

CONSTITUTIONAL LAW | UNIT – II

Executive, Parliament & Council of Ministers

Expanded Edition • 20+ Slides • High-Yield Focus for Judiciary & LLB

What Previous Papers Repeatedly Ask

Highest Frequency

Position of President as Constitutional Head vs Real Executive (PM + Council). Ordinance making power (Art. 123). Collective Responsibility.

Very High Frequency

Governor's discretionary powers and role in hung assemblies. Powers of Lok Sabha vs Rajya Sabha. Money Bills procedure.

High Frequency

Impeachment of President. Pardoning power (Art. 72). Relationship between President and Council of Ministers (Art. 74).

How to Score

Always write: Constitutional provision → Principle → Landmark case → Current position. Examiners reward structure + case names.

Constitutional Position – Articles 52–62

The President is the Head of the State and the formal executive authority of the Union. All executive action is taken in the name of the President (Art. 53 & 77). However, he is a constitutional head who acts on the aid and advice of the Council of Ministers (Art. 74).

Nominal Executive

Like the British Crown – formal head, not the real decision maker in normal circumstances.

Real Executive

Council of Ministers headed by the Prime Minister. President is bound by their advice (42nd & 44th Amendments).

Key Case

Shamsher Singh v. State of Punjab – President and Governor are constitutional heads; real power with Council of Ministers.

Exam Point

Always contrast 'constitutional head' with 'real executive'. Quote Art. 74 and Shamsher Singh.

Articles 54, 55 & 61

Electoral College

Elected members of both Houses of Parliament + elected members of Legislative Assemblies of States and UTs with Assemblies.

Value of Votes

Uniformity among States and parity between Union and States. Calculated by population formula under Art. 55.

System

Proportional representation by means of single transferable vote. Secret ballot.

Impeachment (Art. 61)

Only for 'violation of the Constitution'. Process can start in either House. Special majority required. President has right to appear and be represented.

Important Point

No President has been impeached so far. The process is deliberately made difficult.

Exam Tip

Distinguish election of President from election of Vice-President (who is elected only by members of Parliament).

01 • POWERS OF THE PRESIDENT

Executive, Legislative, Judicial & Emergency

Executive Powers

All executive action in his name.
Appoints PM, Ministers,
Governors, Judges, CAG, EC, etc.
Supreme Commander of Armed
Forces.

Legislative Powers

Summons, prorogues, dissolves
Lok Sabha. Addresses
Parliament. Assents to Bills.
Ordinance power under Art. 123.

Judicial / Pardoning

Art. 72 – Pardons, reprieves,
respites, remissions,
commutations. Includes death
sentence cases. Subject to limited
judicial review (Kehar Singh).

Emergency Powers

Proclaims National Emergency
(352), President's Rule (356),
Financial Emergency (360). These
are exercised on Cabinet advice.

Diplomatic

Represents India in international
affairs. Negotiates and concludes
treaties (subject to parliamentary
law).

Key Limitation

In almost all matters he is bound
by the advice of the Council of
Ministers (Art. 74 as amended).

Article 123 – High Yield Topic

When both Houses of Parliament are not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action, he may promulgate an Ordinance. It has the same force as an Act of Parliament but is temporary.

Conditions

Houses not in session + satisfaction of necessity for immediate action. Satisfaction is subject to judicial review on limited grounds.

Duration

Must be laid before Parliament. Ceases to operate 6 weeks after reassembly unless approved earlier. Maximum life ~ 7.5 months without approval.

Landmark Case

Krishna Kumar Singh v. State of Bihar – Re-promulgation of ordinances without placing them before legislature is a fraud on the Constitution.

Exam Point

Ordinance is not a parallel law-making power. It is an emergency legislative tool and is subject to legislative supremacy and judicial review.

Constitutional Position – Arts. 153–162

Appointment & Tenure

Appointed by President (Art. 155). Holds office during the pleasure of the President (Art. 156). No fixed security of tenure.

Constitutional Head

Executive power of the State is vested in the Governor (Art. 154). Acts on aid and advice of Council of Ministers (Art. 163) except in discretionary areas.

Discretionary Powers

Reservation of Bills for President's consideration, recommendation for President's Rule, choice of CM in hung assembly, dismissal of ministry that has lost confidence (controversial).

Key Cases

Nabam Rebia (2016) – Governor's discretion is not absolute.
Shamsher Singh – Governor is constitutional head. Bommai – Floor test is the proper method.

Controversy

Role of Governor in opposition-ruled States has been repeatedly litigated. Courts have emphasised constitutional limits on discretion.

Exam Tip

Always discuss: (1) normal rule of aid and advice, (2) limited discretion, (3) Bommai + Nabam Rebia limits.

Bicameral Structure

Lok Sabha (House of the People)

- Maximum strength 552
- Directly elected by people
- Term – 5 years (unless dissolved)
- Money Bills can originate only here
- Council of Ministers responsible to it
- Speaker is the presiding officer
- Can be dissolved by President on advice of PM

Rajya Sabha (Council of States)

- Maximum 250 members
- Indirectly elected by State Assemblies
- Permanent House (not subject to dissolution)
- 1/3rd members retire every 2 years
- Represents States of the Union
- Limited role in Money Bills
- Can suggest but not force amendments on Money Bills

Legislative, Financial, Executive Control & Constituent

Legislative

Can make laws on Union List and Concurrent List. Residuary powers (Art. 248). Can legislate on State subjects in certain situations (249, 250, 252, 253).

Financial

No tax can be levied without authority of law. Budget, Appropriation Bills, Money Bills. Control over executive expenditure.

Executive Control

Collective responsibility of Council of Ministers. Questions, motions, no-confidence motion, adjournment motions.

Constituent Power

Power to amend the Constitution under Art. 368 (subject to basic structure).

Electoral

Participates in election of President and Vice-President. Can impeach President and remove judges, CAG, EC etc.

Other

Approval of Emergency proclamations, creation of All-India Services, regulation of Supreme Court strength, etc.

High-Yield Procedural Topic

A Bill is a Money Bill if it contains only provisions dealing with taxation, borrowing, Consolidated Fund, Contingency Fund, audit of accounts, etc. The Speaker's certificate that a Bill is a Money Bill is final.

Who can introduce?

Only in Lok Sabha and only with the recommendation of the President.

Rajya Sabha Role

Cannot amend or reject. Can only make recommendations within 14 days. Lok Sabha may accept or reject them.

Speaker's Role

Certificate of Speaker is conclusive. Courts have shown reluctance to interfere (though some recent observations exist).

Exam Trap

Do not confuse Money Bill with Financial Bill. All Money Bills are Financial Bills but not vice versa.

Composition & Powers

Unicameral vs Bicameral

Most States have only Legislative Assembly. Some States have Legislative Council (Vidhan Parishad) as second chamber.

Legislative Assembly

Directly elected. Strength varies.
Term 5 years unless dissolved.
Real seat of power at State level.

Legislative Council

Permanent body where it exists.
Members elected by local bodies, graduates, teachers, MLAs + nominated.

Powers

Legislate on State List and Concurrent List. Money Bills only in Assembly. Governor's assent required.

Creation / Abolition of Council

Parliament can create or abolish Legislative Council of a State on the request of the State Assembly (Art. 169).

Key Limitation

Parliament can legislate on State subjects under Arts. 249, 250, 252, 253 and during Emergency.

Articles 75(3) & 164(2) – Core of Parliamentary System

The Council of Ministers is collectively responsible to the House of the People (Lok Sabha) at the Centre and to the Legislative Assembly at the State. This is the fundamental principle of parliamentary government.

Meaning

All ministers swim or sink together. A no-confidence motion against the government is against the entire Council.

Individual Responsibility

Each minister is also responsible for the acts of his own department and can be removed individually.

Consequence of Defeat

If the government loses the confidence of the House, it must resign or advise dissolution (in certain situations).

Bomma Principle

Majority is to be tested on the floor of the House, not by the subjective satisfaction of the Governor/President alone.

Position and Functions

Appointment

President appoints the leader of the majority party/coalition in Lok Sabha as Prime Minister.

Head of Government

Real executive authority. Head of the Council of Ministers. Principal advisor to the President.

Key Functions

Recommends names of ministers, allocates portfolios, presides over Cabinet, coordinates ministries, advises on dissolution of Lok Sabha.

Link with President

Channel of communication between President and Council of Ministers (Art. 78).

Resignation

If PM resigns, the entire Council resigns. Loss of majority requires resignation or floor test.

Exam Point

PM is the keystone of the Cabinet arch. His position is far stronger than that of any other minister.

Position at the State Level

Appointment

Governor appoints the leader of the majority in the Legislative Assembly as Chief Minister.

Real Executive

Similar to PM at the State level. Head of the State Council of Ministers.

Functions

Recommends ministers, allocates portfolios, advises Governor, coordinates administration, leads the party in the State.

Relation with Governor

Governor is bound by CM's advice in most matters. Discretion of Governor is limited and justiciable.

Hung Assembly

Governor's choice of CM in hung assembly has been a frequent source of controversy and litigation.

Collective Responsibility

Council of Ministers headed by CM is collectively responsible to the Legislative Assembly (Art. 164).

Must-Remember Decisions

Shamsher Singh (1974)

President and Governor are constitutional heads. Real executive power with Council of Ministers.

S.R. Bommai (1994)

Floor test is the proper method to test majority. Judicial review of Art. 356. Secularism is basic structure.

Nabam Rebia (2016)

Governor's discretion is not absolute. Must be exercised within constitutional limits.

Krishna Kumar Singh

Re-promulgation of ordinances without legislative consideration is unconstitutional.

Kehar Singh (1989)

Pardoning power under Art. 72 is subject to limited judicial review.

U.N.R. Rao (1971)

Council of Ministers remains in office even after dissolution of Lok Sabha till new government is formed.

Quick Revision Table

Point	President	Governor
Appointment	Elected by electoral college	Appointed by President
Tenure	5 years (impeachment possible)	Pleasure of President
Real Power	With PM + Council	With CM + Council
Discretion	Very limited	Limited but more visible controversies
Ordinance	Art. 123	Art. 213
Removal	Impeachment	Dismissal by President

Must-Remember Points

01 President is Constitutional Head
Real power with PM + Council (Art. 74 + Shamsher Singh).

02 Ordinance is Temporary
Art. 123 – subject to legislative approval and judicial review (Krishna Kumar Singh).

03 Governor's Discretion is Limited
Nabam Rebia + Bommai – floor test and constitutional limits.

04 Collective Responsibility
Core of parliamentary system. Council responsible to Lok Sabha / Assembly.

05 Money Bills
Only Lok Sabha; Speaker's certificate; Rajya Sabha has only recommendatory role.

06 PM is the Keystone
Head of government, link with President, leader of majority.

End of UNIT – II

Executive • Parliament • Council of Ministers

Next: UNIT-III (Speaker, Anti-Defection & Judiciary)