

Constitutional Law and Public Administration in India

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Week- 08

Lecture-01

Union Executive

In India, there are three organs of the government. The legislature, the executive, and the judiciary. In a layman's understanding, the legislature is responsible for making the laws of the state. Once the laws are made by the state, the executive is responsible for implementing the laws framed by the legislature. The Indian judiciary safeguards the laws that have been made by the legislature. The Indian judiciary takes care of the interpretation and the adjudication of the law. And therefore, it is also known as the guardian to the Indian Constitution.

But, these three organs do not have a complete watertight compartment in the government setup. The three organs, though different, come together in certain circumstances, while their duties are being delivered to the citizens of the country. Article 52 of the Indian Constitution tells us who all are covered under this union executive. The first is the President of India, then we have the Vice President of India, and then we have the Council of Ministers with the Prime Minister as the head which aids and advises the President on various matters in which the President seeks clarification.

The executive also extends to the officers of the Government of India, to the officers of the state government, and who are in the various roles to execute the policies of the government to execute the various instances of the Government of India at various levels. These are primarily the face of the executive, but the entire body of the executive runs through all the officers that are there in the Government of India, who are carrying out the duty on behalf of these people to serve the citizens of our country. It is well understood that earlier states used to be a police state, and therefore the only function of the executive was to implement laws.

How is the executive relevant in the contemporary era? When we need to answer this question, we need to understand that the executive in the initial days was only confined to a few things, that it only had the police function, and therefore it was kn as the police state. But in the present time, the notion of state has changed from police state to a welfare state and the function of the executive has also changed. Today, India is not only a police state,

it is a welfare state. India does not only take care of the law and order, however, it also takes care of the needs of the people in order to provide them a good environment, clean drinking water, various kinds of facilities, we take up the road transport, we take up the metro transport in various cities, railways, aeroplanes, or aircrafts, airports, these are some things that the state is developing for the welfare of the citizens, and therefore it has shifted from a police state to an executive state. So while answering a question like this, we need to mention what it was, how a police state is different from an executive state, and this difference needs to be brought into light. And today, the function of the executive is not only limited to the implementation of laws, but it can also make laws.

It runs an administration of the state also, and it also performs judicial functions. how does it do it? And how does it make a law? There is something called an ordinance that can be made under the constitution of India. Ordinances are not made by the legislators, ordinances are generally made by officers of the government, because they need to tackle some law-and-order situation, or they need to implement some scheme at an immediate time. For instance, there is a natural disaster, and the natural disaster requires a very quick response, and the quick response requires an ordinance to be passed. , it is quite impossible to assemble all the members of the legislative assembly or the Indian parliament together to pass a law.

Therefore, that officer will pass an ordinance that is required to undertake or to bring in control of the scenario that has arisen. So, in this manner, the executive also plays the role of framing a law. , that is a different thing that this ordinance needs to be passed by the legislature. But in a sense, there are no watertight compartments. So, the executive, the legislature and the judiciary, go hand in hand while rendering the services for the citizens of this country.

They also adopt and serve in the judicial functions of the country. Let's see this with an example of an IAS officer. A district collector also holds the charge of the district magistrates in some districts in India. So, the district magistrate also becomes a judicial authority in which he hears the grievances of the people, on various issues. For example, in a few districts in Orissa, there is the sub collector who is the first authority to hear a dispute arising out of a revenue matter.

If a land has been grabbed by some land mafias in a mala fide intent or in the bad spirit of law, the first appeal or the first case that will be filed will be before the tehsildar. And whatever order the tehsildar passes will then come before the sub collector and the sub collector, mind you, is an IAS officer. So, the sub-collector will discharge the duty as a judicial officer and then will say how this matter is bad in law or not bad in law when both the parties will appear before the revenue court. And after the sub collector's judgment, the matter will go to a revenue court. So, therefore, this is how the intricate web of executives is there in our country.

Coming to the union executive with the President. The President has dual functions, and the President is also the commander in chief of India's defence forces. The President is the titular head of the executive and all the executive function of the state is taken on his name. Therefore, all the contracts that are entered by the government will be entered on behalf of the President of India by the representative of the Presidents.

And he is also a crucial part in the legislative making or in the legislative process of the country. No bill that has been drafted and has been debated and finally approved by the legislature can become an act without the assent of the parliament or without the assent of the President of India. So, once the parliament passes the bill, once the bill has been passed by the parliament by both the houses of the parliament, it is the President who will eventually sign. Recent three bills that have been included that will be replacing the Indian Penal Code, the Criminal Procedure Code and the Evidence Act, all these three bills, all these three acts that are currently being replaced with the Nyaya Sanhita bills and which have become a law are something that has been given an assent, which has been signed by the President of India.

In the landmark case of *Ram Jawaya Kapoor v State of Punjab*, the Supreme Court held that the executive functions comprise the whole corpus of authority to govern other than that which is involved in the legislative functions of parliament and the judicial functions of the courts. In simple terms, it means that an executive function is one which is other than legislative and judicial functions. Please note, even in the Indian parliament, there is an executive function going on. When you see the Indian parliament, there will be a table just below where the speaker sits and that is where the bureaucrats sit. They take a note of all the proceedings that happen in the house.

They take a note of all the debates that are governed or that are shared in the house, the different kinds of debates and ideas, ideologies, the criticism, the presentation of every bill, everything is categorically noted down by the bureaucrats who sit there and this is also an executive function that happens in the legislative house of the Indian parliament. As it is mentioned in this case law, everything that takes place in a court of law as well. Other than the judge passing the judgment, the procedure involved in the court of law, wherein an application is filed and the same is passed by the registry, the registry will approve it. Everything will be termed as an executive function. So, with this, let us see the President's role and the qualifications to become the President of India.

Only a citizen of India can be the President of India and if one intends to be a President of India, he, his or her age must not be less than 35 years and he must be qualified as an MP or an MLA to be a member of the Lok Sabha. , these are the only criteria that are required to be a President of India and even a normal citizen like you and I, once we cross the age of 35 years and if we are an Indian citizen and we qualify to be a member of either house of the parliament, we can put in our application to be the President of India. In a quick

trivia, after Pranab Mukherjee's tenure got over, some 27,000 applications were sent to the Rashtrapati Bhavan as applicants to be the President of India. More so, even a rickshaw waala had put in an application to become the President of India.

So, these are the only three criteria that are required to be the President of India. The term of the office of the President is five years and he is eligible for re-election and therefore Rajendra Prasad was re-elected as the President of India. His removal from office is to be in accordance with the procedure prescribed under Article 61 of the Constitution of India and he may by writing under his hand, give it to the Vice-President his resignation.

So, this is with regards to who can become a President, what is his term of office, his eligibility and how is he to be removed and on his own will, yes, he can be removed if he puts the resignation to the Vice-President of India in writing under his own hand. And the President of India is elected by the members who are members of an electoral college. Who are the members of this electoral college? They are first elected members of both houses of parliament that is Lok Sabha and Rajya Sabha and legislative assemblies of the state. It is legislative assemblies because some states have a legislative assembly and they also have the upper house, Vidhan Sabha, and Vidhan Parishad; and in accordance with the system of proportional representation by means of a single transferable vote, all these people they put in votes in a ballot box and then they are counted.

Political parties also back Presidential candidates and that is why most of the applications get rejected and only a few eventually come to be the President of India in the election, in the final elections. So, all members of both the houses of the parliament of all the state legislatures, it can be of the legislative assembly or the legislative council, all of them will put one vote each and whoever wins will become the President of India. And to secure uniformity among the state inter-se as well as the parity between the states as a whole, suitable weightage is given to each vote that means every MP MLA or a member of the Rajya Sabha or a legislative council or that we say the Vidhan Parishad has only one value in the vote that is casted by them. So, this is with regards to the qualification of the President, who can be the President, how the resignation works, who can vote for the President of India and how is the voting system to be elected as the President of India.

What are the powers of the executive? Article 53 of the Indian Constitution, it categorically states the executive power of the union is vested in the President and is exercised by him either directly or through officer's subordinate to him in accordance with the constitution. He is also the supreme commander of the defence forces of the union that also vests with him. So, whenever there is a war that needs to be declared, the same needs to be declared in the name of the President or the President needs to declare that India shall be going to war. The President can promulgate ordinances when both houses of parliament are not in session. Ordinances are laws that needs to be brought into place to tackle a particular

scenario. The President can also make recommendations for introducing financial and money bills and give assent to bills.

Every bill before becoming an Act needs to be signed by the President of India. The President can grant pardons to some prisoners if they bring in an application before the President, reprieve, respite or remission of punishment or suspense and remits or commutes sentences in certain cases. And under Article 75, the prime minister also shall be appointed by the President and other ministers shall be appointed by the President on the advice of the prime minister. Therefore, whenever we see a new government taking over, it is the President who reads out the oath first, then the prime minister reads out and then the prime minister gives a list to the President that these will be the council of ministers in my cabinet and then the President calls upon each of the minister to take an oath that is solemnly served by the President of India.

When there is a failure of the constitutional machinery in a state, the President can assume to himself all or any of the functions of the government of that state. How does the President function as a lone power when the constitutional machinery of a state goes into turmoil? There are cabinet secretaries, there are officers in the Indian administrative service and various services and these officers who are the permanent executives, they come and aid the President of India. There are two kinds of executives as well, the temporary executive and the permanent executive. Every political leader is a temporary executive and IAS officer, or a government servant is a permanent executive. So, a permanent executive will come in the aid and assistance of the President of India in case of a constitutional machinery failure.

The President can proclaim emergency in the country if he or she is satisfied that a grave emergency exists whereby security of India or any part of its territory is threatened whether by law or external aggression or armed rebellion. The President can declare an emergency on the written aid and advice by the council of ministers. While we have seen this case, please note in *Ram Jawaya Kapoor* case, the Supreme Court held that though the executive power is vested with the President, he is only a formal or a constitutional head of the executive. The real power is vested in the council of ministers on whose aid and advice the President exercises his function. And in the case of *UNR Rao versus Indira Gandhi* in 1971, the Supreme Court held that the harmonious reading of articles 74(1), 75(2) and 75(3) is that the President must exercise his powers on the aid and advice of the council of ministers.

Does this mean that the President does not have any real power? Well, the answer can be a no and a yes. When we had Giani Zail Singh as the President of India, he had exercised pocket veto. When a bill is sent to the President of India, he is bound to sign that bill to become an Act. But what if the President does not like the contents of the draft bill? He can send it back to the legislature to be reconsidered. However, there is a power vested

with the President of India that if he does not like a particular bill, he can reserve that particular bill and keep it within himself, that is pocket veto in a sense or in literal terms, it means he will take the bill and keep it in his pocket and he will not give his assent and no one can force him to give his assent. So this is a power that is vested with the President of India and Giani Zail Singh had done this with the post office bill when it was introduced way back then.

Coming to the second most important executive in terms of ranks in the Indian government which is the Vice President of India. The Vice President is elected by an electoral college representing or consisting members of both houses of parliament in accordance with the system of proportional representation by means of a single transferable vote. The criteria are: he must also be a citizen of India not less than 35 years of age and eligible for election as a member of the Rajya Sabha. His term of office is five years, and he is also eligible for reelection. His removal from office needs to be in accordance with the procedure prescribed in article 67B. The Vice President is also the ex-officio chairman of the Rajya Sabha and acts as the President when the latter is unable to discharge his functions due to absence, illness, or any other cause or till the election of a new President to be held within six months when a vacancy is caused by death, resignation, or removal or otherwise of the President of India. While acting so, he ceases to perform the function of the chairman of the Rajya Sabha. And the eldest MP becomes the chairman of the Rajya Sabha in such a scenario.

There's only one person in the history of India who has served three positions. that is the President of India, the Vice President and the Chief Justice of the Supreme Court, Justice Hidayatullah. In case the President dies without a Vice President in office, the Chief Justice assumes the charge of the President of India and if the Chief Justice is not there, the acting Chief Justice or the senior most judge of the Supreme Court becomes the President of India. With this, we come to Article 74 of the Indian Constitution, that is the spirit of the executive in India. There is a council of ministers headed by the prime minister to aid and advise the President in the exercise of his functions.

The prime minister is appointed by the President who appoints other ministers on the advice of the prime minister and the council is collectively responsible to the Lok Sabha. It is the duty of the prime minister to communicate to the President all decisions of the council of ministers relating to administration of affairs of the union and proposals for legislation and information relating to them. The council of ministers comprises ministers who are members of the cabinet, ministers of state and independent charge and ministers of state and deputy ministers. So, all these people will be the cabinet ministers and they are the part of the executive. Is it so that the executive can do whatever and they will not be liable? No, the executive shall be liable for their acts.

Under Article 75(3), which is collective responsibility, it means that the council of ministers are responsible to the house of the people, that is the Lok Sabha, not as individuals but as collective ministers. The principle of collective responsibility is both the cause and effect of the cabinet functioning, which means that the cabinet decisions bind all cabinet ministers irrespective of their opinions and ideologies. And under Article 75(3), the principle of collective responsibility applies only when the house of people is in existence and not when it is dissolved or procured. In the year 1998 or 1997, when Atal Bihari Vajpayee was the Prime Minister of India, he had given a speech that his government failed to secure the majority by a mere one vote and therefore they had to leave, his entire government must resign. This is collective responsibility.

When your government loses the faith of the people, of the house of the people, you must resign. And then we have the emergency provision, which is quite unique. We have taken the emergency provision from the Constitution of Germany. Part XVII of the Constitution of India from Articles 352 to 360 deals with the emergency provisions. The Constitution envisages three types of emergencies.

First is a national emergency. Second is a state emergency and the third is a financial emergency. The former two have been implemented. The second, the state emergency has been implemented numerous times by various states, which is also called the failure of the constitutional machinery in a state, wherein the governor takes charge of the functioning of a state from the chief minister and the MLAs of that state. Mr. Manmohan Singh, as finance minister who was led by the Prime Minister P V Narasimha Rao, was on the verge of a financial emergency, but he sold or he kept the Indian gold in reserve and secured the Indian finances.

So, we have never had a financial emergency. We have only had a national emergency once during the tenure of Indira Gandhi, when she had imposed a nationwide emergency. The emergency provisions are under Article 352 of the Constitution, which talks about the proclamation of emergency. And under Article 352, one, if the President is satisfied that a grave emergency exists, whereby the security of India or any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he can proclaim a declaration to that effect to the whole or any part of India. The word external aggression has been added, armed rebellion has been added. The proclamation shall be issued only when a written communication for the same is conveyed by the President, by the union cabinet, that is the Prime Minister and other ministers of the cabinet.

The President cannot on his own proclaim an emergency. With regards to the state emergency, Article 355 imposes a twofold duty on the centre to protect every state against external aggression and internal disturbance, and to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. And under Article 356, one, if the President on receipt of a report from the governor of a state or otherwise is

satisfied that a situation has arisen in which the government of a state cannot be carried out in accordance with the provisions of this Constitution, he may proclaim a state emergency.

So, the governor of a state writes to the President and then a state emergency is imposed on a particular state. In the northeast, especially Meghalaya is one of the states where this, the President's role has been imposed in quite a lot of time, wherein the governor takes charge along with the bureaucrats or the chief secretary in that state. And recently, this has happened in the state of Maharashtra. The governor plays a very critical role during his tenure, that is, he writes a report to the President, he or she writes a report to the President of India every fortnight, that is every 14 days, updating the President as to how the state. In the ADM Jabalpur case, the Supreme Court said during the national emergency that certain fundamental rights stand suspended like the writs of habeas corpus. There was only one judge, Justice H.R. Khanna, who said that this right or this fundamental right cannot be taken away from individuals.

And in the year 1975, the PM declared a national emergency under Article 352, suspending fundamental rights of Article 14, 19 and 21. The SC upheld the suspension of fundamental rights, but the only judge to give a dissenting opinion was Justice H.R. Khanna. And the Supreme Court in *Puttaswamy* case overruled the *ADM Jabalpur* case and upheld the fundamental rights. So what Justice H.R. Khanna in 1975 was reversed somewhere after the 2020s. In *S.R. Bommai v. Union of India*, a landmark case in matters of proclamation of state emergency in which the Karnataka High Court held that the Presidential proclamation of state emergency is justifiable in the court of law.

And in this case, it is the matter of the governor's rule. So, if the state machinery fails to function the governor can take over. Financial emergency, 360, financial emergency, hasn't been imposed or proclaimed in India till date. Article 123 of Part V of the Constitution deals with the legislative powers of the President and talks about the President's power to promulgate ordinances during recess of parliament. So when both houses of the parliament are not in session, and if the President is satisfied that circumstances exist which rendered necessary for him to take immediate action, he may promulgate an ordinance.

An ordinance promulgated under this article shall have the same force that an Act of the parliament, but it ceases to have force of the expiration of six weeks from the date of the reassembly of the parliament. Executive privilege, being the head of the state, the President at the centre and the governor at the state enjoy quite a lot of privileges. And Article 361 talks about these privileges and is observed as the President is not answerable to any court for exercise and performance of the powers and duties of his office or any act done or purporting to be done in exercise and performance of those powers and duties. So, a President cannot be summoned by any court and no criminal proceedings whatsoever can be instituted or continued against the President or the Governor of a state in any court

during his term of office. Once he admits his office, the proceedings can be initiated again. And no process for the arrest or imprisonment of the President or Governor shall be issued from any court during his term of office. So, no court can summon the President or the Governor. That is the role of the union executive