

Competitive Exams: Council of Ministers

Council of Ministers

- Article 74 (1) provides that There shall be a Council of Ministers with the Prime Minister as its head to aid and advice the President who shall, in exercise of his functions act in accordance with such advice.
- Article 75 (1), the Prime Minister shall be appointed by the President and other Ministers shall be appointed by the President on the advice of the Prime Minister.
- The Council of Ministers is formed as soon as the Prime Minister is sworn in:
- The number of the Ministers in the Council has been fixed in the Constitution, where the number has been provisioned not to exceed 15% of the number of the MPs in the Lower House.
- The Prime Minister has the right to refer to the President, the removal of dissident minister (s) because technically the ministers are responsible individually to the President.
- The Council of Ministers consists of three categories of ministers-Ministers of Cabinet rank, State Ministers and Deputy Ministers. Cabinet Ministers are the senior most Ministers to head a department with portfolio.
- They constitute the Cabinet and have the right to attend all the Cabinet meetings convened by the Prime Minister.
- The word Cabinet Ministers has been incorporated into the Constitution through the 44th Amendment Act in Article 352.
- The Cabinet is the smaller body of the Council of Ministers.
- Ministers of State are lower in rank to Cabinet Ministers and normally assist the latter.
- Ministers of State are paid the same salary as the Cabinet Ministers, usually they are not given independent charge of a ministry but the Prime Minister has the prerogative to allot an independent charge if he desires so.
- They cannot attend the Cabinet meetings normally but can be invited to attend them.
- The Deputy Minister cannot hold independent charge and always assist the Cabinet or State Minister or both.
- They never attend the Cabinet meetings.

- They are paid lesser salary than the Cabinet rank ministers.
- The Cabinet is the supreme policy making body.
- The Cabinet is an extra Constitutional growth based upon convention. Note: All Council of Ministers are not the members of the Cabinet.
- A Minister can be a member of either House of the Parliament, but he is liable to vote in the House to which he belongs.
- A person not belonging to any House can be appointed as a Minister but he has to get elected to either House within a period of six months, [Art75 (5)].
- Non-member cannot be re-appointed without being elected.
- According to article 75 (2), Ministers hold office during the pleasure of the President.

Prime Minister

- In the Scheme of the Parliamentary system of Government provided by the Constitution, the President is the nominal executive (de-jure) authority and the Prime Minister is the real executive authority (de-facto).
- The President is the Head of the State while the Prime Minister is the Head of the Government.
- Dr. B R Ambedkar stated: If any functionary under our Constitution is to be compared with the US President, he is the Prime Minister and not the President of India.
- He is the leader of the party in power.
- He is Political Head of the Services.
- He is the crisis manager-in-chief at the political level during emergency.
- He is the Chief Spokesman of the Union Government.
- He plays a significant role in shaping the foreign policy of the Country.
- As a leader of the Nation, he meets various sections of people in different States and receives memoranda from them regarding their problems.
- He is the ex-officio Chairman of the Planning Commission, National Development Council, National Integration Council and Inter-state Council.
- The Prime Minister plays a very significant and highly crucial role in the politico-administrative system of the Country.

Powers and Functions

In relation to the Council of Ministers:

- He recommends the persons who can be appointed as the Ministers by the President i.e.. the President can appoint only those persons as the 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 advice the President to dismiss him in case of difference of opinion.
- He presides over the meetings of the Council of Ministers and influences its decisions.
- He guides, directs, controls, and coordinates the activities of all the Ministers.
- He can bring about the collapse of the Council of Ministers by resigning from the office any time.
- He can call the meeting of the Cabinet any time.
- He is the Keystone of the Cabinet arch.
- The position of the Prime Minister in the Council of Ministers is described as Primus Inter Pares i.e.. First among equals.
- The so called life and death of the ruling party is the Prime Minister.
- He summons and decides the agenda of the Cabinet meetings. Even the venue of such meetings is decided by the Prime Minister.
- He has right to call for any file from any ministry. This right is basically in pursuance of his role as a coordinator of various ministries.

In Relation to the President

- He advises the President with regard to the appointment of important officials like the Attorney-General of India, the Comptroller and Auditor General of India, the Chairman and the members of the UPSC, the Election Commissioner^{the} Chairman and the Members of the Finance Commission, and so on:
- An advisory body to the President and its advice is binding on him.
- The chief crisis manager and deals with all emergency situations.
- Deals with all major legislative and financial matters.
- Deals with all foreign policies and foreign affairs.
- Exercises control over higher appointments like the Constitutional authorities and senior Secretariat administrators.

Cabinet Committees

The Cabinet works through various committees.

- They are extra-constitutional in emergence. 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.
- The ad hoc committees are constituted from time to time to deal with special problems. They are disbanded after their task is completed.
- They are set up by the Prime Minister according^{to} the exigencies of the time and the requirements of the situation.
- Their number, nomenclature and composition varies from time to time.
- 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. But, in case the Prime Minister is the member of the committee, he invariably presides over it.
- They are an organizational device to reduce the enormous workload of the Cabinet. They also facilitate in-depth examination of policy issues and effective coordination. They are based on the principle of division of labour and effective delegation. There are four more important Committees-Political Affairs Committee, Economic Affairs Committee, Appointments Committee and Parliamentary Affairs Committee. First three are chaired by Prime Minister and 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.

Attorney-General of India

- Article 76 states that the President shall appoint a person who is qualified to be appointed as a Judge of the Supreme Court to be the Attorney-General of India. He is the first legal officer of the Government of India.
- It is convention that, after the change of the Government, the Attorney-General resigns and the new Government appoints one of its own choice.
- He advises the Government of India on any legal matter. He performs any legal duties assigned by the President of India. He discharges any functions conferred on him by the Constitution or the President. In the performance of his duties, the Attorney-General shall have right of audience in all Courts in the territory of India. He shall neither advise nor hold a brief against the Government of India in cases in which he is called upon to advise the Government of India. Nor should he defend accused persons for criminal prosecutions without the permission of the Government of India.
- He is prohibited to take appointment as a Director in any company.

- The Attorney-General represents the Union and the States before the Courts but is also allowed to take up private practice provided, the other party is not the State.
- He is not paid a salary, but a retainer that is determined by the President.
- Although he is not a member of the either House of the Parliament, he enjoys the right to attend and speak in the parliamentary deliberations and meetings (of both the Lok Sabha and the Rajya Sabha), without a right to vote.
- He is entitled to all the privileges and immunities as a Member of the Parliament.
- The retainer of the Attorney-General is equal to the salary, of a Judge of the Supreme Court. He is assisted by two Solicitors-General and four assistant Solicitors-General. The Attorney-General holds office during the pleasure of the President, and receives remuneration as the President may determine.

Comptroller and Auditor General

- Provisions regarding the Comptroller and Auditor General (CAG) are given under Articles 148 – 151.
- He is appointed by the President for a full term of 6 years or 65 years of age whichever is earlier.

Duties of CAG

- To audit the accounts of the Union and the States and submit the report to the President or the Governor, as the case may be.
- To ensure that all the expenditures from the Consolidated Fund of India or States are in accordance with the Law.
- To oversee that the money sanctioned by the Parliament or the State Legislature is being spent for the particular purpose for which it has been issued.
- Also, to audit and report on the receipts and expenditure of the Government companies, All bodies and authorities substantially financed from the Union or the State revenues; and Other corporations or bodies when so required by the Laws relating to such corporations or bodies.
- Since the enactment of the Comptroller and Auditor General (Duties and Power) Act, 1976, he ceases to prepare the accounts of the Union and the States, but he continues to audit the accounts of the Union, the States and the Public Sector undertakings under these Governments.
- The report of the CAG relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause it to be laid before the Legislature of the State. This report is immediately referred to the Public Accounts Committee of the Parliament which, after a

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detailed study prepares another report which is placed before the Parliament. The discussion in the Parliament takes place on the secondary report of the Public Accounts Committee.

- The CAG is an officer of the Parliament and he is called Ears and Eyes of the Public Accounts Committee.
- The CAG has no control over the issue of money from the Consolidated Fund of India or of any State.
- The CAG is concerned only at the stage of audit after the expenditure has already taken place.

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