

Module Detail	
Subject Name	Political Science
Paper Name	Indian Politics: I
Module Name/Title	The Executive In India
Module Id	
Pre-requisites	
Objectives	<ul style="list-style-type: none"> • To understand the power and positions of chief executive head and real head in India • To make an assessment on Cabinet system transforming into Prime Minister System. • To examine the relationship between the President and the Prime Minister in India and its impact on the democratic functioning of the Institutions.
Keywords	President, Cabinet, Prime Minister, Coalition Politics, Constitution.

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THE EXECUTIVE IN INDIA

Narender Kumar

Introduction

The Constituent assembly debates hold significance in the making of republican India. The discussion on the kind of Executive republican India should have, was also debated in detail. While the Constituent Assembly discussed the type of Executive India should have, the Euro-American constitutional traditions had three major kinds of Executive- the Presidential system of America, the elected one in Switzerland and the Cabinet government in Britain. The founding fathers looked back into the functioning of the British executive in India and then quite intelligently differed from the British executive as well as American Executive and adopted a combination of American and British systems, though tilted towards British Cabinet system. Though, they adopted

parliamentary democracy with ministerial responsibility to the peoples representatives in the lower house i.e. Lok Sabha, but did not absolutely resemble it with that of the British executive. Thus the assembly chose a modified form of British Cabinet system with the Head of the State i.e. President of India being indirectly elected for five years that could be removed by impeachment and not be a permanent Monarch like the British Head of State. The modified version was for the needs of strength and quick effectiveness, for huge strides in industrial, agricultural, and social development that were to be made and to govern the enormous population.ⁱ The Constituent Assembly also tried to maintain separation of powers between branches of government. It feared that the executive branch as a whole might become too strong, ignoring its responsibility to the Legislature and President may also become despot in the absence of balance of power. One of the authority of his times on the Indian Constitution observedⁱⁱ:

Indeed, it was in part due to the feared misuse of Executive power that the Assembly adopted cabinet government instead of the fixed Executive: members believed that with the separation of powers of the Swiss and American systems, the Executive would not be subject to legislative control.

The overall impression of the Constituent Assembly that comes out with the adoption of the Executive system for India makes it clear that the Members wanted that the Executive should not become too powerful that it ignores accountability towards the Parliament taking capricious and illogical decisions. And also the President uses constitutional powers in a manner that s/he personally assumes governance instead of heeding to the advice and desires of the council of ministers.

The Indian Executive system is known as Cabinet system of government as it is the Cabinet headed by the Prime Minister which takes the major policy and administrative decisions. However, these decisions are taken in the name of the President. In this write up we shall look into the basic features of the Executive system, the powers and position of its constituents and the relationship among the constituents.

The Indian Executive system has the following features:

President as Nominal Head

One of the major characteristics of the Indian executive system is that it is headed by the President who acts as a nominal head as all the powers though vested in him and used in his name but are pragmatically used by the Council of Ministers. In this light, s/he is also

termed as a mere “Rubber Stamp” consenting to all the decisions of the Council of Ministers without looking into the consequences. Nevertheless, in the subsequent discussion, we shall find that the position of President constitutionally may be that of Nominal Head but in the emerging scenario of recent decades, this position has become crucial taking him/her beyond the Nominal Head and becoming significant in particular political situations.

Prime Minister as Actual Head

President is the head of the State but it is the Prime Minister who is the actual head and his position remains significant in the Indian executive system. It is the Prime Minister with council of ministers who makes policy and administrative decisions in the name of the President. The position of the PM becomes very crucial in the parliamentary system as it is s/he who heads the council of Ministers, enjoys the confidence of parliament and the party that makes him/her more powerful. It is through him/her that the President gets the information of function of the government.

Political Homogeneity and its Changing Nature

Soon after the declaration of republic, the Indian political system was dominated by the Congress and so the Executive had political Homogeneity the President, Prime Minister ministers and most of the ministers belonged to the same party. However, in recent years that has transformed and now the Executive has ministers belonging to various parties so there is a lack of political homogeneity in appearance but the ministers as Executive members have to agree for the decisions taken together.

Collective Responsibility

The Executive is collectively responsible to the Parliament for all its decisions. It means that in fact all the Members of the council of Minister may not belong to the same party but they maintain collective responsibility for all the decisions. There might emerge situations, when a particular minister or ministers may not agree with the collective decisions then they have to either accept such decisions or resign from the ministerial position.

The President

Under article 52, the Constitution mentions about the post of the President. S/he holds highest honor, dignity and prestige as head of the State. All the powers of the executive are exercised by or through him/her.

Election of the President

The President is elected indirectly by an Electoral College comprising of Members of Parliament and Members of State Legislatures. The election of the President is done with a comprehensive method known as a system of proportional representation by means of single transferable vote, wherein all the members of the Electorate do not have equal value for their votes.

Powers and Functions of President

The President of India has been conferred many powers as the Executive Head of the State which may be used by him directly or through subordinate officers as per the Constitutional provisions. These powers are divided into the following:

1. Executive Powers

Article 53 provides that the Executive powers of the Union shall be vested in the President but we need to read it with article dealing with the Prime Minister and his/her council of ministers which exist to aid and advice the President in the exercise of such powers and related functions. However, while using this power, the President is bound to consult his council of ministers and as per the 44th amendment, s/he may ask it to reconsider any given advice, nonetheless, if such advice is sent back to the President after reconsideration then s/he is bound to act accordingly. Among the executive powers of the president, the power to appoint and remove high level state functionaries is major. These functionaries include, the Prime Minister and his council of Ministers, the Attorney General, Comptroller and Auditor General, Judges of the Supreme Court and High Courts, Governors of the States, Finance Commission, Chief Election Commissioner and his/her member-Colleagues.

Legislative Powers

The Legislative powers of the President include-1) Summoning the Houses of Parliament in normal circumstances; 2) Dissolving the Lower House and summoning a joint session of both the Houses in case of deadlock between the two on a particular bill; 3)

Addressing first session of the both Houses of Parliament after each General Election to the Lok Sabha; 4) Nominating 12 Members to the Upper House and 2 Members to the Lower House, if the Anglo-Indian section has not got representation in the Lok Sabha; 5) Giving assent to the bills passed by both Houses of Parliament to make in an Act; 6) Promulgating Ordinances in the absence of meeting of the Houses sitting during the intervals of two sessions, etc.

Emergency Powers

The founding fathers of the Constitution of India could visualize that there will emerge some abnormal or extra-ordinary situations in the country, wherein the Union government will have to play very crucial and decisive roles. However, they were also aware that such circumstances should not make the Executive despotic so they made provision to handle the both. There are three emergency powers of the President:

1. National Emergency (article 352)

The President can impose National Emergency under Article 352 that is caused by- a) war, and b) external aggression or internal revolt. This has been proclaimed only twice once in 1962 and secondly in 1971. It is interesting to note that while the National emergency was continuing under external aggression in 1971, another proclamation was made in 1975 in continuation as there were internal disturbances. When questions were raised for such a continuation then the Indira Gandhi regime made 38th Constitutional amendment by giving sweeping powers to the President and making it unjustifiable in the court of law that got reverted by the Janta Party regime through 44th Constitutional Amendment.

Impact

- Federal Character becomes Unitary due to- 1) the Union Executive gets power to give directions to the States, 2) Parliament gets the right to make law on a subject even though in the State List, and 3) President may change distribution of revenues between the Union and the States.
- The Tenure of the Lok Sabha may be extended for one year at one go.
- The Fundamental rights especially given under Article 19 of the citizens may be suspended during the period of emergency but not the rights under Article 20 and 21.

The National emergency imposed in 1962 continued up to 1968 and within next 3 years in 1971 it was again imposed that lasted till 1977. However, the emergency of 1975 due to internal disturbances was widely criticized not only by civil rights activists but also the academics. A French Scholarⁱⁱⁱ writes that the imposition of emergency like the one in 1975 due to internal emergency may bring in a system of governance that might make structural changes in the political system creating its own rules and invoking its own logic.

2. State Emergency due to Failure of Constitutional Machinery (Article 356)

No other provision of the Constitution might have been in bigger controversy than the imposition of President's rule under Article 356 on a State of the Indian Union on the alleged failures of the constitutional machinery and difficulty to carry on the business of the state in accordance with the Constitution. This power has been used more than 100 times. There was a time when the Congress started losing its power in the States and in that context on the pretext of the failure of constitutional emergency, this power began to be misused that continued when the opposition parties got chance to destabilize the state governments of Congress rule.

Impact

- The President assumes the executive authority of the State and exercises powers through the Governor or any other authority in the State
- The Legislative Assembly may be suspended, may be restrained to do business or may be dissolved
- Legislative powers of the State transferred to the Parliament
- Though High Courts are specified with respect to States but they carry on their business as usual
- The Parliament sanctions the expenditure from the Consolidated Fund of the State while not in session but President needs to get its approval

A proclamation needs to be laid before the Parliament and it ceases to be in operation after two months unless gets approved by a special resolution of both houses i.e. Lok Sabha and Rajya Sabha. The operative period in normal circumstances is six months and may be extended for three years. However, in case of Punjab in 1980's it was extended for more than three years as per 44th Constitutional Amendment Act, 1978 if the Election Commission certifies that holding Elections to the Legislative Assembly are difficult and

also when the emergency is in force in whole of India or part of it, while such a resolution is being passed.

3. Financial Emergency (Article 360)

Under this provision, the President of India has to be satisfied that there is a threat to financial stability or credit of India. The interesting part in this is that it has no time limitation once Parliament gives its consent. Though the emergency under the previous mentioned provisions have been in operation but under this Article, there has been no need to impose emergency.

Impact

- The state governments may be directed to observe measures of financial propriety as may be specified in the direction by the central government
- The salaries of various officials may be reduced including that of High Court and Supreme Court Judges.
- All money bills may require President's consideration and may be reserved for him/her

Critiquing the Emergency Powers of the President

While discussing the emergency powers of the President, some of the founding fathers of the Constitution were apprehensive of such powers as reflected in the observation of H.V. Kamath who said, “..by this single chapter we are seeking to lay the foundation of totalitarian state, a police state..a state where if there be peace, it will be the peace of grave and the void of the desert.” However, as there are extra-ordinary times in the lives of people so are in the lives of the nations, therefore to tackle the political situations of emergency and maintain the constitutional supremacy these provisions were accepted by the Constituent assembly. In spite of the rationale and legitimacy given to them, the criticism remains which include the following:

1. **Contravening the Democratic ethos:** The emergency provisions are considered against the democratic ethos as these make the union government to be totalitarian at times. The elected governments of the states may be axed by using Article 356 and the Union government may become all powerful in case of emergency imposed by internal disturbances as happened in 1975-1977, when emergency was imposed.
2. **Fundamental rights Become Insignificant:** Under these provisions, the Fundamental rights become meaningless making the citizens mute spectators of

the events or putting them in jails etc. This makes the citizenship of insignificance.

3. Federal Structure becomes Unitary: Constitutionally, India is having a federal nature of state, where the Union and states have their own division of powers and need not venture into each others' spheres. However, the emergency powers of all three kinds turn the Federal Structure into Unitary as all the powers are used by the Union Executive or the Parliament. Thus, it brings in erosion in the autonomy of the States.

As stated, the President is the nominal head so he himself/herself does not take major decisions rather it is the Council of Ministers headed by the Prime Minister which helps the President in taking the decisions and executing them. The issue was resolved during the first presidency of Dr. Rajendra Prasad, who sometimes questioned the position of the President vis-à-vis Nehru's cabinet decisions sent for the consent of the President when he had to give his consent while having different opinion personally but as President of the Republic, he abided by the constitutional mandate^{iv}.

Coalition Politics and the President's Discretions:

With the emergence of coalition politics in India, the President is getting opportunities where s/he can use discretion. As no party is in a position to get majority in the general elections so who should be the PM becomes a discretionary choice for the President. Though first of all s/he tries to invite the single largest party to form the government but if he feels that the single largest party may not prove majority on the floor of the House then it become a kind of discretion for him/her. In case of Chandra Shekhar, President Venkatraman allowed him to form the government though he had support of only around sixty MPs of Lok Sabha who defected from the Janta Dal. Secondly, dissolution of the Lok Sabha may be advised by a Council of Ministers but it is up to the President to accept such a move, especially in circumstances where the existing council of Ministers might have lost the confidence of Parliament and thus s/he may like to explore the possibilities of government formation by any other political group. Thirdly, asking the Council of Ministers to resign or get confidence of the Parliament if they seem to have lost the confidence of the lower House.

The Cabinet

Parliamentary system of government is usually termed as the Cabinet system of government as it is the Cabinet (not even the Council of Ministers as mentioned in the

Constitution) which largely carries out the functions of the Executive in general. Looking into the importance of the Cabinet, we need to mention the powers and functions of the Cabinet, which include approving the legislative proposals of the government for enactment; recommending major appointments; coordinating among the ministries; resolving interdepartmental disputes; and, supervising the execution of policies of the government. The Cabinet also forms various committees for smooth functioning. Analyzing the major role played by Political Affairs Committee of the Cabinet, Kochanek^v observes that this committee became responsible for coordinating major domestic and international cabinet concerns and acquired most important status of decision making body.

Although, there is collective responsibility principle for the Cabinet but the individual members also are responsible to manage their departments effectively and they hold the office till the pleasure of the Executive Head. If the PM feels that a particular minister is not able to handle affairs of his/her ministry then, the individual responsibility is fixed in a smooth manner and the concerned minister/ministers are asked to resign by the PM and the colleague abides by the decision of the PM avoiding any embarrassment for whole of Cabinet and particularly for the PM. In May 2013, the Law Minister Ashwani Kumar and Railway Minister Pawan Kumar Bansal of United Progressive Alliance regime resigned from their positions in the same manner that has been practice in the past as well.

The Prime Minister

The Prime Minister is selected in principle by the President but in practice earlier it was the leader of the majority party in Lok Sabha who was selected. In recent years, it may not be leader of the majority party who is selected but someone about whom the President thinks that s/he enjoys support of the majority in the Parliament and as per constitutional obligation who may prove majority on the floor of the House. Under circumstances, when a party does not get majority in the Loksabha elections then the President's discretion becomes important. The President may or may not request the single largest party to form the government and thus his/her discretion becomes significant.

As mentioned above, the Prime Minister is the real Head and thus his status, powers and functioning have a bearing on the working of the government. In recent times, his/her selection has become somewhat complicated as compared to the times of Congress

system, when the Congress Party enjoyed majority in the Lok Sabha. The selection of the Prime Minister is theoretically done by the President but in fact it is the majority party whose leader is supposed to be invited by him/her to form the government. The appointment of Prime Ministers in republican India may be divided into two phases, first, before 1989 and after 1989. Before 1989, it was not difficult for the President to make a choice of Prime Minister as a particular party used to obtain a majority in the General elections and its leader was invited to form the government, except in case of Charan Singh in 1979 who got splintered from the Janta Party to form his own government. However, after 1989, in the era of coalitions, it became difficult to invite a particular party as no single party has been able to muster majority in the Lok Sabha elections. And, thus the appointment of PM has also become complicated and sometimes even controversial. It was during this period that an unwritten law got established if a party does not get majority in the general elections then to invite the single largest party to form the government and former President Venkatraman claims this being his contribution in his autobiography^{vi}.

Powers and Functions

The PM is the head of the government as compared to the president being the head of the State. The powers bestowed upon the President are in fact used by the PM. S/he functions as a link between the Cabinet and the President, who does not have direct access to the Cabinet. S/he communicates the decisions of the council of Ministers, furnishes the information required relating to the administration of the affairs of the Union government and any other proposals for legislation, etc. All the major appointments of the government are practically made by the PM like the Council of Ministers, Planning Commission, Governors, etc. If required then it is s/he who asks the Ministers to resign from their positions. S/he only presides over the meetings of the Cabinet and decides the agenda for such meetings. S/he distributes the portfolios of the Ministers. However, the status of the Minister in the party becomes a major qualification for determining the portfolios to each and every minister.

Prime Minister and President

The relationship between the PM and the President have significant bearing on the functioning of the government. PM is the Chief Advisor of the President and all the Administrative and Legislative decisions of the Cabinet are taken by him/her to the

President. Before the 42nd Amendment Act, the President was bound to accept the decisions of the Cabinet. However now in special circumstances s/he may ask the Cabinet to reconsider its decision. President KR Narayanan in 1997 sent back for reconsideration the need to impose President's rule in Bihar against the democratically elected government of Rashtriya Janta Dal and same was done in 1998 in case of Uttar Pradesh, when there as a deadlock after fall of the Mayawati government as the Bhartiya Janta Party withdrew its support. And such situations make uncomfortable relations between the two. It is not the there were no difference of opinion among various PMs and the Presidents at a given point of time but such differences if surfaced were substantially subdued as was the case of Nehru and Prasad in case of Hindu Code Bill, Rajiv Gandhi and Giani Zail Singh on the regular intimation to the Presidency, Bajapayi and Narayanan on the imposition of President's rule in opposition states, on review of the Constitution and even between Bajapeyi and APJ Abul Kalam while seeking consent for the ordinance amending the Representation of Peoples Act in 2002. Interestingly, the PMs and Presidents have shown lot of maturity in handling such crucial situations and did not allow embarrassment for each other or bringing a constitutional deadlock.

Positioning the Executive in India

The Executive system in India comprise of three constituents namely, President, Cabinet and the Prime Minister. As we have adopted parliamentary system of government that has turned out to be Cabinet system of government as per Westminster model. However, there is a changing trend in the Westminster model as well at the role and position of the PM is becoming too crucial for the survival of the government. Traditionally, the PM had been termed as *primus inter pares* i.e. first among equals with reference to the Cabinet system. Once upon a time, it was thought that the parliamentary system of government has transformed into Cabinet system of government due to the predominance of the Cabinet in the decision making process. However, the position of the PM has become so unparalleled that observers^{vii} started calling it Prime Minister Government.

The PM is emerging as the most powerful among the constituents of the Executive in India for the following reasons:

- The General elections are fought with a particular personality or probable personalities projected as PM in the post election scenario. Most of the General elections have been fought with announcing of the PM candidate by various parties be it Congress or BJP. Presently, a major debate is going on in the BJP

who should be projected as PM whether Narendra Modi or any other senior leader of the party. Similarly the Congress may also announce its candidate for the General election to be held in 2014.

- PM functions as the only link between the President and the Council of Ministers that has been constitutionally mandated to advise the President. Thus for all practical purposes the PM communicates with the President. One may usually read in the newspapers that the PM visited the President and apprised him of the National scenario.
- Selection, Termination and change of portfolios of the Ministers is virtually done by the PM. There could be various other reasons also but no minister could remain against the wish of the PM in the Cabinet
- Call/ Summons the meetings of the Cabinet and functions as the Chairperson and usually his opinion is accepted on major issues of governance.
- Government comes into existence with him/her and shines off with his/her resignation/termination.
- Increasing role of Prime Minister's Office (PMO) in coordinating and supervising the decisions and policies of various ministries. The recent controversies of Telecommunications (2G) Scam, Coalgate Scam, etc. show how the PMO's role has been crucial.

If we look into the functioning of the PMs at various junctures, it may be observed that Nehru was in a position to have his say in the government despite colleagues of his own stature. Shastri was a docile personality and used to make consensus for the decision making. Indira Gandhi became autocratic and held remarkably undivided allegiance of his cabinet colleagues. Morarji Desai was with equally important leaders in the Cabinet so could not take unilateral decisions. Rajiv Gandhi is alleged to have been surrounded by sycophants and it was during his time that the word "Kitchen Cabinet" became popular in media and among the people. V.P. Singh, Chandra Shekhar, H.D. Deve Gowda, I.K. Gujral like Maorarji Desai were surrounded by heavy-weight colleagues and could not create their dominance or pre-eminence in the running of the government. They were heading the coalition governments so PMO could not become dominant factor in governance. Atal Bihari Vajpayee, though led a coalition government but had hold on the government, Kargil War and Nuclear Experiments made him a strong PM despite various ups and downs in the running of the government. Now Manmohan Singh is heading the coalition government but the confidence of his party in him and support from the coalitions partners made him an able PM in the initial years but in the last phase of his term, he seems to loosing the control and the impression is fast emerging his inability to

have control on his colleagues and is seen primarily playing on the tune of the Congress high command.

If the influence of the PM has increased in running the government as the real head, then the role of the President, who may be nominal head has also become noticeable in the changed political scenario of coalition politics (although first President Rajendra Prasad himself did not behave as rubber stamp and asserted his position, but recent political circumstances have led to more assertion in the Presidency). Indicating towards this James Manor analyzes the role of various Presidents in the light of coalition politics and he looks at them from the assertion lens and observes that in post 1989 the President R Venkataraman, 'maybe' termed as assertive, Shankar Dayal Sharma non assertive and KR Narayanan definitely an assertive President. Further as he appears to believe that the legitimacy of government in India is in some doubt and that new approaches to development need to be restored and goes on to argue that "in an era of hung parliaments, people in India need to become more tolerant of legitimate presidential interventions- because the changed conditions will inevitably require more of these."^{viii}

Thus the Executive constituents in India despite having constitutional mandate and expected to work within the given frame of powers and functions could acquire significance beyond the constitutional provisions as the political circumstances unveil. However, they may not become absolutist and maneuver the powers of other constituents as there are various checks and balances imposed by Constitution itself. Above all in the last sixty three years the Courts interventions and emergence of larger maturity among the power holders and the civil society in general forces the individual power holders of the Executive to behave in particular mode as per the Constitutional provisions. This basic understanding is taking the Executive to a stage where, even if the Cabinet wants the President to behave in a particular way then the President also asserts and thus the Constitutional morality is restored.

Notes

ⁱ Austin, Granville 2000 *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, New Delhi, p 116

ⁱⁱ Ibid, p 127

ⁱⁱⁱ Zins, Max Jean 1988 *Strains in Indian Democracy*, ABC Publishing House, New Delhi p. 3.

^{iv} For detailed discussion please see Austin's *The Indian Constitution* pp 139-143

^v Stanley Kochanek, *Business and Politics in India* p 57

^{vi} R. Venkatraman in *My Presidential Years*, HarperCollins/ Indus 1994, New Delhi p 324

^{vii} Mackintosh, Crosssman, Hansen, Wiseman etc.

^{viii} Manor, James 2005 *The Presidency*, Oxford University Press, New Delhi (p 124)

