

Chapter – 11

Parliamentary Form of Government in India – The constitution powers and status of the President of India

11.1 Introduction

- The democratic system of government can be divided into the parliamentary and the presidential system based on the relationship between the executive and the legislature.
- In a parliamentary system, an executive is a part of the legislature. Which implements the law and plays an active role in framing it as well.
- In a parliamentary system, the head of the state may be a monarch or a president, but both of these positions are ceremonial.
- The head of the Government, who is generally called as the Prime Minister, is the real head. Thus, all the real executive powers are vested in the Prime Minister.

11.2 Parliamentary Form of Government or Parliamentary System

- The Parliament of India is the supreme legislative body of the Republic of India. It is a bicameral legislature composed of the President of India and the two Houses:
 - The Rajya Sabha (Council of States); and
 - The Lok Sabha (House of the People)
- The President in his role as head of a legislature has full powers to summon and prorogue either House of Parliament or to dissolve Lok Sabha.
- The President can exercise these powers only upon the advice of the Prime Minister and his Union Council of Ministers.
- Those elected or nominated (by the President) to either House Parliament are referred to as Members of Parliament (MP).
- The Members of Parliament, Lok Sabha have directly elected the Indian public voting in Single-member districts and the Member of Parliament, Rajya Sabha are elected by the members of all state Legislative Assembly by proportional representation.
- The Parliament has a sanctioned strength of 545 members in Lok Sabha including the 2 nominees from the Anglo-Indian community by the President, and 245 members in Rajya Sabha including the 12 nominees from the expertise of different fields of science, culture, art, and history.
- India has a parliamentary system of Government.
- Article 74 and Article 75 deal with the parliamentary system the Centre and Articles 163 and 164 deals with the States.
- The Parliament meets at Sansad Bhavan in New Delhi.

11.3 Sabha

- Lok Sabha (House of the People) or the Lower House has 545 members.
- 543 members are directly elected by citizens of India on the basis of universal adult franchise representing parliamentary constituencies across the country and 2 members are appointed by the president of India from the Anglo-Indian Community.
- Every citizen of India who is over 18 years of age (Article 326), Irrespective of gender, caste, religion, or race and is otherwise not disqualified is eligible to vote for the Lok Sabha.
- The Constitution provides that the maximum strength of the house can be 552 members.
- It has a term of five years.
- To be eligible for membership in the Lok Sabha, a person must be a citizen of India and must be 25 years of age or older, mentally sound, should not be bankrupt, and should not be criminally convicted.

11.4 Rajya Sabha

- Rajya Sabha (Council of States) or the Upper House is a permanent body not subject to dissolution .
- One-third of the members retire every second year and are replaced by newly elected members.
- Each member is elected for a term of six years.
- Its members are indirectly elected by members of the legislative bodies of the States.
- The Rajya Sabha can have a maximum of 250 members.
- It currently has a sanctioned strength of 245 members, of which 233 are elected from States and Union Territories and 12 are 'nominated by the President.
- The number of members from a state depends on its population.
- The minimum age for a person to become a member of Rajya Sabha is 30 years.

11.5 Elements and Features of the Parliamentary System

- Following are the elements and features of the Parliamentary System: Nominal and Real Head
- The head of the state holds a ceremonial position and is the nominal executive. For example, the President.
- In India, the head of Government is the Prime Minister who is the real executive.
- Article 75 of the Indian constitution provides for a Prime Minister to be appointed by the President.
- According to Article 74, the prime minister headed the council of ministers would aid and advise the president in the exercise of his functions .
- The executive is a Part of Legislature
- The Executive forms part of the legislature. In India, the person should be a member of parliament to become a member of the executive. However, the constitution provides that a person can be appointed as a minister for a period of not more than six consecutive months if he is not a member of the parliament, after which the person ceases to be a minister.
- Majority Party Rule
 - The party which wins majority seats in the elections of the Lower House forms the Government.
- In India, the President invites the leader of the majority party in Lok Sabha to form the Government.
- The President appoints the leader as the Prime Minister and the other ministers are appointed by the president on the advice of the Prime Minister.
- The President may invite a coalition of parties to form the government, in case, no party has got a

- Collective Responsibility
 - The council of Ministers is collectively responsible to the Parliament.
- The Lower House of parliament has the ability to dismiss a government by getting the no- confidence motion passed in the House.
- In India, the government survives until the time it enjoys the support of the majority of members in the Lok Sabha.
- Thus, Lok Sabha is empowered to introduce no-confidence motion against the Government.
- Prime Minister as the Centre of Power
- In India, the Prime Minister is the real executive.
- He is the head of the government, the council of ministers and the ruling government. Thus, he has to play a significant and important role in the working of the Government.

11.6 President of India

- The office of the President is very august and the Constitution attaches to it many privileges and immunities.
- The President along with the council of Ministers headed by the Prime Minister comprises the central executive which has been dealt from Article 52 to 78 of the Constitution.
- The President is the head of the State and the former executive.
- All executive action at the center is expressed to be taken in his name.
- This power has been granted to him under Article 53(1) which states that the executive power shall be vested in the president and shall be exercised by him directly or through officers subordinate to him.
- The President of India is the head of State and first citizen of India and the Supreme Commander of the Indian armed forces.
- In theory, the president possesses considerable power.
- In practice, the president's role is comparable to those of a constitution monarch, and indeed the officer replaced that of the British monarch (represented by the Governor General) upon India's independence.
- The Constitution only formally vests functions in the hands of the President.
- In reality, he has no function to discharge his discretion and or his individual judgment
 - He has to act on ministerial advice and therefore the prime Minister and the council of Ministers constitute the real and effective executive.
 - The office of the president is created by article 52 of the constitution and the matters of erection are dealt from Article 54 to 60 of the Constitution.
 - The President is elected by the method of indirect election i.e. by an electoral college consisting of elected members of both Houses of Parliament and of the State legislative assemblies.
 - The method of indirect election was emphasized the ministerial character of the executive that the effective power resides in the Ministry and not in the President as such.
 - secondly, the method of the direct election would have been very costly and energy-consuming.
 - There was also the fear that a directly elected president may in course of time assume all the power.

- The President derives its power from Article 53 which vests in him all the executive authority including the Supreme Command of the Armed Forces.
- There are several other provisions in the constitution that mention specific functions of the President.
- Briefly, the President has the power to appoint all important offices including those of the Prime Minister and other central Ministers, Governors, Judges of the Supreme Court and the High Courts and even Election commissioners. He even has the authority to appoint commissions with respect to the administration of scheduled areas.
- Most importantly, the President is vested with wide powers during Emergency under Article 352 to 360 of the Constitution including the suspension of Fundamental Rights.
- Moreover, every bill comes to him for his assent and can either refuse to give his assent or send it back for reconsideration. Powers of the President can be classified as:
- Executive functions Legislative functions Judicial functions

11.7 Executive Functions of President

- The exercise of the executive power of the union is the function of the President.
- A primary function of the executive is to administer and execute the laws enacted by the parliament and maintain law and order.
- However, the executive function cannot be limited to this and a modern state is not expected to confine itself to a mere collection of taxes, maintaining law and order and defending the country from external aggression. The executive operates over a large area and discharges varied and complex functions.
- The central Executive is entitled to exercise executive functions with respect to all those subjects which fall within the legislative sphere of Parliament besides exercising executive functions which are exercisable by the Government of India under any treaty or agreement.
- A few provisions in the constitution confer on the president some express executive powers such as:
- Power to make important appointments like Prime Minister and other Central Ministers, Governor, Judges of the Supreme Court and the High Court, Chairman and members of the Union Public service commission, the Attorney General, the Chief Election Commissioner and other Election commissioners, and the controller and Auditor General of India.
- He also has the power to appoint various commissions like the Finance Commission, National Commission for the Scheduled Caste and the Scheduled Tribes.
- Power to enter into contracts on behalf of the Indian union. Power to issue directions to state in certain circumstances.
- Besides the above, the executive power of the union is also vested in the union in accordance with Article 53. This executive power may be exercised either directly or through officers, subordinate to him in accordance with the Constitution.
- However, a dispute exists with regards to this power due to the absence of a definition of the term 'executive power' in the Constitution
- The executive cannot act against a statute or exceed its statutory powers. If there exists a law on that particular matter the executive is bound to act in accordance with it.

11.8 Judicial Powers of President

- The central executive is empowered to appoint judges of the Supreme court and the High court under Article 124(2) and 217(1) respectively.
- Another important judicial power vested with the President is the power to pardon under Article 72 lays down the cases when the President has the power to suspend remit or commute sentences
- In all cases where the punishment or sentence is by a Court Martial.
- In all cases where the punishment or sentence is for an offense against any law relating to a matter to which the executive power of the Union extends.
- In all cases where the sentence is a sentence of death.
- However, pardon should not be regarded as a matter of right' It is an act of grace. A pardon not only removes the punishment but also places the offender in the same position as if he had never committed the offense. The effect of the pardon is to clear the person from all infamy and from all consequences of the offenses for which it is granted and from all statutory or other disqualifications upon conviction.
- The scope of the power of the President under Article 72 to commute a death sentence into a lesser sentence has been left open by the Court after observing that whether a case is appropriate to be sent for the consideration of Presidential Pardon depends on the facts and the circumstance of each particular case.
- Therefore, this power of the president can be subjected to judicial review if the Court discovers mala fide intention or political vengeance.

11.9 Legislative Powers of President

- The legislative power of the central executive can be divided into the following heads: Participation of the executive in the legislative process
- The President along with the council of ministers is both members of the parliament and participates intimately in the legislative making process. The President has the power to convene and prorogue to dissolve Lok Sabha. The President has the power to pass a bill and his assent is required for the transforming a bill passed by the two houses into an act
- The central executive's consent is also required in the passing certain types of State legislation which fall under the ambit of Article 288(2).
- Moreover, in certain aspects, the President's recommendation is required before the Bill is introduced before the two houses of Parliament.
- Bill relating to the alteration or states of formation of new states. (Article 3)
- A Money Bill cannot be introduced without the recommendation of the President (Article 117(1)).
- Bill involving expenditure from the Consolidated Fund of India. Any bill affecting any tax in which the states are interested.
- Ordinance making power
- The more controversial and debatable legislative power of the President has always been the Ordinance Making Power.
- Usually, the power to make the laws rests with the Parliament.

- However, Article 123 confers special power on the President empowering him to promulgate ordinances when the Parliament is not in session and the circumstances are such which require immediate action.
- An ordinance cannot be promulgated when both the houses of parliament are in session. However, it may be passed when only one House is in session the reason being that a law cannot be passed by only one House and thus it cannot meet a situation calling for immediate legislation. This power granted to the President in the Indian Constitution is unique and no such power has been conferred upon the executive in Britain or the USA.
- In justification of the inception of the Ordinance Making power in the Constitution, Dr. Ambedkar said that there might be a situation of emergency when the Houses of the Parliament is not in session. It is important that this situation should be dealt with and it seems to me that the only solution is to confer upon the President the power to promulgate the law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because the legislature is not in session.
- Article 123 empowers the President to promulgate ordinance as the circumstances which appear to require when: Both Houses of the Parliament are not in session.
- To evolve and change with all changes in society and the environment is a necessity for every constitution.
- The makers of the Constitution of India were fully aware of this need. As such, while writing the constitution, they also provided for a method of its amendment.
- Further, they decided, to make the constitution both rigid as well as flexible.
- They laid down a flexible amendment method in respect of its some parts and for several others, they provided for a rigid method.