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Civil Services Examinations

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General Studies

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Social Justice and Governance



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INTRODUCTION

The executive is growing in importance as it provides leadership to the government. With the ever widening sphere of its activities, the executive has naturally become the most important branch of government formally, supremacy may rest with the legislature but in practice, it is the executive which is all important. The Ministries and the department helps running the government successfully along with the bureaucracy and the legislature. Indian judiciary is a single integrated system of courts for the union as well as the states which administers both the union and state laws, and at the head of the entire system stands the Supreme Court of India. The development of the judicial system can be traced to the growth of modern-nation states and constitutionalism. On the other hand informal associations like Civil society itself has emerged as a social movement in recent years, while it has always been part of larger social movements in society. The interface between the civil society and non-governmental organizations has been a subject matter of curiosity to sociologists. We shall discuss this facet of informal groups like Self-help groups, user groups and people's organizations, Urban Neighbourhood Associations in this unit. Along with the state and the people, civil society has emerged as a partner of development in the process of decision making.

PRESIDENTIAL AND PARLIAMENTARY FORM OF GOVERNMENT

Our Constitution creates an office of the President but the form of Government is not Presidential.

It would be better to understand and distinguish between the Presidential and Parliamentary forms of Government. The main characteristics of the Presidential type of Government are:

1. The President is the head of the State and also the head of the Government. He is not only the head of the political system but also of the national life. He is the real executive and not merely notional executive. The powers vested in him are in practice actually exercised by him.
2. All executive powers are vested in the President. The cabinet appointed by President is merely to advise him. He is not bound by their advice. He may

obtain their advice and yet may choose to act on his own judgement.

3. The President is elected directly by the people who constitute the electorate. The term of the office of the President is not dependent on the will of the legislature. The legislature does not elect the President and the legislature cannot seek to oust him from office.
4. The President and the members of the cabinet are not members of legislature. The President has no power to dissolve the legislature before the expiry of its term. The legislature cannot terminate the term of the President except by way of impeachment. In this way the President and the legislature are elected for fixed terms and are independent of each other.

Advantages of Presidential Form

The advantage of Presidential systems are—

- a. Because the President remains in office for a fixed term and is not dependent on the legislature for continuing in office.
- b. All executive powers are vested in one individual who is the President. In times of war or emergency or any other national crisis he can arrive at a decision quickly. He does not have to apply his energy in obtaining consent of his cabinet.
- c. The President is free to select such persons as he may deem proper to his advisors. He may select experts to head several departments. These heads would constitute his cabinet.
- d. . After assuming office the President is accepted as a leader of the nation and not merely of a party. He views each problem as national problem and not from a party angle. This provides greater unity and cohesion to the nation.
- e. Presidential form of Government is based on the doctrine of separation of powers and provides for checks and balances to keep the different organs within their allotted areas. This provides better protection to liberty.

Drawbacks of the Presidential Form

1. The only person who is responsible for thinking and planning for the whole

nation is the President. This concentration of power sometimes paves the way for dictatorship. Collective leadership has built-in capability of correcting itself. This is lacking in the Presidential form.

2. The President may have to deal with a legislature which may not be very friendly and accommodating. In the Parliamentary form the policies laid down by the Prime Minister are to be followed by the legislature. If the Parliament rejects the policy the result would be either a new Prime Minister or a new Parliament.
3. In the Presidential form the legislature is not the rubber stamp of the Presidential policies. The President has to make effort to persuade the legislature to follow his line. The tension and differences between the President and legislature are part of everyday politics. The absence of co-operation between the legislature and the President is a source of weakness.
4. In the Presidential system the assessment of responsibility is periodic. The people may review it only when the election of a new President is due. In the Parliamentary form the assessment is on a daily basis because the Government is to justify its action before the legislature in every session.

PRESIDENT

In the parliament set up of Government the executive is responsible for legislation. The British model of parliamentary form was found to be most viable for our Indian set up when our constitutional framers resorted to it. In this system of parliamentary democracy, President, who is indirectly elected, is also the Head of the State. The executive powers of the Union Government is vested in the President. The President is also the Supreme Commander of the Armed Forces. There is no constitutional bar on the number of time a person can be elected as President. The convention of two-terms, which was started in Nehruvian period, did not last too long and from the last few Presidents we have resorted to one-term convention.

The President is not a member of either House of Parliament or for that matter a State Legislature. The term of the office is five years though there are provisions that it can be terminated in between. It can be terminated on four infra mentioned grounds : (1) by resignation in writing to the Vice President of India, (II) by impeachment for violation of the Constitution; (iii) by death, and (iv) invalidation of President's election by the Supreme Court of India.

The qualification laid down for the office of the President include that he is a citizen of India not below 35 years of age and has all the requisite qualification of a member of Lok Sabha. He must also not be holding any office of profit.

ELECTION OF THE PRESIDENT

The President is elected by an electoral college consisting of elected members of both Houses of Parliament and the State Legislative Assemblies. Indirect election is resorted to because President is supposed to be a nominal titular Head of the State acting on the advice of Council of Ministers headed by the Prime Minister. The elected assemblies of the Union Territories are not part of the electoral college. Members of the Legislative councils, on the other hand, are also excluded from participating in President's election. Of the electoral college each member has one vote though the value of each vote is different from one State to the other. Likewise the value of vote of the Member of Parliament also differs from the value of vote of the members of a Legislative Assembly. The election does take account of the fact that States have their uniform representation and a parity is maintained between the Union and the States. This is also culminated into the fact that federal ethos is further strengthened.

It also gives recognition to the status of the States in the federal system. The system of indirect election was criticised by some as falling short of the democratic ideal underlying universal franchise, but indirect election was supported by the framers of the Constitution the following grounds:

(i) Direct election by an electorate of some one billion of people would mean a tremendous loss of time, energy and money (ii) Under the system of responsible Government introduced by the Constitution, real power would vest in the ministry; so, it would be anamalous to elect the President directly by the people without giving him real powers.

In order to be qualified for election as President, a person must —

1. be a citizen of India;
2. have completed the age of thirty-five years;
3. be qualified for election as a member of the House of the People; and
4. must not hold an office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments [Art. 58]

But a sitting President or Vice-President of the Union or the Governor of any State or a Minister either for the Union or for any State is not disqualified for election as President [Art. 58]

Term of Office of President: The President's term of office is five years from the date on which he enters upon his office; but he is eligible for re-election [Arts 56-57].

The President's office may terminate within the term of five years in either of two ways-

- (i) By resignation in writing under his hand addressed to the Vice President of India,
- (ii) By removal for violation of the Constitution, by the process of impeachment [Art. 56].

The only ground for impeachment specified in Art. 61 (1) is 'violation of the Constitution'.

VACANCY IN THE OFFICE OF PRESIDENT

A vacancy in the office of the President may be caused in any of the following ways —

- (i) On the expiry of his term of five years
 - (ii) By his death
 - (iii) By his resignation.
 - (iv) On his removal by impeachment.
 - (v) Otherwise, e.g. on the setting aside of his election as President [Art. 65(1)].
 - When the vacancy is going to be caused by the expiration of the term of the sitting President, an election to fill the vacancy must be completed before the expiration of the term [Art. 62(1)]. But in order to prevent an 'interregnum', owing to any possible delay in such completion, it is provided that the outgoing President must continue to
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hold office, notwithstanding that his term has expired, until his successor enters upon his office [Art. 56(1)(c)]. (There is no scope for the Vice-President getting a chance to act as President in this case.)

- In case of a vacancy arising by reason of any cause other than the expiry of the term of the incumbent in office, an election to fill the vacancy must be held as soon as possible after, and in no case later than, six months from the date of occurrence of the vacancy.
- Immediately after such vacancy arises, say, by the death of the President, and until a new President is elected, as above, it is the Vice-President who shall act as President [Art. 65(1)]. It is needless to point out that the new President who is elected shall be entitled to the full term of five years from the date he enters upon his office.
- Apart from a permanent vacancy, the President may be temporarily unable to discharge his functions, owing to his absence from India, illness or any other cause, in which case the Vice-President shall discharge his functions until the date on which the President resumes his duties. [Art. 65(2)].

PROCEDURE FOR IMPEACHMENT OF THE PRESIDENT

An impeachment is a quasi-judicial procedure in Parliament. *Either House* may prefer the charge of violation of the Constitution before the other House which shall then either investigate the charge itself or cause the charge to be investigated. But the charge cannot be preferred by a House unless-

- a resolution containing the proposal is moved after a 14 days' notice in writing signed by not less than $\frac{1}{4}$ of the total number of members of that House; and
- the resolution is then passed by majority of not less than $\frac{2}{3}$ of the total membership of the House.

The President shall have a right to appear and to be represented at such investigation. If, as a result of the investigation, a resolution is passed by not less than $\frac{2}{3}$ of the total membership of the House before which the charge has been preferred declaring that the charge has been sustained, such resolution shall have the effect of removing the President from his office with effect from the date on which such resolution is passed [Art. 61].

Since the Constitution provides the mode and ground for removing the President he cannot be removed otherwise than by impeachment, in accordance with the terms of Arts. 56 and 61.

Conditions of President's Office: The President shall not be a member of either House of Parliament or of a House of the legislature of any State, and if a member of either House of Parliament or a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President shall not hold any other office of profit [Art 59 (1)].

President must act on the aid and advice of the Council of the Ministers

In order to obtain the correct overall view of the position of the President particular reference has to be made to Arts. 53, 74 and 75. Article 53 vests the executive power of the Union in the President. Article 74 mandates that there shall be a Council of Ministers to aid and advise the President in the exercise of his functions. It is further prescribed that the President shall act in accordance with such advice. Article 75(3) lays down that the Council of Ministers shall be collectively responsible to the Lok Sabha. The Constitution has no article stating that the President is answerable or responsible to the Lok Sabha. The express provision contained in Art. 75(3) is the foundation of the Parliamentary form of Government. The Council of Ministers is the final authority to take decisions in regard to the affairs of the Union, because they have been vested with the authority and have been made answerable to the Lok Sabha. The President being the titular or formal head exercises all powers and functions conferred on him on the aid and advice of the Council of the Ministers. In *U.N. Rao v. Indira Gandhi* the Supreme Court has clearly laid down that the Council of Ministers is in actual control of both executive and legislative functions. By reading together Art. 74(1) with Arts. 75(2) and 75(3) it becomes evident that the President cannot exercise executive powers without the aid and advice of the Council of Ministers. This proposition has been clarified in *Samsher Singh*. In that case the Supreme Court has stated that the President as well as the Governors are formal heads. Whenever, the Constitution requires the satisfaction of the President or the Governor it indicates the satisfaction of the Council of Ministers on whose aid and advice the President or the Governor exercises his powers and functions.

Exceptions

It appears that there are some exceptions to the rule that the President shall always act on the advice of the Council of Ministers. The exceptions are—

- (a) The appointment of the Prime Minister. In the nature of things for selecting the Prime Minister the President is to find which party commands majority in the Lok Sabha. When there is a clear majority the President has no choice. But when there is no clear majority and various small parties are combining to form a coalition the President has to apply his mind and act in a judicious, fair and impartial manner.
- (b) When the Prime Minister who has lost the confidence of the Lok Sabha advises the President to dissolve the House the President has to judge independently whether such a course of action would be in the national interest. The President should not blindly follow the advice tendered by the Council of Ministers which does not enjoy the confidence of the Lok Sabha. If it is possible to form an alternative Government, the President should avoid dissolution, but the President may dissolve the House if the term of the House is to expire within six months.
- (c) The Proviso Art. 74(1) gives the President the power to require the Council of Ministers to reconsider its advice. This referring back to the Council of Ministers would be a decision to be exercised independently by the President.
- (d) The President can under Art. 78(b) call for information relating to administration and legislation. Naturally, this power has to be exercised without the aid and advice of the Council of Ministers. Similarly the President may on his own submit for the consideration of the Council of Ministers any matter on which a decision has been taken by one Minister and which has not been considered by Council [Art. 78(c)].
- (e) Article 352(3) casts a duty on the President to ensure that the decision to issue a Proclamation of Emergency is communicated to him in writing and that the decision is of the Union Cabinet. The President under this article has a duty to ensure that these two conditions are fulfilled. This again must be personal duty of the President.

(f) The death of a Prime Minister operates to dissolve the Council of Ministers. There is no Council of Ministers left to aid and advise the President. The President must select a new Prime Minister who in his judgment would be able to command majority in the Lok Sabha.

PRESIDENT AND COUNCIL OF MINISTERS

The President is elected for a term of 5 years and his office is vacated only by resignation, death or impeachment. The real executive in India is the Council of Ministers who have no definite tenure. They last only so long as they are able to muster in their favour a majority in the Lok Sabha. The Council of Ministers has no security of tenure. They are daily answerable to the Lok Sabha. Responsibility in governance is preferable to a fixed tenure or stability.

POWER & FUNCTIONS OF THE PRESIDENT

The Constitution says that the "executive power of the Union shall be vested in the President" [Art. 53]. The President of India shall thus be the head of the 'executive power¹ of the Union.

Before we take up an analysis of the different powers of the Indian President, we should note the *constitutional Limitations* under which he is to exercise his executive powers.

After 44th Amendment, except in certain marginal cases referred to by the Supreme Court the President shall have no power to act in his discretion any case. He must act according to the advice given to him by the Council of Ministers, headed by the Prime Ministers, so that refusal to act according to such advice will render him liable to impeachment for violation of the Constitution. This is subject to the President's new power to send the advice received from the Council of Ministers, in a particular case, back to them for their reconsiderations; and if the Council of Ministers adhere to their previous advice, The President shall have no option but to act in accordance with such advice. The power to return for reconsideration can be exercised only once, on the same matter.

It may be said, accordingly, that the powers of the President will be the powers of his Ministers, in the same manner as the prerogatives of the English Crown have become the 'privileges of the people' (Dicey)¹¹ An inquiry into the powers of the Union Government,

therefore, presupposes an inquiry into the provision of the Constitution which vest powers and functions in the President.

The various powers that are included within the comprehensive expression 'executive power' in a modern State have been classified by political scientists under the following heads :

(a) **Administrative power**, i.e., the execution of the laws and the administration of the departments of government.

- *Military power*, i.e. the command of the armed forces and the conduct of war.
- *Legislative power*, i.e. the summoning, prorogation, etc. of the Legislature, initiation of and assent to legislation
- *Judicial power*, i.e., granting of pardons, reprieves, etc. to persons convicted of crime.

The Indian Constitution, by its various provisions, vests power in the hands of the President under each of these heads, subject to the limitations just mentioned.

EXECUTIVE POWERS

The executive power of the Union is vested in the President. The executive power does not only mean the execution of laws passed by the legislative but also the powers to carry on the business of the Government, However, it is evident that President is not free to use his powers, rather he acts (binding) on the advises of the Council of Ministers. In this regard the 42nd Amendment is a mile-stone. The 44th Amendment, however, did loosen the grip to some extent as it gave the

The administrative power of President also includes the power to appoint and remove the high dignitaries of the State. Under our Constitution, the President shall have the power to appoint - (i) The Prime Minister of India, (ii) Other Ministers of the Union, (iii) The Attorney - General for India, (iv) The Comptroller and Auditor General of India, (v) The judges of the Supreme Court, (vi) The judges of the High Courts of the States, (vii) The Governor of a State (viii) A commission to investigate interference with water-supplies . (ix) The Finance Commission, (x) The Union Public Service Commission and joint Commissions for a group of States, (xi) the Chief Election Commissioner and other members of the Election Commission (xii) A Special Officer for the Schedule Castes and Tribes, (xiii) A Commission to report on the administration of Scheduled Areas, (xiv) A Commission to investigate into the condition of backward classes (xv) A Commission on Official Language (xvi) Special Officer for linguistic minorities.

President of India the right to return a bill for reconsideration of the Cabinet and is bound to give his consent when returned. In broad perspective, one can say that administrative powers of the President include administrative powers and military powers. Administratively, the President may not discharge any function as there are ministries responsible for such an act. This way President becomes a formal head and action is taken in his name.

In the matter of administration, not being a real head of the Executive like the American President, the Indian President shall not have any administrative function to discharge nor shall he have that power of control and supervision over the Departments of the Government as the American President possesses. But though the various departments of Government of the Union will be carried on under the control and responsibility of the respective Ministers in charge, the President will remain the formal head of administration, and as such, all executive action of the Union must be expressed to be taken in the name of the President. The only mode of ascertaining whether an order or instrument is made by the Government of India will be to see whether it is expressed in the name of the President and authenticated in such manner as may be prescribed by rules to be made by the President [Art. 77]. For the same reason, all contacts and assurance of proper made on behalf of the Government of India must be expressed to be made by the President and executed in such manner as the President may direct or authorise [Art. 299].

Again, though he may not be the 'real' head of the administration, all officers of the Union shall be his 'subordinate' [Art. 53(1)] and he shall have a right to be informed of the affairs of the Union. [Art. 78(b)].

In making some of the appointments, the President is required by the Constitution to consult persons other than his ministers as well. Thus, in appointing the Judges of the Supreme Court the president shall consult the Chief Justice as he may deem necessary [Art. 124(2)]. These conditions will be referred to in the proper places, in connection with the different offices.

The President shall also have the power to remove (i) his Ministers, individually; (ii) the Attorney-General for India; (iii) the Governor of a State; (iv) the Chairman or a member of the Public Service Commission of the Union or of a State, on the report of the Supreme Court;

(v) a judge of the Supreme Court or of a High Court or the Election Commissioner, on an address of Parliament.

LEGISLATIVE POWERS

With regard to the legislative powers of the President, the Constitution of India is largely different from the American Constitution. The separating line of executive and legislation is not as strong as in case of the U.S.A. In India, President is both Executive Head and also the part of legislature. The President has power to summon and prorogue Parliament. He can also dissolve the Lok Sabha (refer 1991) before the expiry of five year term. The President also enjoys the power to summon a joint sitting of both House of Parliament in case of difference between the two. The President also addresses the opening session of a newly elected Parliament. He can also address it jointly in between. The President also enjoys the power to nominate certain member of the Parliament. In Rajya Sabha 12 members are nominated and 2 members from Anglo-Indian communities are nominated to the Lok Sabha if the community has not been adequately represented in his opinion in the House. Certain Bills do require a previous sanction of the President like money bill, the bill involving expenditure from C.F.I., bill for the formation of a new state, bill relating to language, and the bill affecting the taxation of state. The bill passed by the parliament cannot become an Act before it has president's assent. He can, after his comments, return the bill limited in case of money bill. Thus we may summarise it as follows:

(a) Summoning, Prorogation, Dissolution

Like the English Crown our President shall have the power to summon or prorogue the Houses of Parliament and to dissolve the lower House.¹² He shall also have the power to summon a joint sitting of both Houses of Parliament in case of a deadlock between them. [Arts. 85, 108].

(b) The Opening Address

The President shall address both Houses of Parliament assembled together, at the first session after each general election to the House of the People and at the commencement of the first session of each year, and "inform Parliament of the causes of its summons" [Art. 87].

The practice during the last four decades shows that the President's Opening Address is being used for purposes similar to those for which the 'Speech from the Throne' is used in England viz. To announce the programme of the Cabinet for the session and to raise debate as to the political outlook and matters of general policy or administration. Each House is empowered by the Constitution to make rules for allotting time "for discussion of the matters referred to in such address and for the precedence of such discussion over other business of the House."

(c) The Right to Address and to send Messages

Besides the right to address a joint sitting of both Houses at the commencement of the first session, the President shall also have the right to address either House or their joint sitting, at any time, and to require the attendance of members for this purpose [Art. 86(1)]. This right is no doubt borrowed from the English Constitution, but there it is not exercised by the Crown except on ceremonial occasions.

Apart from the right to address, the Indian President shall have the right to send messages to either House of Parliament either in regard to any pending Bill or to any other matter, and the House must then consider the message "with all convenient despatch" [Art. 86(2)]. Since the time of George III, the English Crown has ceased to take any part in legislation or to influence it and messages are now sent only on formal matters. The American President, on the other hand, possesses the right to recommend legislative measures to Congress by messages though Congress is not bound to accept them.

The Indian President shall have the power to send messages not only on legislative matters but also 'otherwise'. Since the head of the Indian Executive is represented in Parliament by his Ministers, the power given to the President to send message regarding legislation may appear to be superfluous, unless the President has the freedom to send message differing from the Ministerial policy, in which case again it will open a door for friction between the President and the Cabinet.

It is to be noted that during the first forty-six years of the working of our Constitution, the President has not sent any message to Parliament nor addressed it on any occasion other than after each general election and at the opening of the first session each year.
