

UPSC
NCERT Summary
Political Debate – 1

PRESIDENTIAL VS PARLIAMENTARY

Generally democracies are either Presidential or Parliamentary in form. In the former the Chief executive is directly elected by the people and is not responsible to legislatures. Removal of a President is normally through an impeachment procedure. The advisers to the President are chosen at random by the President and they are not members of legislature. On the other hand, in a parliamentary democracy the Chief executive and advisers known as Council of Ministers are all chosen from legislature. Both individually and collectively they are accountable to legislature. The members of the Prime Minister's team are trained and tested in parliamentary system of governance and all of them go out if legislature chooses to cut their tenure.

Main features of a Presidential form of Government are:

- 1. No distinction between the Notional and the Real Executive.** The executive powers of the Government are not only vested in the President, they are exercised by him in actual practice also. The President is, thus, both the head of the State and the head of the Government.
- 2. President is elected by the people for a fixed term.** The President is elected, not by the Legislature, but directly by the entire electorate. Thus, both in regard to his election and tenure the President is not dependent on the Legislature.
- 3. The President is the sole Executive.** All executive powers of the Government are vested in the President and are exercised by him. His Cabinet has merely the status of an advisory body. Constitutionally, he is not bound by its advice. He may take the advice or may not take it at all. After getting the opinion of the Cabinet, he may refuse to accept it and may choose to act according to his own judgement.
- 4. Both the President and the Legislature are independent of each other in respect of their terms.** The President and the members of his Cabinet are not members of the Legislature. The Legislature has no power to terminate the tenure of the President before its full constitutional course, other than by impeachment.

Similarly, the President has no power to dissolve the Legislature before the expiry of its term. Thus, the President and the Legislature are elected for fixed terms.

Merits

The following are the merits of the Presidential form of Government:

- 1. Greater Stability:** In the Presidential systems, the head of State has a fixed term. This ensures stability of the system. He is also free from day-today Legislative duties and control, which enable him to devote his entire time to administration.
- 2. Valuable in time of War or National Crisis:** The Presidential executive is a single executive. In taking decisions, the President is not bogged down by endless discussions in his Cabinet. He can take quick decisions and implement them with full energy. Such a government, therefore, is very useful in the times of war or national crisis.
- 3. Experts may be obtained to head the Departments:** The President can select the persons with proper expertise to head various departments of the Government. These heads of departments constitute his Cabinet. The Ministers under the Presidential system, therefore, prove to be better administrators, whereas Ministers in a Parliamentary system are appointed as Ministers not because of administrative acumen, but simply because of their political affiliation.
- 4. Less dominated by the Party Spirit:** Once election to the office of the President is over, the whole nation accepts the new President as the leader of the nation. Political rivalries of the election days are forgotten. Both inside the Legislature and outside it, people look at problems from a national rather than a party angle. This gives the system greater cohesion and unity.
- 5. No concentration of Legislative and Executive powers:** Presidential system is organised on the principle of separation of functions and checks and balances. This provides much better protection to personal liberties than in the Parliamentary system.

Demerits

Presidential system has been criticized on the following grounds:

- 1. Autocratic and Irresponsible:** The Presidential system places immense powers in the hands of the President. It is autocratic because the President is independent of the control of the Legislature. He may govern largely as he pleases. He cannot be

made answerable regularly for the misdeeds of his administration. The Legislature (Congress) in the United States can turn down the appointments and treaties made by the President, but it can in no way remove him from the office, except through the impeachment. A power hungry President may misuse his powers to amass wealth, and to finish off political opponents.

2. Presidential Election is an Union Affair: The President in this system is elected directly. The election to this office generates great heat and tension. The whole national life gets disturbed. In countries where constitutional traditions are not as deep-rooted as in the United States, tensions and instability of the election time can even result in revolutions.

3. Friction and Discord between the President and the Legislature: The separation of the Executive and the Legislature may lead to conflicts and deadlocks between the President and the Legislature. The Legislature may refuse to accept executive policies, or enact the laws suggested by the executive. The President, on the other hand, may show lack of interest in implementing the laws passed against his will. He may even veto the bills passed by the Legislature. Such deadlocks are more frequent when the party to which the President belongs does not have a majority in the Legislature.

4. Responsibility is hard to find: In the Presidential system, it becomes difficult to fix responsibility for the Governmental failures. The President may blame the Legislature, the Legislature may put the blame on President. In the US, most of the bills are referred to the committees of the Legislature, on the report of which the bills are passed. The powers of these committees are immense. The committees have not only seized the power of lawmaking, they have also made fixing of responsibility in this regard very difficult.

In Favour of Presidential form

The presidential form of government has some theoretical advantages:

- Cabinet of is based on competence and integrity;
- Ministers are not motivated by populist measures;
- No time is wasted in politicking;
- No incentive for desertions and defections; and
- The fixed tenure of the President ensures reasonable stability.

In Favour of Parliamentary form

- In India parliamentary form of democracy is better. Arguments in favour of Presidential type of democracy do not carry conviction. If the executive's tenure is fixed for a few years, the executive would be able to pursue his policies without being impeached or challenged by legislature.
- This is not a great advantage. Executive decisions well debated and discussed are more welcome than a single individual pursuing a policy. Very often rifts occur between executive and legislature in the Presidential form of Government. Indian society is plural.
- Cultural differences are quite prominent. In such a situation it is possible to choose the members of the Council of Ministers from various regions and cultures. If at all there is any lack of expertise on the part of the Council of Ministers it is compensated by the permanent executive and various advisory bodies, committees and commissions.
- Moreover, Indians have considerable experience in the parliamentary form of government. From 1923 onwards, leaders of India were well trained both as members of opposition and as treasury benches in legislatures. After all, a known devil is better than an unknown devil.
- Further more, in the composition of the Council of Ministers it is possible to accommodate leaders of various minorities which is not possible in the Presidential form of democracy. Presidential form of government has not solved many of the social, economic and cultural problems in many countries.
- In many countries of Asia, Africa and Latin America, the Presidential form has degenerated into dictatorship. The moral decay which is responsible for political rot will not disappear with the introduction of the Presidential system. There is perhaps no alternative but to give a fair trial to our parliamentary system, particularly in view of our socioeconomic problems, vastness of the country, its traditions, national genius and diversity.

SEPARATION OF POWER

The doctrine of separation of powers, ascribed to a Frenchman, Montesquieu has come to mean an organic separation or separation of government powers, namely, the legislative, the executive, and the judicial powers. Any two of these powers should not fall in the same hands. They should not assume or combine functions essentially belonging to each other. This is necessary to ward off any kind of tyrannical government. Thus, doctrine of separation of powers stated in its rigid form means that each of the branches of government, namely, executive or administrative, legislative and judicial should be confined exclusively to a separate

department or organ of government. There should be no overlapping either of functions or of persons.

Separation of Power Used in USA

The Constitution of the United States is usually quoted as the leading example of a constitution embodying the doctrine of separation of powers. While Constitution of the U.S.A. does not expressly provide for a separation of power, the doctrine has been incorporated into the Constitution by the provisions that:

- All legislative powers shall be vested in a Congress
- All executive power shall be vested in President
- All judicial power shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish.

Separation Power Used in India

- Under the Indian constitution only executive power is 'vested' in the President while provisions are simply made for a Parliament and judiciary without expressly vesting the legislative and judicial powers in any person or body.
- Moreover, India has the same system of parliamentary executive as in England and the Council of Ministers consisting as it does of the members of legislature is, like the British Cabinet. Even, though the Constitution of India does not accept strict separation of powers it provides for an independent judiciary with extensive jurisdiction over the acts of the legislature and the executive.
- The Constitution in article 50, however, specifically ordains separation of the Judiciary from the Executive. The vitality and importance of the doctrine of separation of powers lies not in any rigid separation of functions, but in a working synthesis with the guarantee of judicial independence.
- Accordingly, the Indian Constitution has not recognised the doctrine of separation of powers in its absolute form but the functions of the different parts or branches of government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption by one organ or part of the State, of functions, that essentially belong to another.
- The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way.

JUDICIARY VS LEGISLATURE

Conflict between legislature and the judiciary has often given rise to anxiety and grave concern to the governments at the Centre and the States. The executive heaves a sigh of relief when the conflict gets resolved or the matter is put in the cold storage after initial heat over the powers each of these wings of the States enjoy under the Constitution subsidies. There are a number of cases where friction between the two has arisen. There has been a perennial conflict not only in India but also in England about the respective rights and privileges of Members of Parliament and the Judiciary.

Indian Scene

- In India, under the written Constitution, the three organs of the Government, viz. the Legislature, judiciary and the executive, have to function within their respective powers and none of them can exceed its powers. Whether, any one of these organs has exceeded its powers or not, is a matter of judicial interpretation.
- In several decisions of the Supreme Court, it has been held that the Supreme Court is the ultimate interpreter of the Constitution and its interpretation is binding on all courts, tribunals and authorities in this country. Under article 141 of the Constitution, the law declared by the Supreme Court is binding on all parties.
- So, if there is any doubt that any particular organ of Government has exceeded its powers, the interpretation ultimately rests with the Supreme Court.
- Even the powers granted by the Constitution to the Members of Parliament and the Assembly are subject to other provisions of the Constitution. They cannot act arbitrarily; nor can they deprive the citizens of their fundamental rights arbitrarily.
- There is a provision in the Constitution for codifying the law relating to the privileges of legislatures and if Parliament makes such a law that will be a law within the meaning of Article 13 of the Constitution; validity of which can be tested before the Supreme Court in the same manner as any other legislation.
- The scheme of the Constitution does not contemplate that Parliament or a State Legislature is not at all liable to be questioned for any violation of law since rule of law is the corner-stone of the Constitution of India.
- Though Legislatures in India have plenary powers they function within limits prescribed by the material and relevant provisions of the Constitution.

Main Areas of Conflict

Following are the Main areas of conflict between the Legislature and the Judiciary:

- Existence, extent and scope of Parliamentary privileges and power of Legislatures to punish for contempt,
- Interference in the proceedings of Parliament/ Legislatures,
- Decisions given by the Presiding Officers of Legislatures under the Anti-defection law; and
- Decision given by the Presiding Officers of Legislatures in administration of their Secretariats.

Powers, Privileges and Immunities of Members of Legislatures

The relevant provision of the Constitution relating to powers, privileges and immunities of the members of Parliament and State Legislatures is incorporated under Article 105 and Article 194 respectively. These Articles provide that:

- Subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the Legislatures, there shall be freedom of speech in the Legislature of the Union and of every State.
- No member of any Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.
- In other respects, the powers, privileges and immunities of a House of any Legislature, and of the members and committees of a House of such Legislature, shall be such as may from time to time be defined by that Legislature by law, and until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment) act, 1978.

LEGISLATIVE COUNCILS

Arguments in Favour of Legislative Council

The supporters of these Upper Houses of State Legislatures advance strong arguments. They feel that these Houses must be retained in the national interest. In favour of these Houses, it is said that:

- In India the Lower Houses are constituted on the basis of universal adult franchise. There are no voting qualifications based on education and property. In the Lower House, both the literate as well as illiterate vote on political considerations. It is argued out that in case democracy is to be saved from the caprice of uneducated persons, it is' essential that there should be Upper House.
- Another argument advanced is that in every state there are people who have excelled in certain walks of life. The nation must take advantage of their abilities and capabilities. But these persons have no interest in contesting elections. Their services can best be utilised only with the help of Vidhan Parishads.
- It is also argued that the very fact that there is another House, creates a very sobering effect on the Lower House, which does not feel tempted to pass a bill either in haste or under the influence of some momentary impulses. In case any half cooked measure comes up then at least Upper House points that out to the duly elected representatives of the people, leaving to them to accept the suggestion or not. In other words, it points out gravity of problems and suggests solution but does not very much care whether suggestions have been accepted or not.
- Another utility of the Legislative Council is that minority communities in every state can be given representation in this House. Such representation is likely to keep them very much happy and satisfied. Similarly, the services of experienced persons who do not wish to contest elections can also be used in this House.
- Legislative work every where has much increased and it is becoming impossible for a single House to handle it efficiently. So some nonmoney bills or less controversial matters can be introduced in the Upper House and in this way pressure of work in the Lower House is considerably reduced. This is always a welcome relief for the Lower House.
- It is accepted that law making process has become time consuming and sufficient time is taken by each House before a bill becomes an Act. It is also accepted that during this time, the people get an opportunity to express their view point.
- But when the bill goes to the Upper House, the people are bit more clear as to what is going to be passed. Moreover, this time interval is always a welcome because during this period the people can express them selves and if need be changes can even now be introduced.
- It is also argued that Upper House does not stand in any way on the determination of duly elected representatives of the people. All that they do is that they point out certain drawbacks and shortcomings, which should always be welcome. These Houses can serve very useful

purpose in case all political parties return there men of eminence who have long and varied experience of life and maintain a good position in society.

- If they are the people with the strength of character and also capacity to render service to the society, they can do a lot of good to the society. Only those should be nominated who enjoy high reputation for their qualities of head and heart and a spotless life career.