

Book = 36  
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PAD

PUR I  
(CN)

PAPER - II

Union Government.

## President.

The Prez of India is elected in accordance with

- i. the provisions of constitution in arts 54 55 58 62 71.
- ii. provisions of prez and vice prez election act - 1952.
- iii. the president and V. prez election rules - 1974.

value of vote of MLA

population of the state as per 1971 census.

$\div 1000$

no. of elected MLAs

If the remainder is  $\geq 500$  a figure of 1 is added to it  
if less than 500 then ignored.

value of vote of MP.

total value of all the votes of MLAs of all the states

$\div$  total number of elected MPs

fractions exceeding half to be added as 1 and those less than  $\frac{1}{2}$  are ignored.

Art 71 - 39<sup>th</sup> AA 44<sup>th</sup> AA  $\rightarrow$  Status Quo Ante restored.

SC can only decide the disputes relating to prez election.

## Debates and Issues in Prez<sup>al</sup> Elections.

### 1. Why indirect election for Prez.

- Prez is mainly a De Jure / nominal head.
- second ballot or single transferable vote sys. not very viable propositions given the level of literacy and awareness in India.
- not suitable for Parliamentary democracy as Prez. may attribute to himself more power. ∴ to avoid friction between com and Prez. direct election is avoided not shared.
- such election will not be contested on real issues but on personal issues (caste based, region based issues)
- To ensure the election of a statesman who is above party / partisan politics.

J&K has a 2nd house as per its constn<sup>n</sup>.  
in consti<sup>n</sup> - J & K not mentioned.

Legislative council - 7 states - UP, BH, MH, TN, KR, AP, J&K

### 2. Exclusion of members of L-council from the electoral college.

- doesn't exist in all states.

- composition is not uniform
- Future of the house is uncertain.

creation of SLC - Art 169.3  
State has to pass a resolution  
for final auth to create or  
abolish the Legis Council.

### 3. Possibility of Election by A lame duck college.

To avoid this election of Prez. should be held after  
the election of L.S and S.L Assembly.

4. Members of 5 UTs are not allowed to vote in Presidential  
election as there is no specific provisions for them in  
the constitution.

### 5. conflict b/n Art 55 and 71.

As far as practicable - Art 55.

6. Secy. General of R.S is the returning officer for both Prez  
and vice presidential election.

The constituent as. was authorised by the consti<sup>n</sup> to  
elect the 1st President - 1950 Dr. Rajendra Prashad (2+5+5 years)

## Politics of Presidential Election.

1. Dr Rajendra Prasad.

2. Dr. Radhakrishnan (S. India) regional balance.

precedent of appointing vice Prez as Prez. was set.  
after the election of Dr. Radhakrishnan.

3. Zakir Hussain (Era of PM's Prez. began)

4. VV Giri (I. Gandhi camp v. Kameraj camp - S. India)

5. notion of conscience vote emerged.

1st time when end preference votes were counted.

5. Fakharudin Ali Ahmed.

symbolic steps  
as long as  
effective steps.

6. N. Sanjeeva Reddy - no powerful Prez.

7. Giani Zail Singh

8. R. Venkataraman - nominated on a/c of differences b/w  
G. Zail Singh and Rajiv Gandhi

9. S.D. Sharma. - Narsimha Rao - a weak PM.

10. K. Narayanan - 1st Prez. more than 91% votes.

India entered the era of coalition govt. -

Prez. held was to acquire multiple new dimensions.

11. APJ Abdul Kalam - 1st Prez. - BJP govt.

left parties concern raised - he had no political.

2. Pratibha Patil.

1st true isolation era prez.

conditions of office of president.

The president's emoluments and pensions act - 1951.

salary 1.5 lakhs / mensem.

pension 9 lakhs / annum.

even during emergency sal. of prez. cannot be reduced.

vacancy in prez' office.

1. Death 2. Resignation to V.Prez. 3. Impeachment

4. Expiry of term 5. Setting aside of election (If the SC he can continue to hold office till the next election decided that there was some malpractice in the appointment of Prez.) in such case all decisions made by Prez shall not be nullified. 6. Temporary vacancy.

Pres. discharge of functions act - 1969. - Even if V.P. is not there CJ of SC to act as Prez. or in his absence the senior most judge of SC.

IPSO FACTO - by virtue of this fact

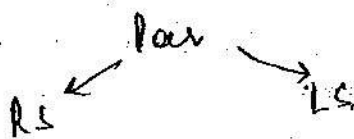
Once Prez has to be immediately communicated about the resignation of the Prez to the speaker of L.S.

Power prerogative -

Temporary vacancy.

Dr Rajendra Prasad Dr. Radha Krishnan. (Kulke)  
no limit of temporary vacancy as not mentioned in  
constitution

Article 61. Impeachment of President.



notice of  
14 days signed  
by  $\frac{1}{4}^{\text{th}}$  of the total strength of either house.

Resolut<sup>n</sup> debated and to be passed by the  $\frac{2}{3}^{\text{rd}}$  of  
the total members of the house in the same house  
in which the issue is raised.

Then resolut<sup>n</sup> goes to 2nd house. That house acts as  
an investigating house. (by CJI, CBI etc) Prez. is  
given an opportunity to defend himself in person  
or thru' a lawyer.

If 2nd house also passes the resolut<sup>n</sup> with  $\frac{2}{3}^{\text{rd}}$   
majority Prez. stands impeached. No scope of  
joint sitting.

Joint sitting available only in case of ordinary bills, not in case of impeachment or constitutional am. bills

Powers and duties of President.

All executive power (business of laying down and implementing govt policies, power to run business of govt, law making and judicial powers taken out from the entire corpus of govt)

Art 74(c)

Westminster → PM (real head)  
→ Crown (nominal)

As India follows W-model of democracy so India also has a distinct b/n the real and nominal head. Nominal head has to obey the PM as a matter of convention so even though if not clearly mentioned in the constn it is obvious the Prez has to act acc to the advice of PM & com  
42nd AA - 19.76. Prez has to obey the

Nature of President's position.

1. The prez. is merely a constitutional head much like the English Crown. - Granville Austin.

exaggerated

MC Setalvad. (1st attorney general)

Alexandrovicz.

2. ultra literal view of the constitution.

Pres is not a mere figurehead and some of his powers are indeed supraministerial.

- Alan Goldhill, KM Munshi.

3. middle view - held by majority of scholars.

Pres is required to preserve, protect and defend the consti<sup>n</sup> has to serve the people of country

while as the pres. is a constitutional head he has an unspecified reserve of powers as the guardian of the constitution.

### Views of the Constituent Assembly.

DR Ambedkar - "The Pres. represents the nation but does not rule it. he occupies a position 'analogous' to that of the king under English law. he can do nothing contrary to the advice of com on infact he can do nothing without it"

Draft constitution originally contained a set of instructions which inter-alia (among other things) provided that he must act on ministerial advice.

## Views of the Judiciary.

S.C. said Pres and governor are only constitutional heads.

1. Ram Jaisingh vs S.O. Pb (1955)

2. Shamsher I vs S.O. Pb (1974)

3. V.N. Rao vs Indira Gandhi (1971) - even after dissolution of LS the COM continues to exist in the care taker format so the Pres. cannot exercise his powers without the aid and advice of COM.

Art 361.

## Constitutional evidence of binding nature of advice.

1) Art 361 - president is personally not liable in any court of law for any act done in the course of discharge of his duties of office.

2) Art 78 (a).

3) aid and advice cannot be construed to be an order yet the advice offered cannot be superfluous as the constitution does not assign any other function to the COM.

accordance with the

42nd 1976 - Pres. shall act in aid and advice of the COM.

44th

- Pres. can send back the advice to the COM for reconsideration once.

#### 4) discretionary powers of President

1. choosing a PM in a hung lok sabha.
2. returning an advice to the PM for reconsideration.
3. seeking information under art 78.
4. not bound by the advice of PM who has lost majority.

Art 78

#### 5) suspensive veto

- sending a bill back to the par. for re-consideration.

For the removal of service commission members has to seek the advice of SC and for dis on grounds of misbehaviour and for disqualification of MP he needs to take advice from electn commissioner.

#### Functions of President

constitutional violation - only grounds for impeachment

(arian - out cast - eg BJP)

To ensure that

2) The country has a stable govt.

3) Vice constitutional adviser exercising general oversight over the govt.

1) Ceremonial Head

## Presidential Activism

→ Returning an advice back to the council of ministers once in a while is not activism, but if does so repeatedly it is activism.

→ Prez. is interfering and demanding too much information about various matters. constantly seeking information from the govt.

→ Policy activism of Prez as by Abdul Kalam.

PURA - Bharat Nirman.

Pan Africa connectivity network.

Prez. has some policy plans he should discuss it first with the PM instead of highlighting it in media.

The Record from 1950-2010 has established the following principles:

1. The Prez. is entitled in a limited manner to exercise in his own manner to quies govt bills, appointments and policy.
2. Within limits the prez. can comment on the affairs of state but the criticism of government

should be muted and should be in the nature of raising an alarm.

3. Prez is entitled to admonish the PM in private (show his displeasure)
4. Prez right to know under art- 75 is unfettered, (no restrictions)
5. The practice of receiving opposit<sup>n</sup> leaders is now established. He offers no comment but forwards the protest to the PM and speaks to him. Not only opposit<sup>n</sup> parties but even state cms can invoke Prez moral authority as guardian of const<sup>n</sup> in their case specifically to safeguard the federal character of the constitution.
6. Prez is entitled to insist when appointing the PM that he obtains a vote of confidence from LS within a stipulated short period.

Art 75(2)(3)

7. Art 75(2) cannot be invoked till such time the condition under art 75(3) is fulfilled.

Art 91, 130 - has clearly expresses the lack of faith in the 13.  
gout on the floor of house as <sup>art 91, 130</sup> states in Pakistan  
constitution. To prevent presidential activism. As morale  
are declining so <sup>as</sup> to prevent the misuse of art 75.

## Enumeration of President's Powers.

### Administrative Powers.

1. All action of the union taken in his name or contracts and assurances made in his name.
2. All officers of the union enjoy office during his pleasure.
3. He has the right to make rules for more convenient transaction of govt business Art 77(3)
  1. right to create and uncreate dept.
  2. Rules regarding allocation of work to these depts.

Allocation of business rules. - 1961.

Transaction of business rules - 1961.

4. President's right to information - Art 78. original constitution guaranteed RTI only to 1 citizen A 3 fold right.

1. duty of PM to communicate the major decision of govt to Prez.
2. duty of PM

## Debate on Article 78

Debate during the time of G. Zail Singh.

Art 78 - 84

Art 78 - 74

Art 78 is a stand alone article and prez can seek any information.

<sup>Pres</sup> Art 78 confers executive powers on president. Comment!

If prez. seeks info → highlighted in media. This shows the policy / stands has some errors. Prez. has some kind of indirect influence on govt. policy making.

- i) Can influence content of policy.
- ii) Process of decision making.

No it doesn't, indirectly he can influence the content of policy and directly can influence the process.

## Military Powers.

supreme commander of defence forces.

declares war concludes peace.

## Diplomatic Powers

Head of state

Represents India internationally.

Appoints Indian missions abroad (diplomatic staff/embassy)

Reviews diplomatic representatives from abroad

Negotiates and signs treaties.

## Legislative Powers.

Pres. is a part of par. because.

Art 79 1) Pres. symbolically is said to be a part of par.

2) par. process cannot be completed without the pres' role.



Incomplete

10M is drawn from par.

⇒ executive is a part of par.

1. Power to summon sessions of par. (on the advice of PM)  
gap should not be over 6 months. it is more of a duty than a right.

As govt presents all the bills and does the business so the session should be called by the prez. on the advice of PM and the right should not be given to the speaker of LS or chairman as they don't know about the schedule of the govt.

2. Power to prorogue (close) and dissolve.

House is adjourned sine die by the speaker only then President prorogues the session.

→ sine die indefinitely. - adjournment without giving date for next session. Generally done towards the end of sessions.

1st session of the newly elected Lok Sabha and 1st session of the par every year (budget session) begins with the address of prez. Address prepared by the govt which represents the agenda of the govt)

He cannot edit or comment the speech

on the advice of com he can address both the houses of par. separately or jointly and can make the presence of all members obligatory. (but not be used till now)

4. Pres. can send msgs. to parliament.  
mentioned in (taken from Irish consti<sup>n</sup>)

Hindu code bill initiated by DR BR Ambedkar. Dr R. Parshad was against it

legal opinion unsettled if the prez. can send msgs to par. without or with advice of com.

in case of grey areas of constit<sup>n</sup> - conventions need to be evolved.

5. Power to nominate - 12 members.

arts, science, literature, social service.

2 anglo Indians if not adequately represented as they are scattered all across the country.

6. To lay the reports (annual) of various bodies in parliament such as UPSC, finance comis, b.c comis, comis on SC's, ST's, annual financial statement.

Public accounts comt. 22 members 15 LS 7 RS.

19

proportional representation. Chairman always from opposition.

convention since 1967. (convention in parliamentary practice)

7. appoints protest speaker.

largest court.

cm has to be a member of lok sabha.

9. prior sanction for legislations - for money bills.  
bills seeking to create states.

Art 304.

9. Assent to legislation.

veto power - power to block  
any bill from coming into  
effect or becoming law.

10. Types of veto powers.

to prevent any hasty or legislative

absolute

suspensive veto.

Qualified

Pocket veto.

absolute veto - the power to reject the bill completely  
with no recourse open to par.

suspensive veto - bill is passed, prez rejects bill is  
passed again prez has to pass.

Qualified veto - for the second time i.e. the opposition of the prez. can be overcome by a majority more than simple majority. (special majority) - US president.

US prez. is given a 10 days period to pass or reject the bill. If the session ends before the 10 days the bill lapses.

→ Indian president has absolute veto with advice of com, suspensive veto (As Abdul Kalam, office of profit bill) and pocket veto (1986 - Post office <sup>am</sup> bill - G. Zail Singh)

law making is not a turn key project. it takes a long time.

absolute veto - Govt changes.

eg PEPSU Appropriation Bill, MP's salary and pensions bill.

Budget of a state under president rule needs to be passed by parliament.

Art III

words absolute, suspensive and pocket veto are not mentioned in constitution.

## 11. Disallowance of state legislation art 200

governor can reserve a bill passed by the SLA for the consideration of Pres. (com).

money bill  $\begin{cases} \text{accept} \\ \text{reject} \end{cases}$

Art 201

other bill  $\begin{cases} \text{accept} \\ \text{reject} \end{cases}$

$\rightarrow$  send back  $\rightarrow$  LA  $\rightarrow$  President  $\begin{cases} \text{accept} \\ \text{reject} \end{cases}$   
(must reconsider in 6 months)

central govt has absolute veto over state legislation.

governors to harass the state govt unreasonably delay the passage of bills - Govt of India Bill the tenure of the legislature expired.  $\leftarrow$  Recommendations by Punchi commission. 2004 reserved, 2009 sent back.

## 12. Ordinance making power art 123

when either of the house is not in session.

to be passed by the advice of com.

pres. can issue ordinances on all those areas over which par can make laws but not a co-ordinative or parallel power but is a co-extensive power.

within 6 weeks of reassembly the par has to pass the ordinance else the ordinance lapses.

a life of an ordinance cannot go beyond 6 months and 6 weeks.

### Issues involved.

#### 1) Highly undemocratic power.

power is not available in most of the developed countries.

India is perhaps the only country which confers this power to H.O. to that extent it is held undemocratic.

#### 2) Abuse of ordinance making power.

POTO - POTA. (introduced to buy time)

repromulgating the ordinance without making any effort to present it in parliament.

Cooper v UOI (1970) → repromulgation of  
DS Madhava v St of BH (1987) → ordinance was  
a mala fide use.

38<sup>th</sup> AA - 1978 - amended art 123. provision: satisfaction of Prez is final and it cannot be challenged in any court of law on any grounds.

ordinance needs to be accompanied by an explanatory memorandum while presenting it in front of the Par. Par. can amend it while passing.

### Judicial Powers

- i) Power of presidential clemency (show of mercy) Art 72.  
art 161 - governor
- i. pardon - free of all penalties.
- ii. to commute - to change the character of punishment.
- iii. remission - to reduce the sentence with changing character.
- iv. respite - to award a lesser sentence on account of some special fact.
- v. reprieve - stay on the execution of the sentence pending the state of completion of mercy petition.

It is given to most of the heads of the state all across the world to correct possible judicial errors to reduce punishments which are unduly harsh.

If the offence is against a law over which the executive power of the union extends (subjects in union list and concurrent list - sch VII)

If offence is against union list appeal can be filed to prez. If against state list appeal can be filed against to governor.

Pardoning a death sentence is the exclusive privilege of prez. Governor can commute it.  
court marshall case - appeal can be filed only to prez.

### apex courts opinion on use of clemency powers

1st set of guidelines by SC was made under:  
Kihel S Versus UOI - 1989.

- I. Courts cannot interfere with the decision of prez. on its merits but the court exercised a limited power of judicial review to ensure that prez. considers all the relevant <sup>material</sup> powers before coming to conclusion.
- II. The prez. may examine the evidence afresh.
- III. Petitioner cannot demand an oral help.
- IV. Courts cannot lay down guidelines for the exercise of this power.
- V. Prez. doesnot act as a court of appeal his powers are independent of judiciary.
- VI. Power is to be exercised on the advice of com.

max. abuse of this power cases come from Haryana. 25

AP- Kushil Kumar Shinde - 2006. 10 yrs punishment.

After 1 year exempted.

Guru Vandana Reddy case: 2006.

- i. clemency powers are prone to misuse and thus the judiciary can examine the wisdom behind the decision of the prez. or governor (SC didn't say that it will over rule the decision) - check the power.
- ii. clemency cannot be shown upon undue consideration of caste, religion or political loyalty.
- iii. clemency is not a private act of grace. The 1<sup>st</sup> criteria to be considered is the interest of the society and not the interest of the convict.

2) Article 143 - power to be used by prez. on advice of CM where an authoritative legal opinion is needed.

SC is not bound to give the advice and Prez is also not bound by the advice.

The Emergency Powers - (Ginsler C - Germany)

National emergency - 352

Constitutional emergency - 356

Financial emergency - 360

They are some extreme powers to deal with extreme situations. To varying degrees the emergency has impact on the two most important pillars of the parliamentary democracy: • Rights of citizens; • Federalism

Maurian empire or all great empires - central authority displayed some weakness the country began to disintegrate (eg from history)

1. Unique circumstances in which India was born
2. Historical experience

### Views of members of Constituent Assembly.

KT Shah - emergency powers seek to arm the center with special powers against the state and against the people. Looking at these provisions it seems that the name only of liberty and democracy will remain under the constitution.

HV Kamath - by this single chap we are laying the foundation of a totalitarian state police state

Bhai - Art 352 would make the prez a new Frankenstein. (goes or does things counter to the creator)

## Article 352. National emergency.

27

can be imposed on grounds of external aggression, war or internal disturbances. (original)

1962-68 - Indo China - Indo Pak

1971 - Indo Pak. agreement b/w I. Gandhi and Shultz.  
Shimla agreement.

emergency was imposed on grounds of external aggression

1975 - emergency on grounds of internal disturbances.

Delahabad HC annulled the election of Indira Gandhi for electoral malpractices and debarred her for 6 years -  
→ resulted in 1975 emergency.

I. Gandhi was misled by her political advisers - like  
S.S. Ray. 1977 she revoked emergency.

## consequences of imposition of article 352.

1. Executive effect / consequences of emergency

2. Legislative effect

→ Union par can make laws on the state list subjects

42nd AA - single act amended 12 articles including preamble

→ The tenure of both LE and SLA can be extended  
for 1 year only by the resolution passed by the par.  
It can further be extended by passing a resolution.

cannot extend beyond 6 months.

### Financial implications of emergency.

During emergency per. acquires the powers and can modify the distribution of financial resources b/w center and state.

### Effects on fundamental rights.

If N-E is imposed on the grounds of war and aggression 6 freedoms under art 19 suspend automatically - Art 358

Art 359- other rights can be suspended by separate presidential orders. 2 rights - art 20 and 21 cannot be suspended, while all other rights can be suspended.

### Safeguards against possible misuse of art- 352.

most of these safeguards were added by the 44<sup>th</sup> Am. 1978.

→ The phrase "internal disturbances" was replaced by "armed rebellion".

→ written advice from cabinet would be required.

National emergency satisfied in (earlier) (now) 29  
2 months 1 month

earlier it needed to be passed by simple majority and now special 2/3rd majority. Needs to be extended every 6 months earlier 1 year. can be extended indefinitely.

LS can serve a notice signed by not less than  $\frac{1}{10}$ th memb<sup>of total st.</sup>. Notice goes to speaker or Pres. then within 14 days a special session is held and if the LS disapproves the continuance of emergency, the emergency would come to a pre-mature end.

Punchi comm. recommended localised emergency gout which provides power to state govt to deal with that prob. central govt. will have an extended role <sup>(enhanced powers)</sup> but the authoritative role will be of the state. - submitted in 2010

Act 356 - constitutional emergency  
when the state is being run by the govt contrary to the provisions of the constn - then constitutional emergency exists -

I. state govt is dismissed

II. SLA suspended or dissolved - law making function

of that state is transferred to par. law may

delegate this power to Pres. and he may delegate the power to make laws to governor.

Governor's Rule - constitutionally only for 3 m.

Art 356 can be imposed when governor gives a report or when the com feels that there is a constitutional breakdown in the state.

Art 356 - max. used article.

Governor's office has become extension counters of central government.

1967 - year of great divide in politics  
regional parties started rising, congress was reduced to minority in most states.

1950-65 - Art 356 used 10 times.

1965-80 - Art 356 used 60 times. abused.

observations of Sachar's commission.

-appointed in 1983 - 1st com. appointed by central govt to look into the center state government.

356 was imposed in 13 cases even though the state ministry enjoyed confidence.

1976 - TN govt dismissed on grounds of mal adm.

1979 Manipur govt dismissed on same grounds.

1977 Janta party enter. 9 states congress ruling party congress lost all the lok sabha seats.

Janta party dismissed all the 9 cm's on the grounds that congress lost all seats in lok sabha.

1980 - Indira Gandhi came to power. She dismissed 9 Janta party cm's.

In as many as 15 cases where the ministry resigned other claimants were not given an opportunity to form alternative govt.

Kerala - 1965, UP - 1970.

Sarkaria commis said in as many as 26 cases prez. rule was inevitable b'ly they were dealing with problems of reorganisation.

1992 - 3 BJP govt were dismissed after Babri Masjid demolition. HP, UP, Rajasthan.

2009-10 - Pres. rule in Jharkhand.

2005 - Bhatta Singh recommended pres. rule in BH (abuse)

### Major problems / sore points relating to Art 356.

1. Expression break down of C<sup>n</sup> machinery has not been defined in C<sup>n</sup> leading to art 356 being applied differently in similar situations.
2. on many occasions opposit<sup>n</sup> parties were not given an opportunity to form alternative govt.
3. Rigging / doctoring of governors' reports at the instance of union govt.
4. Assemblies are dissolved or suspended depending on union govt's convenience.
5. 356 is often used to dislodge govt run by parties other than union govt party.

## Sarkaria commission (recommendations)

3:

- 356 should be used sparingly as a measure of last resort
- warning should be given to the st. govt before imposition
- In case of law and order disturbances alternative courses available to the union under Art 355 should be exhausted to contain the situation.
- Governors should explore all possibilities of forming an alternative govt. If fresh elections are inevitable care taker govt should be formed
- State legislature should not be dissolved before parliamentary ratification of imposition
- Cmtt F should normally be imposed on governor's report which should be a speaking document and must be given wide publicity.

## Apex Courts' opinion

SR Bommai vs UOI - 1994.

1. President's proclamation is subject to judicial review.
2. No wholesale dismissal of state govt solely on the ground that the state ruling party has lost heavily in LS elect<sup>ns</sup>.
3. If state govt works against secularism it can be dismissed.
4. Imposit<sup>n</sup> of prez rule and dissolut<sup>n</sup> of assembly cannot take place simultaneously.
5. Prez power under art 356 is a <sup>cnal</sup> power not an absolute power thus the existence of material evidence is a pre-condition for imposition of 356.
6. SC can investigate the material evidence to ensure as to whether it was relevant.
7. If the imposit<sup>n</sup> is found to be unreasonable SC can restore status quo ante.
8. 356 can't be imposed on the following grounds  
maladm  
where the state govt resigns and the govt

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recommends 356 without exploring the possibility of installing an alternative govt

where no floor test has been held and govt recommended 356 on his subjective assessment

where no prior warning has been given to state govt.

allegations of corruptions against state govt  
stringent financial problems in the state.

suggested occasions for use of 356 by sc.

1. under art 365- failure of the state govt to comply with union govt's directions

2. where a ministry resigns after losing maj and no other govt can be formed. 356 may be imposed and the assembly kept in suspension to allow the dust to settle in order to explore the possibility of alternative govt.

- National Comis to review the working of constn

by Mr Venkatachelaiah- 2000 recommended: Report-2002

1. before issuing the proclamation the state central govt should indicate to the state govt the matters

1. where the state is not acting in accordance with the provisions of Cr and give it reasonable opportunity to correct its behaviour.

2. Proclamation must contain an annexure listing the circumstances and grounds for imposition.

3. Floor test must be made mandatory.

4. Grounds for dissolving the as. or for keeping it suspended must also be mentioned.

Art 352

356

Initially imposed for a period of 6 months.

reckoned from the day on which the pro. appears.

has to be ratified in 1 month by special (2/3) maj.

can be renewed every 6 months indefinitely.

reckoned from the day on which the govt imposed.

has to be ratified in 2 months by simple maj.

let imposed for 6 months and then can be extended for another 6 months.

If the emergency has to be extended further beyond 3 years the constn needs to be amended as was done in case of 18. it was extended for 5 years.

If national emergency is also<sup>3</sup> in force or if election comes certifies states that elections in the state are not possible if can be extended for another 2 years in blocks of 6 months.

### comparison of Indian Prez with German President.

Similarities.

1. Elected by a federal convention consisting of the entire membership of the Bundestag and an equal number of state delegates selected by state parliaments.
2. He is the head of state and enjoys a ceremonial position.
3. He is by tradition a unifying presence and usually takes great care to steer clear of day to day politics but on rare occasions if the  
— does take a stand on a contemporary issue we can expect to generate great attention and carry a lot of moral weight

min age in India 35. Germany - 40.

No person can be German president for over 2 terms.

He cannot be a member of either house of legis.

German prez. appoints the  
chancellor  
federal judges  
civil servants  
military officers.

He is not regarded as the supreme commander  
of defense forces.

Dissolves the par on the advice of Chancellor.

Bills become laws after his assent.

There is a debate regarding the unspecified reserve  
of powers regarding the German prez.

portfolio - set of duties, integration of duties or activities which are inter-related.

Govt. work has been divided into portfolios.

Portfolio system was introduced by Lord Canning.

COM is the real ex in a result of convention in Eng but in India it has been specifically codified in constitution under Art-74.

Cabinet ministers (senior most) have independent portfolios  
ministers of state.

deputy ministers.

parliamentary secretary.

cabinet actually advises the president (a non-constitutional body is running the constitutional functions of the govt)

decision by the whole com is not possible so most of the decisions are taken by the cabinet.

cabinet-44A - Art 356 to prevent the mis use of the act.

Cabinet is the steering wheel of the govt.

Technically speaking cabinet is has constitutional anomaly but the whole com is under various cabinet ministers  $\therefore$  calling cabinet to be an anomaly is an exaggeration. Cabinet's role has become so imp. that the debate about it has fallen down.

Hierarchy in com is symbolic of the com status.

Transport - 4 ministeries  
Energy - 5 ministeries.

Integrated approach is needed but we have an isolated approach.

Art 77(3) <sup>Ans</sup> Total size of com  $\rightarrow$  15% of the strength of LS.

personality of a ministers influences how popular a ministry can become - environment, sports.

Cabinet ministers without portfolio - all authority without responsibility.

### classification of ministers.

N. Gopalaswamy Ayyangar report on reorg of govt machinery - 1949.

cabinet ministers - dual <sup>or</sup> responsibility  
own portfolio

imp govt decisions

7  
towards their own ministry.  
gave wide decision making on major policy matters. 41

→ Appointment of 1 or 2 cabinet ministers without portfolio to deal with responsibilities which do not come under any portfolio.

to deal with inter-departmental issues for their co-ordinat<sup>n</sup> policies which are supra-ministerial.

When the PM is overburdened by responsibilities he can delegate some of them.

this was advised only for admin<sup>n</sup> convenience but actually has been used for political convenience and accommodation.

↓  
K. Natwarlal - oil for food scam. was removed from the portfolio of external affairs and then made the cabinet minister without portfolio and then finally told to step down. (Volkar commt). appointed by UN to enquire into the scam.

Minister of State. 1952 govt changed the nomenclature to minister of cabinet rank, 1959 they restored the status quo ante. He said MOS to be conferred with specific responsibility which can be done in following ways:

i) make him incharge of a dept. within the overall responsibility of a cabinet minister. (make MOS the head of a dept.)

Home ministry - 6 depts. <sup>UK</sup> Int secu.  
home.  
official lang.

ii) He may generally assign the cab min who may entrust him with specific items of work.

iii) MOS may be given independent <sup>ent</sup> charge of a ministry. (minis of ministries which are not very imp and are not included in cabinet) He won't take part in cabinet deliberations.

If all the ministries are included in cabinet it will become an unmanageable body, too large.

### Deputy minister

can perform some parliamentary duties -

- answers questions.
- ensure smooth passage of bills.
- explain the policies of the govt to media / public.

given to persons who are not important but often important to create some political problems

Parliamentary secretary.

GA unit said the duties delegated to the P.S. can be performed by S.M. and hence recommended a three-tier hierarchy.

1967- last par. secy was appointed in central govt.

and was appointed for a brief period during the tenure of Rajiv Gandhi.

Functions of all the ministers should be codified but govt turned it down as the govt felt that it would introduce the element of rigidity in the functioning of govt.

ARC-1 Recommendations by Morarji Desai - 1966.

19 reports - 581 recommendations.

Cabinet Ministers - Dual Responsibility

DMs shouldn't be given independent charge.

Deputy ministers were not given any responsibility for their entire tenure. They act as frontmen of cabinet ministers. ARC-1 did not recommend to

abolish DM but they changed the view and said

it was not a consolation prize but a training ground for ministers of future and abolish the position of

parliamentary secy. Govt turned down this recom but in practice it was implemented as since 1967 no par secy has been appointed.

Advocated 3 tier machinery but for quick decision making by the govt the machinery should be 2-tier. i.e no more than 2 ministers should be involved to check retdelays.

### Formation of Council of Ministers.

Appoint a PM by the prez.

1977- Janta party - unstable coalition - on paper parties stated that they are dissolving their separate identities and evolving as Janta party.

1979- govt collapsed. Charan Singh left.

1st drama of coalition

Prez was in the thorns of a dilemma.

UK comment- Prez. should invite the leader of opposition to form govt. - YB Chavan.

asked Charan Singh and Moraji Desai to furnish the list of supporters - CS - 262, M.D - 236.

Prez. invited Charan Singh. His decision was

criticised in press.

C.S. govt fell.

Jagjeewan Ram said that he will form the govt.

N. Sanjeeva Reddy declined that as Jagjeewan Ram was a backward class.

Pres. said he declined this because he didn't want to encourage defection.

1989 - R. Venkataswami.

Congress party largest - R. Gandhi declined.

N.P. Singh - Congress and BJP supported from outside.

lasted for 11 months

Congress withdrew support coz of Mandal comm. report.

Cohabitation - common personal interest.

secular view in politics means - worried about Muslims.

Advani - Rath Yatra, arrested, BJP withdrew support.

Chandra Shekhar - support of 40-45 MP's belonged to Janta Dal.

supported from outside by Congress.

Pres' decision to invite Chandra Shekhar was criticized because they were not prepared and organised for new elections for atleast 5-6 months.

Congress came back with 221 seats - May P.V. Narasimha Rao.

National Front - abstained from voting walked out  
and 221 was the majority he had. He became safe  
for 6 months.

Gave 1 crore to in small pags.

1993- introduced MP's scheme - granted Rs 1 crore to  
all MP's for development scheme.

now - 2 crore - per year.

further plan to increase to 5 crore.

with a support of 221 he could manage to pull  
through the entire term.

1996- S.D. Sharma - BJP single largest party.

criticised for blindly imitating BJP govt lasted for 13 days.

Babri masjid demolition (Vajpayee)

Dene Gounda govt - supported from outside

1K Gujral govt - by congress.

UNITED FRONT GOVT.

PM should rise among the masses not  
imposed on the masses. Like it was said  
for Nehru that he was a tourist attrac<sup>n</sup>  
in India.

Indira Gandhi. Lal Bahadur Shastri - true mass  
leaders.

In case of hung par. prez. should follow the following 4 principles:

1. Invite the leader of oppos<sup>n</sup> if the govt is defeated in a no confidence motion.
2. Invite the leader of coalat<sup>n</sup> formed prior to elections.
3. Invite the leader of single largest party.
4. Invite the leader of coalat<sup>n</sup> formed after elections. (such coalitions are most unstable: only convergence of personal interests and not policies)

PM's power to select his com depends on his political stature, personality. He has to keep the following considerat<sup>ns</sup> in mind - before selecting his com.

1. Regional representat<sup>n</sup>
2. Representat<sup>n</sup> to major communities.
3. Representat<sup>n</sup> to women
4. Accomodat<sup>n</sup> of party heavy weights.
5. Accomodation of coalition partners.
6. BC representation.
7. Youth representation.
8. Rewards for loyalty.

According to ARC - 1

- 1) In selecting his colleagues the PM should give special attention to considerations of political stature, personal integrity, intellectual ability and capacity for taking decisions and capacity for sustained application to work.
- 2) In assigning portfolios due regard must be paid to aptitude and capabilities of ministers.
- 3) No discussion on ~~and~~ is

Position of Deputy Prime Minister.

Vallabh Bhai Patel - by Nehru.

Morarji Desai - 1967 - I. Gandhi

Charan Singh - 1977 by Morarji Desai.

Shriyug Beni Lal by VP Singh and Charan Singh.

Advani by Nagpyee.

<sup>is</sup>  
 DPM Appointed when 2 top leaders of a party are equally matched, due to the near-equal stature of 2 leaders (Patel - Nehru)

② To prevent infighting within a pol party (Indira - Morarjee)  
(Vajpayee - Advani)

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③ Compulsions of coalition politics.

Deputy PM is generally given more than 1 portfolio and chairs the cabinet meetings in the absence of PM.

Pranab Mukherjee is the current deputy PM though not appointed.

ARC-1 said position of deputy PM should be codified, to reduce the burden of PM. Govt rejected the recommend as it would induce rigidity. A PM can have more than 1 deputy PM. LARC-1 - a deputy PM must be appointed.

### Size of the cabinet and COM.

Cabinet / COM - is a deliberative body which takes decisions after long discussions (confabulations / parleys).

Advantages of a small cabinet.

1. More effective talks or deliberations
2. Less problems on secrecy front.
3. Better co-ordination.

3. Less burden on public exchequer

4. Conducive for building up team spirit - (esprit-de-corps. - H. Fayol)

Treasury benches - for ruling party in par.

5. Fewer tongues being tied to the govt policy & point of view.

6. Large size cabinet / com is not conducive to healthy growth of public life, democracy and political parties.

Dec 1 2010.

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Haldane committee (1918) - 10-12 cabinet members.

Principles for fixing size of CM.

→ % of legislature.

91st Am - added art 75 (1A) and 164 (1A) - 2003.

Limited the size of CM to 15% of the strength of the house.

introduces an element of rigidity in the functioning of govt.

The actual needs of administration. (more rational principle)

ARC-1 recommendations (1966)

size of CM should be fixed on the basis of no. of departments a minister can handle individually and the need in a federal set up to give representation to each big region.

size of cabinet should not be more than 16 and CM-40-45

Bunching together of ministries scheme.

(Chengiz Cmt) - 1949

Bunching together of related ministries into 4 bureaux

(not accepted) implementing the recom. meant the

size of CM could be reduced to 5

1951- overboard ship - bunching together of ministeries.  
given up in 1953.

A.R.C. - 2 Recommendations - 2005 n/ by venappa mally.

concerned with ensuring co-ordination and bringing out effective functioning of the govt.

Current ministeries - 55.

ministeries have been carved out of the existing ministeries to accomodate the politicians.

coordinating or first minister - to head integrated ministeries.

Energy.

Atomic, coal,  
water, petroleum

Transport.

civil aviation

shipping

roads and highways

urban development

by integrating various ministeries, there no. can be reduced to 25.

### Functions of The Cabinet.

1. supreme executive authority - runs the country  
∴ we have cabinet govt. - "here creation dominates the creator."

2. It is the prime legislative body as most of the bills are introduced by cabinet.

3. Agenda of parliamentary sessions is prepared by cabinet.
  4. summoning, proroging, dissolving is done by cabinet.
  5. prepares President's address.
  6. advice perz. to promulgate ordinances.
- cabinet is merely responsive to par in reality and not responsible to the parliament.
7. It is the principle policy making body all major political and adm<sup>v</sup> decisions are taken by the cabinet.
  8. co-ordinating body par. excellence.
  9. cabinet questions - all those issues which are presented to the cabinet and require the decision by the cabinet hence merit reaching the cabinet.
- interdepartmental or interministerial disputes -  
 supradepartmental policies -  
 decisions on major issues confronting the country.
10. cab. provides chief executives for major organs of govt.
  11. Preparation and execut<sup>n</sup> of the budget is a collective exercise done by the cabinet.
  12. Service level appointments.

many cabinet cmts - CEA - cabinets cmt for on appointments

B- responsible for crisis mgmt.   
 { natural  
 { man made  
 emergency (352, 356, 360)

imposition and consequences of emergency.

we are living in a regime which can be described as 'cabinet dictatorship' A stark reality.

but the cabinet is not omnipotent because of checks.

checks on cabinets omnipotence.

1. collective wisdom of the cabinet on decision making on critical issues is often lacking.

by consent~ cabinet meeting takes place on every Friday.

cbt cmts have been created to speed up the work. institutional support mechanisms to cabinet as they advise the cabinet and enable the cabinet to focus only on major issues. all the cabinet cmts are headed by the PM.

2. existence of bodies like cabinet cmts.

3. Dominating PM.  
Indira Gandhi.

Nehru - 1962 Chinese aggression - Cabinet decided to maintain status quo and start dialogue process.

4. co-ordinat<sup>n</sup> cmt - in case of coalit<sup>n</sup> govt. acts as supra cabinets.

NAC - National advisory council - h/ly Sonia Gandhi - is a co-ordination cmt.

National comis on SC and ST      their views cannot  
National comis on women      be ignored or sidelined.  
National comis on minorities

National knowledge comis, sci advisory council, planning comis.

5. Media Pressure.

Not to allow BT Brinjál in country.

Adarsh Society scam.

6. opposition checks. can serve as a deterrent on the cabinet from becoming autocratic.

7. President.

8. Judicial checks.

Cabinet's dictatorship is a stark reality. Yet it can't be omnipotent.

## Challenges to cabinet govt

### 1. Existence of dominating PM

Nehru, I. Gandhi, R. Gandhi

Others could not afford to be insertive.

most of the govt are coalatn govt

### 2. Problems on secrecy fronts

leaks from the govt / ministers done to embarrass ministers and PM about confidential matters.

### 3. Ex mln - Home mln and Defence mln

differences were brought out in media.

open airing of differences.

### 4. Rising levels of corruption

5. cabinet today is becoming a dumping ground for rejected and discarded CM's.

### 6. Absence of intellectual merit and application

political skills + many other skills are needed for running a govt which are characterised by a conspicuous absence.

2 week vacation - recommended by ARC - 1 for reading, reflecting and relaxing

E-GOM.

7.

empowered group of ministers - Bhopal gas tragedy, CWC.

formed out of cabinet ministers.

ad hoc cmt to report <sup>upon</sup> and investigate an issue.

E-GOM is given authority to decide and remaining cabinet memb are prohibited from debating, railway jurisdiction is only with PM → this compromises the principle of collective responsibility.

Whatever is the power of com is in effect the power and authority of the cabinet.

Cabinet cannot force its views on PM but PM can.

Cabinet committees.

cmts are organisational devices used to line the output of a busy or over loaded institution.

Advantages of cabinet cmts

save the time of cabinet - most of the debates about

An issue are settled in cmt. The cmt creates

a short brief on an issue which is in a

comprehensible form thereby facilitating quick

decisions as cabinet has to focus only on key issues

cabinet cmts: can also consist of memb of com and deputy ministers. - It safeguards the principle of collective responsibility as junior ministers can also be appointed.

2) Cabinet cmt. on prices.

Can serve as a check on arbitrary decision of individual ministers or PM.

3) Cab cmts facilitate supra-ministry attent<sup>n</sup> on key aspects of adm<sup>n</sup>. and ensure that ministers don't <sup>miss</sup> ~~forget~~ forest for the trees.

4) They facilitate inter departmental co-ordina<sup>n</sup> by enabling the ministers to bargain and compromise with each other, thereby reducing the burden on cabinet.

5) Facilitate best utilisation of ministerial expertise.

6) More effective discussion.

7) Help in placing sustained focus on key aspects of adm<sup>n</sup>.

G.W. Jones "cab cmts have saved the cab sys of govt 59 which otherwise would have crumbled under the pressure of work." was a British politician.

Nomenclature and Number of cabinet cmts - Prerogative of PM

1948 - 2 cabinet cmts hence not uniform.

2010 - 14.

Political Affairs - most imp.

Appointments cmt of cabinet -

Natural calamities.

Parliamentary affairs.

Cabinet cmt on accommodation.

Cabinet cmt on security.

Cabinet cmt on disinvestment.

Drug abuse control.

Cabinet cmt on prices.

Cabinet cmt on WTO.

Cabinet cmt on economic affairs.

Cabinet cmt on trade & investment.

Cabinet cmt on expenditure.

Cabinet cmt on infrastructure.

par alienation  
women empowerment  
environment -  
are needed.  
(as they are imp)

7. Several imp subj are not covered by them,  
women empowerment, environment.

ARC-1 recom:

1. There should be 11 standing C.C:

defence                      foreign affairs                      economic affairs

parliamentary affairs and public relations.

food and rural development

transport, tourism and communica<sup>n</sup>

commerce, industry and science.

social services

internal affairs

administration

ACC (appointments cab cmt)

2. membership of CC should not exceed 6 and should include all the concerned ministers.

3. every standing CC should be supported by a cmt of secretaries which would cover in advance the matters to be taken up by CC

4. Ad hoc cmt should also be appointed to deal with incidents or problems but their role.

should be confined to investigat<sup>n</sup> and advice  
and not decision making

5. Should cover all imp areas of govt activity

S  
Additional  
Joint  
Deputy  
Under

### Questions:

C.C in union govt are a proven asset as staff agencies.

Elucidate. (explain) Pg-35. Q-16

Cabinet is not a coal body. Q-15