

Chapter 6

Central Government

Meaning and Definition of Government-

The state is an abstract concept, which is an intangible and invisible institution, the organisation which gives it a concrete shape is called the government. The overall will of the state is determined, expressed and implemented by the government; we can say that the government is the only expression of that abstract concept of state. The state cannot be imagined without a government which makes and executes the laws to serve the people residing in a certain territory, and punish and bring on the right path the people who do not obey the laws in a proper way. Defining the government Garner has said, 'government is a tribunal or a machine, by which the policies of a state are finalized, general issues are regulated and the common interests are upgraded.

Three Major Parts of a Government are as follows-

1. Legislature 2. Executive 3. Judiciary

1. Legislature-

The legislature is the first among the three parts of government. The formation of Legislature in Indian ruling system is on two levels; first- Union legislature, second -state legislature the union legislature is called Sansad or parliament. There is a provision in the article 79 of Constitution that the Federation of India will have a parliament which is constituted by The President and the two houses, and these would be named Lok Sabha and Rajya Sabha respectively. Thus the collective name of all three- the President, Lok Sabha and Rajya Sabha is called parliament.

The structure of Lok Sabha-

Lok Sabha is the First or Lower House of the Parliament it is also called the Popular house

because its members are directly elected by the public.

1. Number of members-

The number of members of Lok Sabha was fixed 500 in the original Constitution but it was increased on occasions. Now it is made sure by the Constitution act of Goa, Daman and Diu of 1987, that the maximum number of Lok Sabha can be 552.

530 members from state electorates and 20 from union electorates could be elected from them and The President can nominate two members for Anglo Indian community.

2. Election-

Members of Lok Sabha are elected directly and the election is based on adult suffrage. In India an 18 years old person is now considered as an adult. All the constituencies of Lok Sabha are kept for single membership.

3. Eligibility Conditions for Members-

1. He must be a citizen of India. 2. He must have completed the age of 25 years. 3. He should not hold any office of profit under the Government of India or any State Government. 4. He should not be bankrupt and declared of unsound mind by any Court.

4. Term of office for Lok Sabha-

The tenure of Lok Sabha is 5 years. On the advice of Prime Minister, the President can dissolve Lok Sabha prematurely. It has been happened 9 times so far.

5. Sessions-

The session of the Lok Sabha and Rajya Sabha are convened and prorogued by the

President, however the rule in this regard is that there should be no gap of more than 6 months between two sessions.

6. Office Bearers of Lok Sabha-

According to the article 93 of Constitution, Lok Sabha will elect a Speaker and a Deputy Speaker from amongst its members. The speaker and Deputy Speaker could be removed from their respective posts if a resolution about this matter is passed by a majority of all the present members of Lok Sabha, but it is mandatory to give a minimum 14 days notice of the intention to move this kind of resolution in Lok Sabha. The speaker and the Deputy Speaker will get the desired salary and allowances determined by the Constitution.

Functions and Powers of the Speaker

The Speaker of the Lok Sabha holds almost all those rights similar to the Speaker of House of commons in British Parliament.

1. All the meetings of Lok Sabha are chaired by the Speaker and the discipline and decorum of the house is also maintained by him.

2. Speaker decides the desired agenda to be taken up for discussion during the meetings, and presides over these meetings he also allots the time for debate on various issues on the advice of opposition leader.

3. He is an ex officio speaker of some committees of the house. He also appoints the Presidents of select committees and all these committees work under his guidance.

4. Only speaker can decide whether a bill is money bill or not.

5. All the correspondence between Parliament and The President is done by the speaker.

The structure of Rajya Sabha-

Rajya Sabha is the Second or the Upper house of Parliament. It holds lesser powers as compared to Lok Sabha.

1. Number of members and election process-

The number of members of Rajya Sabha can

be 250 maximum according to the Constitution, but at present it is only 245, 12 of them are nominated by the President. They are the distinguished personalities who excel in various fields of arts, literature, science, social services and sports. 233 members are elected through state legislative assemblies and these members are elected by the members of various state legislative assemblies of the union and the members of the legislative assemblies of union territories according to the Single Transferable Vote System of proportional representation.

2. Qualification for the members-

The Qualifications for the members of Rajya Sabha are same as the members of Lok Sabha. The only difference is that the age required for members of Lok Sabha is 25 Years but it is 30 Years or more decided for the members of Rajya Sabha.

3. Tenure of Members-

Rajya Sabha is a Permanent House and is not a subject to dissolution, however one third of its members retire after every second year. The member who is elected for a full term, serves for a period of 6 years.

4. Office Bearers of Rajya Sabha

There are two office bearers in Rajya Sabha. The Chairman and the deputy Chairman. The Vice President of India is the ex-officio Chairman of Rajya Sabha, his tenure is of 5 years. Rajya Sabha elects one of its members as Deputy Chairman for term of 6 years.

Powers and functions of the Parliament

The Constitution has provided enough powers to the Parliament. The principal powers of parliament can be mentioned in the following terms-

1. Legislative powers-

The main function of Parliament is to create laws keeping in view national interests. Parliament has the power to make laws on the subjects mentioned in the Union and Concurrent lists, though the union Parliament and the State Assemblies both can make laws on the subjects of

Concurrent list the Parliament any law overrides state legislative laws in case of contradiction. Laws on residual subjects can also be made by the parliament.

2. Power of Amendment in the Constitution-

Parliament has got significant powers in relation to the amendments in Constitution. A bill for amendment in the Constitution can be initiated in either House of Parliament but not in any Legislative Assembly. In most part of the Constitution amendment can be made by a simple majority of the house or a two third majority of both houses separately. There are some situations in the Constitution where the consent of at least half of the State Legislatures is essential for the amendment.

3. Financial Powers-

Being a representative of the public, Indian Parliament holds absolute power on the national finance, and any work related to income and expenditure will not be performed till the budget proposed by the finance minister is approved by the Parliament.

4. Administrative Powers-

The Parliamentary system has been set up by the Indian Constitution, so according to Constitution the union executive i.e. the cabinet is accountable to the Parliament (Lok Sabha in practice). The cabinet can remain in office till it has the support and confidence of the majority in the Lok Sabha. The parliament can hold control over the executive in different ways.

5. Electoral Powers-

By through the article 54 several electoral powers have been granted to the Parliament. Elected members of both the houses of Parliament are part of the electoral board constituted for the election of the President. According to article 66 the elected members of both houses of Parliament elect the vice President.

6. Miscellaneous Powers-

In addition to powers mentioned above the Parliament holds some other powers too.

i) Both houses of Parliament can pass the

impeachment motion against The President based on the special provision of Constitution and dismiss him. In the same way both the houses can pass the proposal to dismiss the judge of Supreme Court or High court on the basis of Incompetence, mischief or conduct. This type of motion should be passed by two third majority of each house. The motion to remove the Vice President should be approved by the Lok Sabha.

ii) For the effectiveness of emergency declared by the President, approval of both the houses is needed. The President's rule is exercisable for 6 months at a time and still if there is a need, it can be extended up to 6 months, but for this the assent of both the houses of Parliament would be compulsory.

Powers or the authority and functions of the Lok Sabha

1. Legislative powers-

According to the Constitution the Parliament of India can make laws on federal list, concurrent list and on the subjects of state list also. Under certain circumstances regarding non financial bills and bills of amendment in the Constitution, it is said that such bills can be proposed in both the houses of Parliament, either Lok Sabha or Rajya Sabha and the bill will be sent to The President for signature after the approval of both the houses of Parliament.

2. Financial powers-

Powers related to financial sector are provided only to Lok Sabha by the Indian Constitution, and the position of Rajya Sabha is secondary in this regard. According to article 109 money bills can be proposed in Lok Sabha only, Rajya Sabha is not entitled for it. After being passed by Lok Sabha the money bill is sent to Rajya Sabha and it is essential for Rajya Sabha to return this bill to Lok Sabha within 14 days of its receiving. Rajya Sabha can propose amendments in the bill but to accept them or not, depends on the choice of Lok Sabha.

3. Power to control the Executive-

The Parliamentary system has been established by the Indian Constitution. Therefore,

according to the Constitution the union executive body or the cabinet is accountable to the Parliament (Lok Sabha in practice) Cabinet only enjoys its office till it gets the trust of Lok Sabha.

4. Power of Constitutional amendment-

As per article 368 of the Constitution, Lok Sabha has got the right to amend the Constitution in with Rajya Sabha. The task of amendment in most part of the Constitution is made by the Parliament alone.

5. Role of an electoral college-

Lok Sabha also works as an electoral college According to article 54 elected members of Lok Sabha and Rajya Sabha with the elected members of state legislative assemblies together elect The President.

Functions and powers of the Rajya Sabha-

Powers of Rajya Sabha can be studied in the following terms-

1. Legislative powers-

In addition to Lok Sabha the Rajya Sabha also deals in law making process. Both the Lok Sabha and Rajya Sabha are provided equal powers by the Constitution regarding nonfinancial bills.

2. Power to amend the Constitution-

Regarding Constitutional amendments, Rajya Sabha enjoys the same power as Lok Sabha. The resolution of amendment in the Constitution will be dropped if there is a disagreement between both the houses of Parliament on the proposal of amendment.

3. Financial Powers-

Rajya Sabha holds some financial powers but the Constitution has provided it weak status as compared to Lok Sabha in this regard. According to Constitution money bill will be introduced in Lok Sabha first. Being passed by Lok Sabha the money bill will be sent to Rajya Sabha where it can be contemplated for maximum 14 days. Rajya Sabha can give suggestions regarding the money bill, but it is the sole discretion of Lok Sabha whether to accept them or not.

4. Executive Powers-

In the Parliamentary system of governance

the cabinet is only accountable for the popular house of Parliament. So in India the cabinet is collectively responsible to Lok Sabha but not to Rajya Sabha. Members of Rajya Sabha can ask questions and supplementary questions to ministers and also criticize them but they have no power to remove the ministers by using no confidence motion.

5. Miscellaneous Powers-

Apart from above mentioned powers Rajya Sabha holds some other powers too, which it exercises collectively with Lok Sabha. These powers and functions are as follows:

- (I) Elected members of Rajya Sabha take part in the election of the President.
- (ii) Elected members of Rajya Sabha together with elected members of Lok Sabha elect the Vice-President.
- (iii) Rajya Sabha along with Lok Sabha can impeach against the President, the judges of Supreme Court and some of its officials. The motion of such impeachment can only be considered 'passed' when both the houses accept it.
- (iv) The Rajya Sabha in collaboration with Lok Sabha can pass a proposal with a majority to remove the Vice President from his post, but the proposal for removal of Vice President goes to Lok Sabha after passing in Rajya Sabha at first.
- (v) If emergency is to be applicable for more 1 month, then this type of proposal should be approved by both Lok Sabha and Rajya Sabha with their special majority separately.

6. Special Powers-

Rajya Sabha holds two other powers also, which are not with Lok Sabha and these can be exercised only by Rajya Sabha. This kind of power belongs to the federal structure of the country, and Rajya Sabha, being sole representative of the states, has following kinds of powers:

1. According to article 249, Rajya Sabha can declare any subject of state list as of national importance by two third majority of the present and participating members of the house. By this

process, Parliament gets the privilege to make law on that subject of state list.

2. According to article 312 of the Constitution Rajya Sabha can give the power to Central Government for creating new All India Services by passing a resolution with two third majority of it.

Executive

The second part of the government is executive.

The President-

There is a provision in the article 52 of Indian Constitution that there will be a President of India. According to article 53 the executive power of union would be vested in The President and he himself or by the functionaries will use it According to the Constitution The President, Vice President, Prime Minister, Cabinet and the Attorney General of India are included in the Union Executive. The President will be the nominal head of the executive and the Prime Minister with the cabinet would be the real head of Indian union. The head of the executive in Indian union is known as The President. India has adopted Parliamentary System similar to Britain in which the statutory head and the actual head of the executive are two different people. The President is the statutory head of the executive of Indian Union, where he holds position similar to the British King'.

Qualifications for the post of the President-

In the Constitution of India following qualifications are determined to get elected on the post of the President:

1. He must be a citizen of India.
2. He has completed 35 years of age or above.
3. He holds the qualification to become a member of Lok Sabha.

Apart from that if a person holds office of profit under Government of India or the Government of any state or under any local or other authority, cannot be a contestant for the post of the President. The President of India won't be a member of Parliament of India or any state Legislative Assembly.

Election of the President

The method of indirect election has been adopted for the Presidential election, and this election is held on the basis of Single Transferable Vote method.

It is like this-

Indirect Election-

The election of The President is made indirectly by such an Electoral College, in which following members are included.

- (1) Elected members of both the houses of Parliament.
- (2) Elected members of state assemblies including the elected members of the assemblies of union territories. (70th Constitutional Amendment 1992)

Single Transferable Vote system-

Elected members of Parliament and State Assemblies with union territories elect The President by a special voting system also called as Single Transferable Vote system. Polling in the election is held by the secret ballot and it is necessary for the candidate to get a minimum quota of votes for success in the election.

Formula adopted to determine the minimum quota;

Minimum quota = Valid votes polled / number of candidates to be elected ÷ 1000

Method of Deposition Impeachment-

The term of office for The President of India is 5 years, but according to the article 61 of Indian Constitution he can be deposed through the process of impeachment mentioned in the Constitution of India in case of transgression of Constitution by him. Each house of Indian Parliament has the right to prosecute him, For the permission of prosecution the signatures of one fourth members of the house concerned is required. 14 days after the receipt of the proposal, it will be considered in the house which has indicted him. The house will make consideration over it if the proposal of the suite is accepted by two third of total members of the house, then the proposal is forwarded to the second

house. The second house will either investigate itself or appoint a special committee for this task, if the charges against The President are proved and the Second House also accepts the proposal of impeachment by at least two third majority of its members, then The President is deemed to have deposed off from his post from the date of acceptance of the proposal.

Powers and Functions of the President

Facilitating the study, all the powers of The President can be primarily divided into two parts:

General Powers and Rights

The powers conferred by the Constitution to The President in peace time can be studied under following heads-

1. Executive or Administrative powers:

According to article 53 of Constitution the executive power of the union will be vested in The President and he will use it according to the Constitution himself or by his subordinate officers. In this way all the work of governance would be done in the name of The President and all the decisions of government will be considered as 'His' decisions.

(I) Appointment and Dismissal of Important Officers

The President appoints several important officers of Indian Union, such as :

The Council of Ministers on the advice of Prime Minister, Governors of states, Judges of the Supreme Court and High court, Auditor General, Chairman and members of Union Public Service Commission, Ambassadors in foreign countries etc.

(ii) Powers for Governance-

Different rules can be made by him in this regard. He makes the rules regarding the joint sitting of both the houses of Parliament, appointment of the officers and employees in Supreme Court and the rules regarding the powers of Comptroller and Auditor General. The distribution of portfolios amongst Council of Ministers is also made by him.

(iii) Powers in Foreign Affairs-

Being the legal head of Indian Union, The President represents India in foreign countries, appoints ambassadors and diplomatic representatives for the Indian Embassy located abroad and accepts the certificates of foreign ambassadors and diplomats. All pacts and agreements with foreign nations are also signed in the name the President.

(iv) Military Powers-

He is the Supreme Commander of Defence Forces of India but he can use this power according to the laws. Only Parliament holds the power to make laws on subjects of defence services, war and peace etc. So without the approval of Parliament The President of India can neither declare war nor can use the armies.

2. Legislative powers-

The President of India is not only statutory head of the executive of Indian Union but he has also been considered as an integral part of the Indian Parliament, and in this way The President receives various powers of Legislative field.

(i) Legislative administration-

The President has got many powers related to the legislation. He convenes the sessions of Parliament and announces the prorogation of sessions. He can dissolve the Lok Sabha before its tenure on the recommendation of Prime Minister. Lok Sabha has been prematurely dissolved 9 times so far. At the commencement of the session of Parliament, The President addresses joint meeting of both the houses. The work of addressing the legislature can be done by him on other occasions too. The general policy of government is announced in these addresses of the President.

(ii) Power of nomination-

The President holds the right to nominate 12 members in Rajya Sabha, they are the distinguished personalities who excel in Literature, arts or in any other field. He can nominate two members of Anglo Indian community in Lok Sabha.

(iii) Use of veto power on a bill-

Every Bill approved by the Parliament takes the form of law only after the approval of the President. He can return a General bill to the Parliament for reconsideration with a few suggestions, but if that bill is again passed by Parliament with or without any amendment, then The President will have to accept it for the second time.

(iv) Power of issuing ordinance-

When the Parliament is not in session, The President has the power of issuing ordinances. These ordinances will remain valid upto 6 weeks after the commencement of the session of Parliament, but on the wish of Parliament these ordinances can be nullified before their term.

3. Financial powers-

In the beginning of every financial year The President will get details of income and expenditure tabled in both the houses of Parliament. The money bill and the demand for grants cannot be proposed in Lok Sabha without the permission of the President.

4. Judicial Powers-

The theory "Freedom of Judiciary" is adopted by our Constitution. The President appoints the judges of Supreme Court and High court. The approval of The President is essential regarding the rules related to the work order of the court made by the Supreme Court. The President receives yet another important power of clemency. Including judicial powers the power to pardon or reprieve the people who have been sentenced already is also possessed by him.

Emergency powers: Promulgation, Effects and use in practice.

The President is empowered with special powers by the Constitution in the case of emergency. The position of emergency provisions in the Constitution at present time are as follows-

1. Emergency Provisions at the Time of War, Foreign Invasions and Home Unrest-

Method of Declaration- Article 352 of the original Constitution had the arrangements that if The President observes about the danger to peace

and normalcy in India or in any part, then after the development of this type of situation in reality or about the apprehension of it, The President could declare the emergency even without the approval of the Parliament. This arrangement lasts for 2 months and after the approval of the Parliament government can retain it till the requirement. But after 44th amendment of the Constitution the provision in this regard is as follows-

First- This kind of emergency can no be declared only after the apprehension of War, external invasion or the armed rebellion. The emergency could not be declared in the name of internal disturbance.

Second- The declaration of emergency by The President under article 352 can only be made after the written advice of the Cabinet.

Third- The assent of the Parliament would be required within a month with its special majority. (total majority of both the houses separately and two third majority of present and participating members those voted), and to keep it continue the permission of the Parliament would be required after every six months.

Fourth- The announcement of emergency can be terminated by the simple majority of the present and participating members of Lok Sabha.

Provision of emergency after the failure of Constitutional machinery in the states-According to article 356, when The President gets the apprehension that there has evolved a situation where the Government of a state could not function according to the provisions of Constitution, then he can declare the state of emergency in that province. This announcement of emergency would not be applicable for a period for more than 2 months without the approval of Parliament. The Presidents Rule can be imposed for 6 months by passing a resolution in the Parliament. This type of proposal is essential to be passed separately by both of the houses of Parliament with a simple majority. The President rule cannot continue in any condition after 3 years.

Financial emergency-

Method of Declaration-

According to article 360 when The President

gets the apprehension that, owing to certain circumstances the menace to financial stability and credibility of India has been caused, then he can declare the state of financial emergency. The term decided for such declaration is as same as the first declaration.

Vice President

Election-

In the article 63 of Indian Constitution there is a provision for the post of Vice President. Vice President is elected during the joint sitting of both the houses of Parliament, and this election is performed by The Single Transferable Vote system of proportional representation method with the secret ballot.

Following qualifications are required for the post of Vice President-

1. He must be the citizen of India.
2. He must be not less than 35 years.
3. He should meet all the qualifications which have been fixed for the members of Rajya Sabha

Deposition-

According to the Constitution the term of office for the Vice President is 5 years but he can resign voluntarily from his post before his tenure or he can be terminated by the resolution of Rajya Sabha passed with the total majority of it, which is later accepted by the Lok Sabha too. The information of this kind of proposal should be given before within 14 days.

Powers and Functions of Vice President-

1. Ex officio Chairman of Rajya Sabha : Vice President is the ex officio Chairman of Rajya Sabha. As he is not a member of Rajya Sabha, so he is not entitled for voting, but in the case of indecisiveness on any subject, he holds the right of 'casting vote' .This is the most important work of Vice President.

2. Taking over the charge of the President in his absence:

In following conditions the Vice President takes over the charge of the post of the President-

- (i) After the death of the President.
- (ii) After the resignation of the President.
- (iii) Deposition of The President due to impeachment.
- (iv) Inability of The President due to any reason like disease or a foreign tour.

The Prime Minister

Article 74 of the Constitution of India has the provision for the post of Prime Minister

Appointment of the Prime Minister-

It is provisioned in the Constitution that the Prime Minister will be appointed by the President. According to the basic concept of Constitutional system, it is obligatory for The President to appoint the leader of the party having majority in Lok Sabha as Prime Minister. Yet there may be circumstances where The President can exercise his discretion in relation to the appointment of Prime Minister. Functions and powers of the Prime Minister:

In the Parliamentary system of governance Prime Minister is the only person who is considered as "The Principal Rock of arch shaped building of the Constitution".

1. Formation of Council of Ministers-

The first work of Prime Minister after assuming his charge is to form a Council of Ministers. Only Prime Minister has to decide that what should be the number of ministers and who should be a minister under the legal range.

2. Distribution and changes of portfolios from amongst the ministers-

Prime Minister acts according to his discretion in the distribution of portfolios amongst the ministers and generally no one makes any objection in the final distribution of portfolios by the Prime Minister.

3. Administration of the cabinet-

Prime Minister superintends all the proceedings and Chairmanship of the meetings of cabinet. Subjects included in the agenda by the Prime Minister are discussed only in the Cabinet meeting.

4. Coordination amongst various departments of governance-

Prime Minister establishes coordination amongst all the departments of government so that it would work as a unit.

5. Leader of Lok Sabha-

Prime Minister is the leader of Lok Sabha principally, and all the lawmaking functions are performed in his leadership. All government bills including annual budget are prepared under his supervision only.

6. Link between the President and the Cabinet-

On the issues of public importance the contact with the head of the nation can only be made via Prime Minister. He apprises The President about the discussion of Cabinet and also transmits President's advice to the cabinet.

7. Bestowing various posts-

The power of appointing high ranked officials given by the Constitution to The President is practically exercised by the Prime Minister, because The President exercises this power with the only advice of Prime Minister, and not on his self discretion.

Council of Ministers:

There is a provision in article 74 of original Constitution that "There will be a Council of Ministers for the help and advice of The President for the administration of his work, and it will be headed by the Prime Minister". Theoretically by the Constitution of India all the powers of executive is deemed to be vested in the President, and the Council of Ministers headed by the Prime Minister is arranged for the help and advice of the President, but The President is merely a Constitutional head in the Parliamentary System of governance adopted by the Constitution, and all the authority of executive in reality (the all powers to help and advice) is vested in Council of Ministers.

Formation of the Council of Ministers

1. Appointment of Prime Minister-

According to article 75 of the Constitution of India the appointment of Prime Minister would be made by the President, and the other ministers

would also be appointed by The President on the advice of Prime Minister. According to the Constitution The President appoints the Prime Minister.

2. Selection of Ministers by the Prime Minister-

The Constitutional provision for the appointment of other ministers is as follows -

The President will appoint other ministers on the advice of Prime Minister but The President is bound to accept the advice of Prime Minister in practice.

3. Distribution of Work amongst the Ministers-

The toughest work for Prime Minister after the formation of cabinet is to distribute the portfolios of ministers. Legally Prime Minister holds the total power regarding this act but practically he has to keep a lot of things in mind while distributing the portfolios.

4. Qualifications Required for the Ministers-

In order to become a member of the Council of Ministers, it is necessary for a person to become a member of any house of Parliament .if a person is not a member of Parliament at the time of becoming a minister, then it is essential for him to get elected as a member of Parliament within 6 months of his swearing in as a minister or else he has leave his post.

5. Oath of Office by the Ministers-

Prior to assuming the office each minister including the Prime Minister has to take an oath of office and the Oath of confidentiality before the President

6. Tenure of Council of Ministers there is no fixed term of office for the Council of Ministers. It only remains in the office till it receives the trust of Parliament.

7. Salary and Allowances of Ministers-

There is a provision of giving monthly salary and fixed monthly allowances to the Prime Minister, Cabinet Minister, Minister of States and Deputy minister. It is reviewed by Parliament from time and again. Apart from that they all get free lodging, vehicle and other facilities too.

8. Categories of Ministers (Cabinet and Council of Ministers)

There are three series of ministers-- Cabinet or the Council of Ministers and Ministers of State and deputy ministers. The first level of Ministers are members of Cabinet which are the top unit of governance in the Parliamentary system of India. Members of Cabinet are the heads of one or more departments, minister of state stand at second category between the ministers and deputy ministers. They belong to the special departments and sometimes they also serve as the independent heads of the department. Ministers of this category are invited by the PM for the cabinet meetings in which the questions related to the departments are under consideration. After the ministers of state there is a category of Deputy Ministers, who help the Minister of State under supervision of the Senior Minister.

Powers of the Cabinet

Article 74 of the Constitution states that the Council of Ministers will assist and advise The President in the execution of his duties. It is a traditional terminology, but in practice the cabinet is the top-most unit of Indian system of governance and the whole system of governance is operated by it. In reality all the powers of The President are exercised by the cabinet and it is called the heart of the Indian system of governance

1. Determining the national policy-

The most important task of the cabinet is to make a national policy. Cabinet determines the type of policy to be adopted by the various departments in internal administration and by the foreign missions in external region.

2. Control over law making-

Being a Parliamentary system the expertise of cabinet is not limited only to the policy formulation but the process of law making is also led by it. After the determination of the policy by the cabinet, the law making process is also decided by it and the member of the cabinet only proposes the important bills in the house.

3. Supreme control over National executive-

In principle the entire power of the Union

Government is vested in The President but all executive power is practically used by the cabinet. Different heads of departments have their Chairmanship in the cabinet. They superintend their own departments and take care of the functions related to them.

4. Financial Affairs-

The Council of Ministers is responsible for determining the economic policy of the country. In this regard the details of possible income and expenditure or the budget is presented before the Parliament by it. On the basis of prescribed policy laid down by the cabinet the Finance Minister himself prepares the budget and presents it in the Lok Sabha. All other money bills are also presented by the Cabinet in Lok Sabha.

5. Control of Foreign Affairs-

Foreign Affairs of India are governed by the cabinet only. Proclamation related to war and peace is made by the cabinet and the kind of relationship other countries is also decided by the cabinet.

4. Power of Appointment-

The power of appointment of officers given to The President by the Constitution is used by the cabinet only. In India the function of controlling and checking the misuse of the powers of Executive is done by opposition. In order to control the treasury benches and to move the governance in accordance with the Constitution the opposition affects and checks out the government by following means-

Judiciary

Formation of the Supreme Court

1. The number of judges

Originally a Chief Justice and 7 other judges were proposed for the Supreme Court, and the right to fix the number of judges, jurisdiction of Supreme Court, salary and service rules of the judges of Supreme Court was given to the Parliament. The number of judges with the Chief Justice were increased to 31 in 2008. The judges of the Supreme Court are appointed by The President of India. The President seeks the advice of those other judges of Supreme Court which he considers

necessary in this regard. Presently the appointment of the judges of Supreme Court and High court is made by the collegium system. Accordingly the Chief Justice of Supreme Court and a group of senior judges propose names to the President, and The President appoints the judges from this list.

3. Qualification for the Judges-

Following qualifications are essential for the judges of Supreme Court-

- (i) He is a citizen of India.
- (ii) He has worked as a judge of High court or has been worked regularly at least for 5 years in two or more than two other courts as a judge.

OR

He has been an advocate in High court or other courts for 10 years.

OR

He has been a distinguished jurist in the opinion of the President.

4. Executive and Impeachment-

In general, every judge of the Supreme Court can remain in office till he attains 65 years of age. Prior to this stage he can resign himself. Due to proven misconduct or inability a judge can be removed from his post by the Parliament.

If both the houses of Parliament with two third majority of their total members separately prove him incompetent or a person with objectionable behaviour, The president of India can removed that judge from his post.

5. Salary, Allowances and other Facilities-

The Chief Justice of India receives a monthly salary of Rs 1 lakh and other judges get Rs 90000 per month as salary. There is also a provision of pension and gratuity for the judges, the salary and allowances are amended from time to time.

6. Immunities-

Judges are kept free from the criticism of their decisions and all their actions.

7. Chief location of the Court-

According to article 130 the head office of the

Supreme Court lies in Delhi.

8. Restrictions on judges-

It has been decided in the Constitution that the person who has been a judge of the Supreme Court of India cannot advocate against any Court or any officer after his retirement.

Jurisdiction, powers and functions of the Supreme Court-

By the Constitution of India, the Supreme Court has been granted a much wider jurisdiction which can be studied in following terms.

Original jurisdiction-

The original jurisdiction of the Supreme Court can be kept under following two categories.

A. Original unique jurisdiction

Original unique jurisdiction is meant for those conflicts which can only be heard by the Supreme Court of India. Following subjects are included in the original unique jurisdiction:

- Controversy arising between Government of India and any state.
- Controversy arising between Government of India and any state or union territory.
- Any dispute emerged out of constitutional subjects between two states and more than two.

B. Original Concurrent Jurisdiction-

Regarding implementation of the Fundamental Rights bestowed by the Constitution, the High court has also been granted the authority along with Supreme Court, therefore whatever the dispute related to the violation of Fundamental Rights, it can be presented first in the High Court of a state or may be brought directly to the Supreme Court.

2. Appellate jurisdiction-

The Supreme Court has also been granted the appellate jurisdiction by the Constitution along with the original jurisdiction and this is the last appellate Court of India. It has the authority to hear the appeals against the decisions of the High court of all the states. The appellate jurisdiction of the Supreme Court can be divided into following

categories; Constitutional, civil, criminal and special.

A. Constitutional-

According to article 132 of the Constitution, if the High court proves that there is no significant question included in the dispute regarding the interpretation of the Constitution then the appeal of the decision of High court can be filed in the Supreme Court too.

B. Civil-

The original Constitution had the arrangement in this regard that the appeal for only those civil cases could be made in the Supreme Court from High court where the disputed amount was more than Rs 20000, but by the 30th Constitutional amendment of 1973, the article 133 is amended by removing the limit of Rs 20000, with determining that all the civil disputes are appealable in the Supreme Court.

C. Criminal-

Criminal appeal can be filed in the Supreme Court against the decision of High court when (1) The accused has been awarded capital punishment by High court after overruling of the decision of lower court, while the Lower court had already acquitted the criminal or (2) The High court has awarded capital punishment to the accused by hearing the case already filed in a lower court or (3) If the High court proves that the case is appealable in the Supreme Court.

D. Special-

There may be some cases which are not included in the above category but the intervention of Supreme Court could be essential for them. So according to article 135, the Supreme Court has been granted the authority to permit for appeal in Supreme Court against the decision of any other Indian court or Tribunal except the Military Court.

3. Authority to grant special order for appeal-

According to article 136 of the Constitution the Supreme Court itself has the authority that it can hear the appeal against any court or Tribunal of

Indian state except the military jurisdiction. There is no Constitutional restriction on this authority of Supreme Court.

4. Advisory jurisdiction-

The Constitution has also provided advisory jurisdiction to the Supreme Court. According to article 143, if at any time The President seems to have got a question of law or fact that is of public importance, then he can seek the advice of the Supreme Court on that question. The acceptance or rejection on court's counsel depends on the discretion of the President.

5. Court of Record

Article 129 puts Supreme Court at the place of Court of Record. There are two meanings for Court of Record: First, all the decisions of this court will be accepted as evidences everywhere and no question of validity would be raised regarding the passing of these decisions when presented in any Court: Second, any type of sentence can be awarded for The Contempt of court by this court.

6. Savior of the Fundamental Rights-

Supreme Court of India is the protector of Fundamental Rights of the citizens. In order to implement Fundamental Rights the court can issue writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari.

7. Guardian of the Constitution-Power of judicial review-

The task of guarding the Constitution is given to the Supreme Court by the Constitution itself, which means that the Supreme Court has the authority to investigate the legality of the laws. Article 131 and 132 gives Supreme Court the right of judicial review of the legislations formed by union and the state governments. If the Union Parliament or the state legislature violate the Constitution or constitute laws against the Fundamental Rights, then such laws made by the union Parliament or the State Legislature can be declared illegal by the Supreme Court. This power of Supreme Court is called the power of Judicial Review.

Important Points

- The union Parliament has been named as Sansad in the Indian constitution. It has been divided into three parts.
- (1) The President who is the head of the Executive also has role in law making.
- (2) Lok Sabha is also called the first house, lower house or a popular house.
- (3) Rajya Sabha is also called as second house or upper house.
- The maximum number of Lok Sabha can be 552 members.
- The system of reservations for SC and ST in Lok Sabha and Rajya Sabha has been maintained since the enactment of the Constitution.
- The term of Lok Sabha is 5 years but it can be dissolved before its term on the advice of Prime Minister.
- The two office bearers of Lok Sabha- Speaker and the Deputy speaker are elected by Lok Sabha itself.
- Rajya Sabha - The number of Rajya Sabha members can be 250 and out of which 12 members are nominated by The President.
- Term of office-Rajya Sabha is a permanent house which is never dissolved, the term of office for the members of Rajya Sabha is 6 years, and one third of the members retire from Rajya Sabha after every second year.
- There are two main office bearers in Rajya Sabha : Chairman and the Deputy Chairman. The Vice President of India is the ex officio Chairman of Rajya Sabha.
- Works and powers of the Parliament- Legislative powers, Power of amendment in the Constitution, Financial powers, Administrative powers, Electoral powers and miscellaneous powers.
- The President, Vice President, Prime Minister with cabinet and the Attorney General of India are included in the Union Executive.
- The President is the Constitutional head of the Executive of Indian Union.
- The President is elected indirectly by the process of Single Transferable vote system of proportional representation.
- Term of office for The President is 5 years.
- The rights and powers of the President : (1) Peace time powers and (2) Powers in emergency.
- Vice President- Vice President is elected in the joint sitting of both Houses by The Single Transferable Vote of proportional representation method and secret voting system. His tenure is 5 years.
- The powers and functions of Vice President- Ex officio Chairman of Rajya Sabha, takes charge of the post of The President in his absence.
- Union Cabinet-The entire power of the Executive is practically vested in the cabinet in the Parliamentary system of governance.
- Formation or making of the cabinet- Appointment of the Prime Minister by the President, selection of the ministers by the Prime Minister, distribution of portfolios amongst the ministers.
- Categories of ministers: Three categories; Members of the cabinet, Minister of state and the Deputy ministers.
- The cabinet is the internal and most important committee of the Council of Minister.
- The powers and functions of the Cabinet.: The co-ordination work of national policy determination on all important subjects, financial work, operating foreign affairs, appointment related work and other functions.
- Prime Minister-Appointed by the President.
- Need and importance of the Supreme Court- Chief Justice and 30 other judges, nowadays the appointment of judges would be made on the advice of the Collegium of Supreme Court, the judge can remain in office till the age of 65 years.
- Jurisdiction or powers and functions of the Supreme Court.

1. Original jurisdiction-
 - (a) Original unique jurisdiction.
 - (b) Original concurrent jurisdiction.
2. Appellate jurisdiction Constitutional, civil, criminal, special.
3. Power of giving special order for the appeal.
4. Court of records.
5. Protector of Fundamental Rights.
6. Saviour of the Constitution and the power of judicial review.
5. How the value of the vote of every member of Parliament and the members of state and Federal assemblies is determined in the election of the President?
6. Describe the Appellate Jurisdiction of Supreme Court.
7. When can Civil and Criminal cases be heard as an appeal in Supreme Court?
8. Why is the Supreme Court called as Court of Record?
9. Who can remove the judge of Supreme Court and High Court and how?
10. Explain the importance of judicial review.

EXERCISE

Very Short Answer Type Questions-

1. On which method the election of The President is based on?
2. Who appoints the Prime Minister?
3. Who is the ex officio Chairman of Rajya Sabha?
4. Who presides over the union cabinet?
5. On the adjournment of the house The President issues an order in extra ordinary conditions. What is it called?
6. In relation to which matter both the Supreme Court and the High court have original jurisdiction?
7. Who can be appointed as the judge of Supreme Court?
8. Once appointed, how long can a judge of Supreme Court remain in his post?
9. What do you mean by the Court of Record?

Short Answer Type Questions-

1. Explain the process of election for Vice President
2. What qualifications are required for the Presidential candidate?
3. By which process The President can be removed from his post?
4. Under which article The President can proclaim emergency?

Essay Type Questions

1. Explain the process of election for The President of India.
2. Discuss the peacetime powers and rights of the President.
3. Discuss the emergency powers of the President.
4. Discuss the formation and powers of the cabinet.
5. Describe the formation, jurisdiction and powers of the Supreme Court.
6. Explain the formation and jurisdiction of the Supreme Court.