist on completion of the task assigned to them.

Standing Committees

On the basis of the nature of functions performed by them, standing committees can be classified into the following six categories:

1. Financial Committees

- (a) Public Accounts Committee Estimates Committee
- (b) Committee on Public Undertakings

2. Departmental Standing Committees (24)

3. Committees to Inquire

- (a) Committee on Petitions
- (b) Committee of Privileges
- (c) Ethics Committee

4. Committees to Scrutinize and Control

- (a) Committee on Government Assurances
- (b) Committee on Subordinate Legislation
- (c) Committee on Papers Laid on the Table
- (d) Committee on Welfare of SCs and STs
- (e) Committee on Empowerment of Women
- (f) Joint Committee on Offices of Profit

5. Committees Relating to the Day-to-Day Business of the House

- (a) Business Advisory Committee
- (b) Committee on Private Members' Bills and Resolutions
- (c) Rules Committee
- (d) Committee on Absence of Members from Sitzings of the House

6. House-Keeping Committees or Service Committees (i.e., Committees concerned with the Provision of Facilities and Services to Members):

- (a) General Purposes Committee
- (b) House Committee

- (c) Library Committee
- (d) Joint Committee on Salaries and Allowances of Members

Ad Hoc Committees

Ad hoc committees can be divided into two categories, that is, Inquiry Committees and Advisory Committees.

1. Inquiry Committees are constituted from time to time, either by the two Houses on a motion adopted in that behalf, or by the Speaker / Chairman, to inquire into and report on specific subjects. For example:
 - (a) Committee on the Conduct of Certain Members during President's Address
 - (b) Committee on Draft Five-Year Plan Railway Convention Committee
 - (c) Committee on Members of Parliament Local Area Development Scheme (MPLADS)
 - (d) Joint Committee on Bofors Contract
 - (e) Joint Committee on Fertilizer Pricing
 - (f) Joint Committee to Enquire into Irregularities in Securities and Banking Transactions
 - (g) Joint Committee on Stock Market Scam
 - (h) Joint Committee on Security in Parliament Complex
 - (i) Committee on Provision of Computers to Members of Parliament, Offices of Political Parties and Officers of the Lok Sabha Secretariat
 - (j) Committee on Food Management in Parliament House Complex
 - (k) Committee on Installation of Portraits / Statues of National Leaders and Parliamentarians in Parliament House Complex
 - (l) Joint Committee on Maintenance of Heritage Character and Development of Parliament House Complex
 - (m) Committee on Violation of Protocol Norms and Contemptuous Behaviour of Government Officers with Members of Lok Sabha
 - (n) Joint Committee to Examine Matters Relating to Allocation and Pricing of Telecom Licences and Spectrum
2. Advisory Committees include select or joint committees on bills, which are appointed to consider and report on particular bills. These committees are distinguishable from the other *ad hoc* committees in as much as they are concerned with bills and the procedure to be followed by them is laid down in the Rules of Procedure and the Directions by the Speaker / Chairman.

PARLIAMENTARY FORUMS

The first Parliamentary Forum on Water Conservation and Management was constituted in the year 2005. Subsequently, five more Parliamentary forums were constituted. At present, there are six Parliamentary forums.

1. Parliamentary Forum on Water Conservation and Management (2005)
2. Parliamentary Forum on Youth (2006)
3. Parliamentary Forum on Children (2006)
4. Parliamentary Forum on Population and Public Health (2006)
5. Parliamentary Forum on Global Warming and Climate Change (2008)
6. Parliamentary Forum on Disaster Management (2011)

Objectives of the Forums

The objectives behind the constitution of the Parliamentary forums are:

- (i) To provide a platform to the members to have interactions with the ministers concerned, experts and key officials from the nodal ministries with a view to have a focused and meaningful discussion on critical issues with a result-oriented approach for speeding up the implementation process;
 - (ii) To sensitise members about the key areas of concern and also about the ground level situation and equip them with the latest information, knowledge, technical know-how and valuable inputs from experts both from the country and abroad for enabling them to raise these issues effectively on the Floor of the House and in the meetings of the Departmentally-Related Standing Committees (DRSCs); and
To prepare a data-base through collection of data on critical issues from ministries concerned, reliable NGOs, newspapers, United Nations, Internet, etc. and circulation thereof to the members so that they can meaningfully participate in the discussions of the forums and seek clarifications from experts or officials from the Ministry present in the meetings.
- It has been mandated that the Parliamentary Fora will not interfere with or encroach upon the jurisdiction of the Departmentally-Related Standing Committees of the Ministry/Department concerned.

Composition of the Forums

- The Speaker of Lok Sabha is the President of all the Forums except the Parliamentary Forum on Population and Public Health wherein the Chairman of Rajya Sabha is the President and the Speaker is the Co-President.
- The Deputy Chairman of Rajya Sabha, the Deputy Speaker of Lok Sabha, the concerned Ministers and the Chairmen of Departmentally-Related Standing Committees are the ex- officio Vice-Presidents of the respective Forums.
- Each Forum consists of not more than 31 members (excluding the President and ex-officio Vice-Presidents) out of whom not more than 21 are from the Lok Sabha and not more than 10 are from the Rajya Sabha.
- Members (other than the President and Vice-Presidents) of these forums are nominated by the Speaker/Chairman from amongst the leaders of various political parties/groups or their nominees, who have special knowledge/keen interest in the subject.
- The duration of the office of members of the forum is co-terminus with their membership in the respective Houses. A member may also resign from the forum by writing to the Speaker/Chairman.
- The President of the forum appoints a member-convenor for each forum to conduct regular, approved programmes/meetings of the forum in consultation with the President. The meetings of the forums are held from time to time, as may be necessary, during Parliament sessions.

Functions of the Forums

Parliamentary Forum on Water Conservation and Management

The functions of the forum are:

1. To identify problems relating to water and make suggestions/recommendations
2. for consideration and appropriate action by Government/organisations concerned
3. To identify the ways of involving members of Parliament in conservation and augmentation of water

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resources in their respective states/constituencies

4. To organize seminars/workshops to create awareness for conservation and efficient management of water
5. To undertake such other related task as it may deem fit

Parliamentary Forum on Youth

The functions of this forum are:

To have focused deliberations on strategies to leverage human capital in the youth for accelerating development initiatives

1. To build greater awareness amongst public leaders and at the grass-roots level of the potential of youth for effecting socio-economic change
2. To interact on a regular basis with youth representatives and leaders, in order to better appreciate their hopes, aspirations, concerns and problems
3. To consider ways for improving Parliament's out-reach to different sections of youth, in order to reinforce their faith and commitment in democratic institutions and encourage their active participation therein
4. To hold consultations with experts, national and international academicians and government agencies concerned on redesigning of public policy in the matter of youth empowerment.

Parliamentary Forum on Children

The functions of the forum are:

1. To further enhance awareness and attention of Parliamentarians towards critical issues affecting children's wellbeing so that they may provide due leadership to ensure their rightful place in the development process
2. To provide a platform to Parliamentarians to exchange ideas, views, experiences, expert practices in relation to children, in a structured manner, through workshops, seminars, orientation programmes, etc.
3. To provide Parliamentarians an interface with civil society for highlighting children's issues, including, *inter-alia*, the voluntary sector, media and corporate sector, and thereby to foster effective strategic partnerships in this regard
4. To enable Parliamentarians to interact, in an institutionalised manner with specialised UN agencies like the UNICEF and other comparable multilateral agencies on expert reports, studies, news and trend-analyses, etc., world-wide, which are germane to developments in the sector
5. To undertake any other tasks, projects, assignments, etc., as the Forum may deem fit.

Parliamentary Forum on Population and Public Health

The functions of the forum are:

1. To have focused deliberations on strategies relating to population stabilisation and matters connected therewith
2. To discuss and prepare strategies on issues concerning public health
3. To build greater awareness in all sections of the society, particularly at the grass-root level, regarding population control and public health

- To hold comprehensive dialogue and discussion in the matter of population and public health with experts at the national and international levels and to have interactions with multilateral organisations like WHO, United Nations Population Fund, and academicians and government agencies concerned.

Parliamentary Forum on Global Warming and Climate Change

The functions of the forum are:

1. To identify problems relating to global warming and climate change and make suggestions/recommendations for consideration and appropriate action by the government/organisations concerned to reduce the extent of global warming
2. To identify the ways of involving members of Parliament to interact with specialists of national and international bodies working on global warming and climate change with increased effort to develop new technologies to mitigate global warming
3. To organise seminars/workshops to create awareness about the causes and effects of global warming and climate change among the members of Parliament
4. To identify the ways of involving members of Parliament to spread awareness to prevent global warming and climate change
5. To undertake such other related task as it may deem fit

Parliamentary Forum on Disaster Management

The functions of the forum are:

1. To identify and discuss the problems relating to disaster management
2. To equip the members of Parliament with the information and knowledge on disaster management, for making them aware of the seriousness of the issues involved and enabling them to adopt a result-oriented approach towards this critical issue