

Unit 14. COM, Prime Minister and Attorney General (Articles 74-78)



Chapter I (Executive) of Part V of the Constitution (Union) deals with President, Vice-President, Council of Ministers (COM) headed by Prime Minister and Attorney General. Having already discussed about President and Vice-President, let's concentrate now on COM, Prime Minister and Attorney General. While Indian President is the head of the state, Indian Prime Minister is the head of the government.

Council of Ministers

Article 74 : Council of Ministers to aid and advise President

(1) 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:

Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

Article 75: Other provisions as to Ministers

(1) 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.

(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent. of the total number of members of the House of the People.

(1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on

which he is declared elected, whichever is earlier.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

The Attorney-General for India

Article 76 : Attorney-General for India.

(1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney- General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

Conduct of Government Business

77. Conduct of business of the Government of India.—(1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

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Article 78 : Duties of Prime Minister as respects the furnishing of information to the President, etc.

—It shall be the duty of the Prime Minister—

(a) 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;
 (b) 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
 (c) 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.

Info Bits Related with COM, PM and AG

1. The prime minister is responsible for aiding and advising the president in distribution of work of the Government to various ministries and offices and in terms of the *Government of India (Allocation of Business) Rules, 1961*. The co-ordinating work is generally allocated to the Cabinet Secretariat.
2. By Article 75 of the constitution of India, remuneration of the prime minister as well as other ministers are to be decided by the Parliament. In 2010, the prime minister's office reported that he did not receive a formal salary, but was only entitled to monthly allowances.
3. The Attorney General, like an Advocate General of a State is not supposed to be a political appointee, in spirit, but this is not the case in practice. Every time a party comes to power in the general elections, all the law officers resign and law officers loyal to the new party are appointed.
4. The Attorney General has the right of audience in all Courts in India as well as the right to participate in the proceedings of the Parliament, though not to vote.
5. Unlike the Attorney General of the United States, the Attorney General of India does not have any executive authority, and is not a political appointee, those functions are performed by the Law Minister of India.
6. The Attorney General is assisted by a Solicitor General and four Additional Solicitors General. (Non-constitutional posts.)
7. The Cabinet is a smaller body than Council of Ministers which consists of a few important senior ministers who are in charge of separate departments. The Cabinet is described as "a wheel within a wheel". It is the nucleus of the Council of Ministers.
8. Cabinet exercises all powers on behalf of the Council of Ministers. The policy decisions are taken in the Cabinet.
9. There are three categories of ministers (COM), in descending order of rank:
 - Union Cabinet Minister: senior minister in-charge of a ministry. A cabinet minister may also hold additional charges of other Ministries, where no other Cabinet minister is appointed.
 - Minister of State (Independent Charges): with no overseeing Union cabinet minister for that portfolio.
 - Minister of State (MoS): junior minister to overseeing cabinet minister, usually tasked with a specific responsibility in that ministry. For instance, an MoS in the Finance Ministry may only handle taxation.





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