

11. Prime Minister and Council of Minister

PRIME MINISTER

In the scheme of parliamentary system of government provided by the constitution, the President is the nominal executive authority (*de jure* executive) and Prime Minister is the real executive authority (*de facto* executive).

APPOINTMENT OF THE PRIME MINISTER

The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister. Article 75 says only that the Prime Minister shall be appointed by the president. In accordance with the conventions of the parliamentary system of government, the President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. But, when no party has a clear majority in the Lok Sabha, then the President may exercise his personal discretion in the selection and appointment of the Prime Minister. In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month.

In 1980, the Delhi High Court held that the Constitution does not require that a person must prove his majority in the Lok Sabha before he is appointed as the Prime Minister. The President may first appoint him the Prime Minister and then ask him to prove his majority in the Lok Sabha within a reasonable period. For example, Charan Singh (1979), VP Singh (1989), Chandrasekhar (1990), PV Narasimha Rao (1991), AB Vajpayee (1996), Deve Gowda (1996), IK Gujral (1997) and again AB Vajpayee (1998) were appointed as Prime Ministers in this way.

OATH, TERM AND SALARY

Before the Prime Minister enters upon his office, the president administers to him the oaths of office and secrecy. In his oath of office, the Prime Minister swears:

- to bear true faith and allegiance to the Constitution of India,

- to uphold the sovereignty and integrity of India,
- to faithfully and conscientiously discharge the duties of his office, and
- to do right to all manner of people in accordance with the Constitution and the law, without fear of favour, affection or ill will.

The salary and allowances of the Prime Minister are determined by the Parliament from time to time. He gets the salary and allowances that are payable to a member of Parliament.

POWERS AND FUNCTIONS OF THE PRIME MINISTER

In Relation to Council of Ministers

The Prime Minister enjoys the following powers as head of the Union council of minister:

- He recommends persons who can be appointed as ministers by the president. The President can appoint only those person as ministers who are recommended by the Prime Minister.
- He allocates and reshuffles various portfolios among the ministers.
- He can ask a minister to resign or advise the President to dismiss him in case of difference of opinion.
- He presides over the meeting of council of ministers and influences its decisions
- He guides, directs, controls, and co-ordinates the activities of all the ministers.
- He can bring about the collapse of the council of ministers by resigning from office.

Relation to the President

Prime Minister enjoys the following power in relation to the President:

- He is the principal channel of communication between the President and the council of ministers.⁴ It is the duty of the Prime Minister :
 - to communicate to the President all decisions of the council of ministers relating to the



administration of the affairs of the Union and proposals for legislation;

- to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
- if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
- He advises the president with regard to the appointment of important officials like attorney general of India, Comptroller and Auditor General of India, chairman and members of the UPSC, election commissioners, chairman and members of the finance commission and so on.

In Relation to Parliament

The Prime Minister is the leader of the Lower House. In this capacity, he enjoys the following powers:

- He advises the President with regard to summoning and proroguing of the sessions of the Parliament.
- He can recommend dissolution of the Lok Sabha to President at any time.
- He announces government policies on the floor of the House.

Other Powers & Functions

- He is the chairman of the Planning Commission, National Development Council, National Integration Council, Inter-State Council and National Water Resources Council.
- He plays a significant role in shaping the foreign policy of the country.
- He is the chief spokesman of the Union government.
- He is the crisis manager-in-chief at the political level during emergencies.
- As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and so on.
- He is leader of the party in power.
- He is political head of the services.

CENTRAL COUNCIL OF MINISTERS

As the Constitution of India provides for a parliamentary system of government modelled on the British pattern, the council of ministers headed by the prime minister is the real executive authority is our politico-administrative system.

CONSTITUTIONAL PROVISIONS

Article 74–Council of Ministers to aid and advise President:

- There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. However, the President may require the Council of Ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.
- The advice tendered by Ministers to the President shall not be inquired into in any court.

Article 75–Other Provisions as to Ministers:

- The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.
- The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. The provision was added by the 91st Amendment Act of 2003.
- A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.
- The ministers shall hold office during the pleasure of the President.
- The council of ministers shall be collectively responsible to the Lok Sabha.
- The President shall administer the oaths of office and secrecy to a minister.
- A minister who is not a member of the Parliament (either house) for any period of six consecutive months shall cease to be a minister.



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- The salaries and allowances of ministers shall be determined by the Parliament.

NATURE OF ADVICE BY MINISTERS

Article 74 provides for a council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The 42nd and 44th Constitutional Amendment Acts have made the advice binding on the President. Further, the nature of advice tendered by ministers to the President cannot be enquired by any court.

APPOINTMENT OF MINISTERS

The Prime Minister is appointed by the President, while the other ministers are appointed by the President on the advice of the Prime Minister.

Usually, the members of Parliament, either Lok Sabha or Rajya Sabha, are appointed as ministers. A person who is not a member of either House of Parliament can also be appointed as a minister. But, within six months, he must become a member (either by election or by nomination) of either House of Parliament, otherwise, he ceases to be a minister.

Oath and Salary of Ministers

Before a minister enters upon his office, the president administers to him the oaths of office and secrecy. In his oath of office, the minister swears:

- to bear true faith and allegiance to the Constitution of India,
- to uphold the sovereignty and integrity of India,
- to faithfully and conscientiously discharge the duties of his office, and
- to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

The salaries and allowances of ministers are determined by Parliament from time to time. A minister gets the salary and allowances that are payable to a member of Parliament.

RESPONSIBILITY OF MINISTERS

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 75 clearly states that the council of ministers is collectively responsible to the Lok Sabha.

The principle of collective responsibility also means that the Cabinet decisions bind all cabinet ministers (and other ministers) even if they differed in the cabinet meeting.

Individual Responsibility

Article 75 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the president, which means that the President can remove a minister even at a time when the council of ministers enjoys the confidence of the Lok Sabha. However, the President removes a minister only on the advice of the Prime Minister.

COMPOSITION OF THE COUNCIL OF MINISTERS

The council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state,⁵ and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the Prime Minister—the supreme governing authority of the country.

The ministers of state can either be given independent charge of ministries/departments or can be attached to cabinet ministers.

Next in rank are the deputy ministers. They are not given independent charge of ministries/departments. They are attached to the cabinet ministers or ministers of state and assist them in their administrative, political, and parliamentary duties.



Distinction Between Council of Ministers and Cabinet

<i>S. No.</i>	<i>Council of ministers</i>	<i>Cabinet</i>
1.	It is a wider body consisting of 60 to 70 ministers.	1. It is a smaller body consisting of 15 to 20 ministers.
2.	It includes all the three categories of ministers, that is, cabinet ministers, ministers of state, and deputy ministers.	2. It includes the cabinet ministers only. Thus, it is a part of the council of ministers.
3.	It does not meet, as a body, to transact government business. It has no collective functions.	3. It meets, as a body, frequently and usually once in a week to deliberate and take decisions regarding the transaction of government business. Thus, it has collective functions.
4.	It is vested with all powers but in theory.	4. It exercises, in practice, the powers of the council of ministers and thus, acts for the latter.
5.	Its functions are determined by the cabinet.	5. It directs the council of ministers by taking policy decisions which are binding on all ministers.
6.	It implements the decisions taken by the cabinet.	6. It supervises the implementation of its decisions by the council of ministers.
7.	It is a constitutional body, dealt in detail by the Articles 74 and 75 of the Constitution. Its size and classification are, however, not mentioned in the Constitution. Its size is determined by the prime minister according to the exigencies of the time and requirements of the situation. Its classification into a three-tier body is based on the conventions of parliamentary government as developed in Britain. It has, however, got a legislative sanction. Thus, the Salaries and Allowances Act of 1952 defines a 'minister' as 'member of the council of ministers, by whatever name called, and includes a deputy minister'.	7. It was inserted in Article 352 of the Constitution in 1978 by the 44th Constitutional Amendment Act. Thus, it did not find a place in the original text of the Constitution. Now also, Article 352 only defines the cabinet saying that it is 'the council consisting of the prime minister and other ministers of cabinet rank appointed under Article 75' and does not describe its powers and functions. In other words, its role in our politico-administrative system is based on the conventions of parliamentary government as developed in Britain.
8.	It is collectively responsible to the Lower House of the Parliament.	8. It enforces the collective responsibility of the council of ministers to the Lower House of Parliament.

Kitchen Cabinet

KITCHEN CABINET

The cabinet, a small body consisting of the prime minister as its head and some 15 to 20 most important ministers, is the highest decision-making body in the formal sense. However, a still smaller body called the

'inner Cabinet' or 'Kitchen Cabinet' has become the real centre of power. This informal body consists of the prime minister and two to four influential colleagues in whom he has faith and with whom he can discuss every problem. It is composed of not only cabinet ministers but also outsiders like friends and family members of the prime minister.



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CABINET COMMITTEES

The cabinet works through various committees. The following points can be noted with regard to cabinet committees:

- They are extra-constitutional as they are not mentioned in the Constitution. However, the Rules of Business provide for their establishment.
- They are of two types—standing and *ad hoc*. The former are of a permanent nature while the latter are of a temporary nature.
- They are set up by the prime minister according to the exigencies of the time and requirements of the situation.
- Their membership varies from three to eight.
- They are mostly headed by the prime minister. Sometimes, other cabinet ministers particularly the home minister or the finance minister also act as their chairman.
- They are an organisational device to reduce the enormous workload of the cabinet.
- The more important standing committees are four—Political Affairs Committee, Economic Affairs Committee, Appointments Committee and Parliamentary Affairs Committee. The first three are chaired by the prime minister and the last one by the home minister. Of all the cabinet committees, the most powerful is the Political Affairs Committee, often described as a 'Super-Cabinet'.

