

THE PRESIDENT AND THE COUNCIL OF MINISTERS / PRIME MINISTER

Prepared by-

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A Complete Answer-Compendium for UPSC Law Optional (Paper I — Constitutional Law)

Covering the working relationship between Rashtrapati Bhavan and the Council of Ministers — how advice flows, who is answerable for it, and what happens when that relationship comes under strain.

Previous Year Questions Covered in this Document

Year	Question (abridged)	Marks / Q.No.	Anchor Provisions / Cases
2024	Relationship between President and Council of Ministers under the parliamentary system	15 / Q2(c)	Arts. 74 & 75
2015	"PM is the keystone of the Cabinet arch" — critically examine	15 / Q2(a)	Arts. 74 & 75
2012	'Individual' and 'collective' responsibility; consequence of misfeasance by a Minister	10 / Q1(c)	Art. 75
2011	Duties of the PM regarding furnishing information to the President	20 / Q4(b)	Art. 78
2006	"Collective responsibility is the very basis of Parliamentary government" — agree? Impact of coalition politics	—	Art. 75(3)

PART A — Conceptual Framework (Read Before Attempting Any Answer)

Every question in this cluster tests the same underlying architecture of the Union Executive from a different angle. Mastering this common framework first makes each individual answer faster to construct and internally consistent.

A.1 The Twin-Executive Structure

Articles 52–78 create a parliamentary executive with a clear split between the formal (de jure) and real (de facto) executive:

- **Formal/Nominal Executive — The President.** Article 53(1) vests the executive power of the Union in the President, exercised directly or through subordinate officers in accordance with the Constitution.
- **Real/Effective Executive — The Council of Ministers (CoM), headed by the Prime Minister.** Because the President acts on ministerial advice, actual decision-making power rests here.

This is the Westminster model transplanted into a republican, written-Constitution setting: unlike Britain, India codifies many of the underlying conventions (Arts. 74, 75, 78) rather than leaving them wholly to usage.

A.2 The Core Provisions at a Glance

Provision	Content	Function
Art. 53(1)	Executive power of the Union vested in the President	Formal vesting clause
Art. 74(1)	A Council of Ministers with the PM at the head "to aid and advise" the President, who "shall act in accordance with such advice"; one-time power to require reconsideration (44th Amdt.)	Mandatory advisory body; binding advice
Art. 74(2)	The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into by any court	Non-justiciability / confidentiality of advice
Art. 75(1)	PM appointed by the President; other Ministers appointed by the President on the advice of the PM	Appointment mechanics
Art. 75(1B)	Total strength of CoM (incl. PM) capped at 15% of Lok Sabha strength (91st Amdt., 2003)	Size limitation
Art. 75(2)	Ministers hold office during the pleasure of the President	Tenure / dismissal
Art. 75(3)	The Council of Ministers shall be collectively responsible to the Lok Sabha	Collective responsibility (explicit textual basis)
Art. 75(4)	Oath of office and secrecy administered by the President before a Minister enters office	Formal induction
Art. 75(5)	A non-member may be a Minister for up to 6 consecutive months before elected membership becomes necessary	Membership exception
Art. 75(6)	Salaries/allowances of Ministers as determined by Parliament	Emoluments
Art. 77(1)-(3)	Executive action expressed in the President's name; authentication rules; Rules of Business for allocation of business among Ministers	Transaction-of-business mechanism
Art. 78	PM's duties: (a) communicate CoM decisions on administration/legislative proposals to the President; (b) furnish information the President calls for; (c) if required, place before the CoM any matter decided by a Minister alone but not considered by Council	President–CoM communication channel

A.3 The Case-Law Spine

Case	Core Holding
Ram Jawaya Kapur v. State of Punjab (1955)	Earliest articulation: President is a formal/constitutional head; real executive power vested in Ministers/Cabinet; executive power is co-extensive with legislative power and does not need prior statutory sanction (subject to three limits: no violation of Constitution/law, no infringement of private rights, no unauthorised spending).
Sardari Lal v. Union of India (1971)	Held (later overruled) that 'satisfaction' under Art. 311(2)(c) was the President's/Governor's personal satisfaction, non-delegable.
U.N.R. Rao v. Indira Gandhi (1971)	Art. 74(1) is mandatory; the CoM must exist at all times, even after the Lok Sabha is dissolved; the President cannot function through personal 'advisors'.
Shamsher Singh v. State of Punjab (1974)	7-Judge Bench; overruled Sardari Lal; India is founded on the Westminster system; 'satisfaction' of the President/Governor is ordinarily the satisfaction of the CoM; President bound by aid and advice except where discretion is expressly conferred; rejected the 'glorified cypher'/rubber-stamp description, affirming the British-monarchy convention of 'the right to be consulted, the right to encourage, and the right to warn' — but as a non-justiciable convention only.
Dinesh Chandra v. Chaudhury Charan Singh	A PM need not prove a majority before taking oath; the office exists from the moment of appointment, the confidence test occurs on the floor of the House.
Madan Murari v. Chaudhury Charan Singh	The President's political assessment of who can command a majority is not justiciable.
K.M. Sharma v. Devi Lal	'Deputy Prime Minister' is an extra-constitutional, merely descriptive title; the office is, in law, that of an ordinary Minister.
S.R. Chaudhuri v. State of Punjab	The six-month non-member exception (Art. 75(5)) must be used sparingly; repeated consecutive appointment of a non-member is 'undemocratic' and 'subversive' of the Constitution.
B.R. Kapur v. State of Tamil Nadu	A non-member can be appointed Minister only if otherwise qualified (Art. 84) and not disqualified (Art. 102).
S.R. Bommai v. Union of India	Art. 74(2) protects the confidentiality of 'advice' but not the 'material' on which it is based; material is subject to judicial scrutiny for relevance and existence when the underlying executive order is challenged.
Rameshwar Prasad (VI) v. Union of India	Affirms the material/advice distinction; courts may examine the factual existence and relevance of supporting material without breaching Art. 74(2).
State of Karnataka v. Union of India	Collective responsibility does not shield an individual Minister from personal liability for corruption, nepotism, or favouritism.
Common Cause I (1996) & Common Cause II (1999)	Tort of misfeasance in public office requires malice/bad faith; a merely unlawful act without bad faith does not automatically amount to this tort and may instead be remedied by quashing the order.
Kaushal Kishor v. State of Uttar Pradesh (2023)	Majority (Ramasubramanian, J.): collective responsibility is a political concept governing CoM–Legislature relations, not a device for attributing every Minister's personal statement to the government; liability requires the statement to translate into an actionable act of omission/commission. Minority (Nagarathna, J.): statements traceable to State affairs and consistent with government's position can be vicariously attributed to the State.
State (NCT of Delhi) v. Union of India	The Cabinet owes a duty to the legislature for every action taken in any ministry; each Minister is answerable for every governmental act.
Attorney-General v. Jonathan Cape Ltd. (Crossman Diaries case, UK)	Cabinet secrecy is in the public interest to preserve collective responsibility, but the injunction against publication was refused because the material was a decade old — the need for secrecy diminishes with time.

Case	Core Holding
Chagla Commission (Mundhra Affair)	A Minister is constitutionally responsible for the acts of the Secretary/subordinates and cannot take shelter behind them.

QUESTION 1 (2024) — Relationship between the President and the Council of Ministers

UPSC Law Optional | Year: 2024 Marks: 15 Question No.: 2(c)

Question: Discuss the relationship between the President and the Council of Ministers under the parliamentary form of government in India. Explain with the help of relevant constitutional provisions.

Model Answer

Introduction

India's Constitution establishes a parliamentary form of government at the Union level in which the executive power is formally vested in the President (Article 53(1)) but is, in substance, exercised by the Council of Ministers (CoM) headed by the Prime Minister. The relationship between the two is not one of subordination in the ordinary administrative sense, but a carefully calibrated constitutional partnership: the President supplies constitutional legitimacy and continuity, while the CoM supplies political direction and democratic accountability. This relationship is structured principally by Articles 74 and 75, refined by constitutional amendments, and settled by an unbroken line of Supreme Court authority.

1. The Textual Foundation — Article 74

- Article 74(1) mandates a Council of Ministers, with the Prime Minister at its head, 'to aid and advise' the President, who 'shall act in accordance with such advice'.
- Originally the provision merely required the President to 'be guided by' such advice, without stating that it was binding. The 42nd Amendment (1976) inserted the word 'shall act in accordance', making the advice explicitly binding.
- The 44th Amendment (1978) added a proviso allowing the President to require the Council to reconsider the advice once; however, the advice tendered after such reconsideration must be acted upon. This preserves a residual 'right to warn' without creating a veto.
- Article 74(2) bars any court from inquiring into the nature of advice tendered to the President. This creates a zone of confidentiality around Cabinet deliberations, distinguished from the 'material' underlying the advice, which remains open to judicial scrutiny (*S.R. Bommai v. Union of India*; *Rameshwar Prasad (VI) v. Union of India*).
- Advice tendered by even a single Minister is, in law, treated as the advice of the Council, owing to the principle of collective responsibility.

2. The Textual Foundation — Article 75

- Art. 75(1): The President appoints the PM, and appoints other Ministers on the PM's advice — making the PM the practical author of the Council's composition.
- Art. 75(1B) (91st Amendment, 2003): Caps the CoM's total strength at 15% of the Lok Sabha's total membership, checking indiscriminate patronage.
- Art. 75(2): Ministers hold office 'during the pleasure of the President' — textually a discretionary power, but in operation exercised only on the Prime Minister's binding advice.
- Art. 75(3): The CoM 'shall be collectively responsible to the House of the People' — the explicit constitutional anchor of collective responsibility, distinguishing India from Britain where the same principle is purely conventional.
- Art. 75(4): The oath of office and of secrecy is administered by the President, formally inducting Ministers into office.

3. Judicial Elaboration of the Relationship

The constitutional text alone would leave open the question of how much real discretion the President retains. This has been settled definitively by the judiciary.

- Ram Jawaya Kapur v. State of Punjab (1955):** The Court held that although Art. 53(1) vests executive power in the President, Art. 75 mandates a Council of Ministers to aid and advise him, so that the President is 'a formal or constitutional head of the executive' while 'the real executive powers are vested in the Ministers or the Cabinet.'

- **U.N.R. Rao v. Indira Gandhi (1971):** Art. 74(1) is mandatory — a Council of Ministers must exist at all times. Even after dissolution of the Lok Sabha, the outgoing Council continues in office (in a caretaker capacity) because the President cannot govern through personal advisors; a parliamentary executive must always be answerable to some legislature.
- **Shamsher Singh v. State of Punjab (1974):** A seven-Judge Bench overruled *Sardari Lal v. Union of India* (1971) and held that the 'satisfaction' of the President required under various provisions is ordinarily the satisfaction of the Council of Ministers, not the President's personal satisfaction. Except for narrow, expressly conferred discretionary powers, every presidential function is performed on ministerial aid and advice. The Court, however, rejected the description of the President as a 'glorified cypher', affirming — by analogy with the British Crown — the President's convention-based 'right to be consulted, the right to encourage, and the right to warn'. Crucially, this right is a constitutional convention and is not judicially enforceable.

4. The Direction and Character of the Relationship

- Binding, not consultative, in substance: The President cannot act contrary to ministerial advice in ordinary matters of administration; refusal would place the President outside the constitutional scheme.
- Confidential: Art. 74(2) shields the content of advice from judicial inquiry, protecting free and frank Cabinet deliberation, while the material behind an executive decision remains reviewable for relevance and existence (*Bommai*).
- Politically, not legally, enforced: Because of Art. 361 (presidential immunity) and Art. 74(2), courts cannot compel compliance; the ultimate sanction for a President who wilfully disregards advice is impeachment under Art. 61 for 'violation of the Constitution' — a political and rare remedy.
- Marginal residual discretion: In exceptional, 'grave and unforeseen' situations not covered by settled convention — e.g., appointment of a Prime Minister in a hung Parliament, dismissal of a Ministry that has lost the confidence of the House but refuses to resign, or the timing of dissolution — the President exercises independent judgment. This is not a general power but a narrow safety-valve confined to situations where no clear ministerial advice can exist (because the very question is who should give that advice).
- Structural safeguard against deadlock: If the President were to defy binding advice, the Council could resign en bloc; because Art. 74(1) makes a Council of Ministers mandatory (*U.N.R. Rao*), the President would then be constitutionally obliged to find an alternative Ministry commanding the Lok Sabha's confidence — an impossibility if the crisis originated in the President's own unconstitutional conduct. Parliament's control over legislation and finance offers a further check.

5. Communication Channel — Article 78

Article 78 operationalises the relationship on a day-to-day basis by casting specific duties on the Prime Minister to keep the President informed (discussed in detail in Question 4 below): communicating Cabinet decisions and legislative proposals, furnishing information the President calls for, and — under Art. 78(c) — placing before the full Council any matter decided by an individual Minister alone but not yet considered collectively. This last limb reinforces that even ministerial decision-making must ultimately answer to collective Cabinet scrutiny, with the President as the trigger.

Conclusion

The relationship between the President and the Council of Ministers is best described as one of constitutional trusteeship rather than command: the President holds the formal powers of the Union in trust, to be exercised strictly on the binding aid and advice of a Council that is, in turn, collectively answerable to the directly elected Lok Sabha. Articles 74 and 75, as amended in 1976 and 1978 and as interpreted authoritatively in *Ram Jawaya Kapur*, *U.N.R. Rao*, and *Shamsher Singh*, together ensure — in the words used by the courts — that there is 'no conflict between the Head of the State and the Prime Minister.' The President remains the ceremonial guardian of constitutional process and a moral counterweight through the convention-based right to be consulted, encourage, and warn, while real governance is driven by the Council of Ministers, answerable daily and periodically to Parliament and the electorate.

QUESTION 2 (2015) — PM as the "Keystone of the Cabinet Arch"

UPSC Law Optional | Year: 2015 Marks: 15 Question No.: 2(a)

Question: "The Prime Minister is the keystone of the Cabinet arch because he is responsible for its formation, life and death." Critically examine this statement in light of constitutional provisions and determine the position of the Prime Minister in the Cabinet.

Model Answer

Introduction

The description of the Prime Minister as the 'keystone of the Cabinet arch' is attributed to the British jurist Ivor Jennings and captures the structural centrality of the office: just as a keystone holds an arch together, remove the Prime Minister and the entire Council of Ministers collapses. In the Indian context this is not merely descriptive rhetoric but is substantially traceable to constitutional text — principally Articles 74, 75 and 78 — supplemented by convention and judicial pronouncement. The statement must, however, be examined critically, since the PM's dominance is real but not absolute, and is significantly conditioned by the composition of the Lok Sabha, especially in coalition settings.

1. Formation of the Council — the PM as Architect

- Art. 75(1): The President appoints the Prime Minister, but appoints all other Ministers only on the advice of the Prime Minister. In practice, Ministers are the PM's personal nominees.
- The PM allocates portfolios and departments, subject to the Rules of Business framed under Art. 77(3).
- Art. 75(1B) (91st Amendment) caps total Council strength at 15% of Lok Sabha membership, but within that ceiling the PM retains discretion over composition.
- Selection is guided by political considerations — party standing, regional balance, representation of social groups, and professional capability — all channelled through the Prime Minister's judgment.
- Judicial confirmation: In a hung Parliament, the President's assessment of who commands a majority (and hence who becomes PM) is itself not open to judicial review (*Madan Murari v. Chaudhury Charan Singh*), which further concentrates formation-stage authority once a leader emerges.

2. Life of the Council — the PM as Engine

- The PM summons and chairs Cabinet meetings, sets the agenda, and coordinates government policy across departments.
- Art. 78 makes the PM the sole constitutional channel of communication between the President and the Council of Ministers — the PM alone is duty-bound to keep the President informed of Cabinet decisions and legislative proposals, and to furnish information the President seeks.
- The PM forms Cabinet Committees and Groups of Ministers (GoMs) to manage complex governance — informal bodies with no constitutional status, but through which the PM can concentrate effective decision-making in a small, trusted circle (often 4–5 Ministers).
- As principal spokesperson in the Lok Sabha, the PM defends government policy and can recommend the dissolution of the House to the President, which operates as a potent disciplining tool over back-benchers and, indirectly, over Cabinet colleagues who fear the cost of an untimely election.
- Dismissal of individual Ministers: although Art. 75(2) speaks of Ministers holding office at the President's 'pleasure', that pleasure is in practice exercised strictly on the Prime Minister's advice — the PM can effectively force the resignation, or procure the dismissal, of any Minister who loses the PM's confidence.

3. Death of the Council — the PM as Fulcrum

- The resignation or death of the Prime Minister results in the automatic dissolution of the entire Council of Ministers — there is no independent life for the Council once the PM's own tenure ends.
- Conversely, defeat of the government on a confidence motion in the Lok Sabha (collective responsibility under Art. 75(3)) also takes down the whole Council together with the PM — they 'stand or fall together.'
- Succession on sudden vacancy is constitutionally unregulated: historical precedent varies between appointing the senior-most Minister as an interim head (on the deaths of Nehru in 1964 and Shastri in 1966) and immediate

appointment of a successor after informal verification of majority support (Rajiv Gandhi in 1984), underlining the President's residual, fact-sensitive discretion in this narrow zone.

4. Judicial Recognition of PM Primacy

- **Dinesh Chandra v. Chaudhury Charan Singh:** A Prime Minister need not command a proven majority before taking oath; the office comes into existence upon appointment, and the confidence test is conducted afterwards on the floor of the House.
- **Madan Murari v. Chaudhury Charan Singh:** The President's political judgment on who can form a stable government is non-justiciable, insulating the PM-selection process from court interference.
- **K.M. Sharma v. Devi Lal:** Clarifies that a 'Deputy Prime Minister' possesses no independent constitutional status distinct from an ordinary Minister — reinforcing that constitutional primacy in the Council belongs to the PM alone.

5. Critical Examination — Is the PM Truly Unconstrained?

The 'keystone' metaphor captures formation, life and death accurately as a matter of constitutional mechanics, but the statement requires three qualifications:

- **(a) Primus inter pares in theory:** Formally, the PM is only 'first among equals' in Cabinet; in strong single-party-majority governments (e.g., Nehru, Indira Gandhi eras) this formal equality is eclipsed almost entirely by practical dominance, giving rise to the scholarly description of a shift from 'Cabinet Government' to 'Prime Ministerial Government.'
- **(b) Confidence of the House as the ultimate constraint:** The PM's power is derivative — it exists only so long as the Council commands the Lok Sabha's confidence (Art. 75(3)). A PM who loses that confidence cannot function, however dominant internally.
- **(c) Coalition realities:** In a coalition government, the PM's freedom in formation (choice of Ministers is often dictated by allies), in life (policy must be negotiated, not dictated), and even in death (a coalition partner's withdrawal, not the PM's own volition, may precipitate collapse) is substantially curtailed. The keystone may still be structurally central, but it is no longer solely self-supporting — it depends on the surrounding stones (coalition partners) staying in place.
- **(d) Institutional critique:** The proliferation of Cabinet Committees and GoMs, while enhancing efficiency, is criticised for eroding genuine collective deliberation by concentrating decisions in a PM-led inner core, which paradoxically both confirms and distorts the 'keystone' image — the PM becomes not just central but dominant to the point of marginalising the wider Council.

Conclusion

The statement is substantially correct: constitutional text (Arts. 75 and 78) and unbroken convention make the Prime Minister indispensable to the formation, functioning, and continuance of the Council of Ministers, and the judiciary has consistently declined to second-guess the PM-selection process. Yet the metaphor should not be read as conferring untrammelled personal power — the PM's authority is at all times derivative of, and answerable to, the confidence of the Lok Sabha (Art. 75(3)), and is materially diluted in coalition arrangements. The Prime Minister is thus the constitutional keystone of the Cabinet arch, but the arch itself rests, ultimately, on the foundation of parliamentary confidence.

QUESTION 3 (2012) — Individual and Collective Responsibility; Consequence of Misfeasance

UPSC Law Optional | Year: 2012 Marks: 10 Question No.: 1(c)

Question: What is meant by 'individual responsibility' and 'collective responsibility' of the Council of Ministers? What would be the consequence of 'individual responsibility' if a Minister is found guilty of the tort of misfeasance by the Supreme Court? Comment.

Model Answer

Introduction

The Council of Ministers is accountable to the legislature in two distinct but overlapping ways: as a unified body (collective responsibility) and as individual office-holders answerable for their own departments and conduct (individual responsibility). Article 75(3) supplies the textual anchor for the former; the latter rests substantially on convention, reinforced by judicial pronouncements on personal liability for misconduct such as the tort of misfeasance in public office.

1. Collective Responsibility

- Art. 75(3): The Council of Ministers 'shall be collectively responsible to the House of the People.' Unlike Britain, where the doctrine is purely conventional, India has explicitly codified it.
- The Council 'stands or falls together' — if the Lok Sabha carries a vote of no-confidence, the entire government (not merely the targeted Minister) must resign.
- Every Minister must publicly support and defend Cabinet decisions once taken, even if they personally opposed the decision in internal deliberation; a Minister unable to do so is expected to resign.
- Under Art. 78(c), the President may require any matter decided by an individual Minister to be placed before the full Council if it has not already been considered collectively — reinforcing that final policy authority is corporate, not individual.
- Judicially affirmed in *State (NCT of Delhi) v. Union of India*: the Cabinet owes a duty to the legislature for every action taken in any ministry, and each Minister is answerable for every act of government, whether or not personally involved in that specific decision.

2. Individual Responsibility

- Each Minister is individually answerable to the legislature for the administration of their own department — defending policy, answering parliamentary questions, and owning departmental performance.
- A Minister cannot deflect blame onto subordinate civil servants; because civil servants possess no independent constitutional personality and cannot defend themselves publicly, the Minister must answer for them (the 'no-shelter' principle, affirmed by the Chagla Commission in the Mundhra Affair).
- When a Minister is criticised in Parliament, the Cabinet faces a choice: (i) defend the Minister collectively if the decision had Cabinet approval, invoking collective responsibility; or (ii) sacrifice the Minister — the Prime Minister may force resignation — if the conduct is politically indefensible or personal in nature.
- Crucially, where a Minister's conduct amounts to personal indiscretion, corruption, nepotism, or favouritism, the shield of collective responsibility does not apply — the offending Minister is personally liable, as held in *State of Karnataka v. Union of India*.

3. The Tort of Misfeasance in Public Office

- Definition: a malicious abuse of power, deliberate maladministration, or unlawful act causing injury to a person, with 'bad faith' or 'malice' as the decisive element.
- **Common Cause I (1996):** The Supreme Court initially applied the tort and imposed exemplary damages for what it treated as misfeasance.
- **Common Cause II (1999):** Refined this position — a merely 'unlawful' act, without proof of bad faith, does not automatically constitute the tort of misfeasance; such cases may instead be remedied through ordinary judicial quashing of the impugned order, reserving the tort (and its heavier consequence of damages) strictly for cases of demonstrated malice.

4. Consequence if the Supreme Court Finds a Minister Guilty of Misfeasance

This is the crux of the question and calls for a reasoned, multi-layered answer:

- **(a) Personal, not collective, liability:** Following *State of Karnataka v. Union of India* and the logic later reinforced in *Kaushal Kishor v. State of Uttar Pradesh* (2023), a finding of misfeasance — being an act of personal malice or bad faith — is not attributable to the Council of Ministers as a whole. Collective responsibility is, per the *Kaushal Kishor* majority (Ramasubramanian, J.), a political concept governing the CoM's relationship with the Legislature, not a legal mechanism for imputing every Minister's individual wrongdoing to the entire government.
- **(b) Judicial remedies against the Minister/State:** Once the tort is established, courts may award declaratory relief (formal recognition of the wrong), injunctions to prevent continuation of the harmful conduct, and pecuniary damages — including exemplary damages, as in *Common Cause I* — against the erring authority.
- **(c) Quashing of the underlying order:** Independent of the tort finding, the specific administrative order or decision (e.g., an arbitrary allocation of a licence, petrol pump, or stall) tainted by mala fides can be quashed as unconstitutional/illegal executive action.
- **(d) Political consequence — individual responsibility, not confidence motion:** Because the wrongdoing is personal, the appropriate constitutional response is not the fall of the government via a no-confidence motion, but individual consequences for the Minister — removal under Art. 75(2), exercised in practice on the Prime Minister's advice. Only if the Cabinet had itself sanctioned or shared in the impugned decision would collective responsibility be engaged.
- **(e) No immunity:** Unlike the President, who enjoys personal immunity under Art. 361, Ministers enjoy no comparable constitutional immunity; they are fully subject to civil and criminal process for personal wrongdoing, which is precisely why the tort of misfeasance can attach to a Minister in their personal capacity.

Conclusion

Collective responsibility (Art. 75(3)) binds the Council as a political unit answerable to the Lok Sabha for policy, while individual responsibility holds each Minister personally accountable for departmental administration and personal conduct. Where a Minister is judicially found guilty of the tort of misfeasance — a finding necessarily premised on personal bad faith — the consequence is confined to that Minister: personal civil liability (including exemplary damages), possible quashing of the tainted order, and political removal under Art. 75(2) on the Prime Minister's advice. It does not, without more, trigger the collective fall of the government, since the doctrine of collective responsibility was never designed to convert every individual Minister's misconduct into a liability of the whole Council.

QUESTION 4 (2011) — Duties of the Prime Minister to Furnish Information to the President

UPSC Law Optional | Year: 2011 Marks: 20 Question No.: 4(b)

Question: Write critical notes on: Duties of the Prime Minister regarding furnishing information to the President.

Model Answer

Introduction

While Articles 74 and 75 establish the principle that the President acts on the aid and advice of the Council of Ministers, Article 78 supplies the operational machinery by which that advice actually reaches the President. It casts specific, continuing duties on the Prime Minister — and the Prime Minister alone — to act as the constitutional conduit of information between the Council of Ministers and the Head of State. This provision is central to enabling the President's limited but real convention-based role: 'the right to be consulted, the right to encourage, and the right to warn' (Shamsher Singh v. State of Punjab), because none of these rights can be meaningfully exercised without adequate information.

1. Text and Content of Article 78

Article 78 imposes three distinct duties on the Prime Minister:

- **Article 78(a) — Communication of decisions:** 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.
- **Article 78(b) — Furnishing information on demand:** The Prime Minister must furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for.
- **Article 78(c) — Reference of undecided matters to the Council:** If the President so requires, the Prime Minister must submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister individually, but which has not been considered by the Council as a whole.

2. Rationale for Vesting these Duties in the PM Alone

- **Single, authoritative channel:** By making the PM — rather than any individual Minister or the Cabinet Secretariat directly — the constitutionally designated informant, the Constitution avoids multiplicity or conflicting streams of advice reaching the President, consistent with the PM's role as 'repository of constitutional trust' and head of the Council.
- **Enables the President's convention-based checks:** The 'right to be consulted, to encourage, and to warn' recognised in Shamsher Singh is meaningless unless the President is kept substantively informed; Art. 78 operationalises that convention into an enforceable (though non-justiciable in the ordinary sense) constitutional duty.
- **Safeguards collective decision-making:** Art. 78(c) is a structural safeguard — it prevents an individual Minister's unilateral decision from escaping full Cabinet scrutiny by giving the President the power to force the matter back to the Council table, reinforcing that policy is meant to be a collective, not individual, endeavour (echoing the constitutional philosophy underlying Art. 75(3)).
- **Continuity of governance:** Regular communication under Art. 78(a) keeps the ceremonial head reasonably apprised of administration even though the President exercises no independent executive initiative, preserving the President's dignity and functional relevance within a parliamentary system.

3. Nature and Limits of the Duty

- **Mandatory in character:** The language of Art. 78 ('it shall be the duty of the Prime Minister') is obligatory, not merely directory, underscoring that the President is entitled — not merely permitted — to receive this information.
- **Not independently justiciable:** Because Art. 74(2) bars judicial inquiry into the advice tendered to the President, and Art. 361 immunises the President from having to explain the exercise of the office, a court cannot readily be asked to enforce Art. 78 duties directly against a defaulting Prime Minister; the sanction is essentially political.
- **Political/constitutional sanction:** A Prime Minister's persistent or wilful failure to keep the President informed could, in extreme cases, feed into an allegation of 'violation of the Constitution' relevant to the impeachment of the President (Art. 61) or into broader political controversy, though in practice the provision operates smoothly

through settled administrative practice (routine Cabinet Secretariat summaries, periodic PM–President meetings) rather than through litigation or crisis.

- **Complements, does not displace, Art. 74's binding-advice rule:** Article 78 ensures the President has the facts necessary to exercise the one-time power under the Art. 74(1) proviso (as introduced by the 44th Amendment) to require the Council to reconsider its advice. Without adequate information under Art. 78, that limited power of reconsideration would be exercised in the dark.

4. Critical Appraisal

- **Strength:** The provision is a rare instance of the Constitution converting an unwritten British convention (the Sovereign's entitlement to be kept informed by the PM) into codified Indian constitutional text, adding clarity and certainty absent in the UK model.
- **Weakness / gap:** Because the duty is not judicially enforceable in any direct sense, its efficacy depends entirely on the political relationship and mutual trust between the President and the Prime Minister of the day; a determined Prime Minister could, in principle, minimise the flow of substantive information while nominally complying with Art. 78(a) through formal but sparse communications.
- **Systemic safeguard value:** Art. 78(c) in particular is undervalued in general discussion but is doctrinally significant — it is the textual mechanism by which the Constitution guards against an individual Minister quietly bypassing collective Cabinet responsibility, with the President (on requisition) acting as the trigger for correction.

Conclusion

Article 78 is the connective tissue of the President–Prime Minister relationship: it converts the abstract requirement of 'aid and advice' under Article 74 into a concrete, ongoing informational duty resting on the Prime Minister alone. By obliging communication of Cabinet decisions and legislative proposals, compelling disclosure of information the President calls for, and empowering the President to require collective reconsideration of matters decided individually, Article 78 ensures that the ceremonial head of state is never reduced to complete ignorance of the government's functioning, even while remaining bound to act on its advice. It is this provision — more than any other single Article — that makes the President's residual, convention-based role of consultation, encouragement, and warning practically meaningful rather than merely notional.

QUESTION 5 (2006) — Collective Responsibility as the Basis of Parliamentary Government; Impact of Coalition Politics

UPSC Law Optional | Year: 2006 Marks: — Question No.: —

Question: "Collective responsibility is the very basis of the Parliamentary system of government." Do you agree? What has been the impact of coalition politics on the doctrine of collective responsibility?

Model Answer

Introduction

Collective responsibility — the principle that the Council of Ministers acts, and is answerable to the Lok Sabha, as a single unified body — is often described as the defining feature that distinguishes a parliamentary system from a presidential one. This answer examines the doctrinal basis of the claim, largely agrees with it, and then critically assesses how the rise of coalition politics in India has strained, without wholly dismantling, the doctrine.

1. Why Collective Responsibility is Foundational

- **Textual anchor — Article 75(3):** Unlike Britain, where the doctrine survives purely as convention, India explicitly writes it into the Constitution: 'The Council of Ministers shall be collectively responsible to the House of the People.'
- It is the mechanism that makes the executive answerable to the legislature on a continuous, daily basis (through debates, questions, no-confidence motions) rather than only periodically through elections — precisely the design feature Indian founders preferred over the U.S. fixed-term model, to avoid governance paralysis from Executive-Legislature conflict.
- **'Standing or falling together':** If the Lok Sabha withdraws confidence, the entire Council — not one Minister — must resign; this is what makes the Council a single point of accountability, and hence a coherent 'government' rather than a loose assembly of departmental heads.
- **Nehru's 'united whole':** Cabinet decisions, once taken (even after free internal debate), bind every Minister publicly; a Minister who cannot defend a decision is expected to resign, not dissent publicly — this unified voice is essential to a credible, functioning executive.
- **Judicial reinforcement — State (NCT of Delhi) v. Union of India:** The Cabinet owes a duty to the legislature for every action taken in any ministry, and every Minister is answerable for every governmental act, whether personally involved or not.
- **Cabinet secrecy underpins the doctrine:** As held in the UK case *Attorney-General v. Jonathan Cape Ltd.* (the Crossman Diaries case), confidentiality of Cabinet deliberations is 'firmly in the public interest' because it allows free debate while the government still presents a united front; the Court nonetheless permitted publication once the material was a decade old, since the need for secrecy diminishes over time. Correspondingly, a Minister who resigns over a policy disagreement is traditionally permitted to explain that dissent in Parliament — a safety valve consistent with, not destructive of, collective responsibility.
- **Article 78(c) as reinforcement:** By allowing the President to compel Council-level consideration of a matter decided by an individual Minister alone, the Constitution structurally discourages the erosion of collective decision-making.

On this basis, the statement deserves substantial agreement: without collective responsibility, a multi-member executive would have no coherent way of being held accountable as a government; each Minister could simply disown inconvenient decisions, defeating the entire logic of responsible, parliamentary government.

2. Qualification — The Doctrine is Political, Not an Unlimited Legal Tool

The 2023 Constitution Bench decision in *Kaushal Kishor v. State of Uttar Pradesh* has clarified an important limit that should be factored into any modern answer:

- **Majority view (Ramasubramanian, J.):** Collective responsibility is fundamentally a political concept governing the relationship between the Council of Ministers and the Legislature — it is not a mechanism for automatically attributing every individual Minister's personal statement (however objectionable) to the government as a whole. Liability of the State arises only where a statement translates into an actual act of omission or commission causing

harm — a mere statement, even if inconsistent with constitutional values, is not by itself an actionable 'constitutional tort.'

- **Dissent (Nagarathna, J.):** Statements traceable to the affairs of the State, or consistent with/endorsed by the government's position, may be vicariously attributed to the State; she further proposed that political parties adopt internal Codes of Conduct to regulate members' speech.

This clarifies that collective responsibility, properly understood, is narrower than 'the government is legally liable for anything any Minister says' — it operates specifically as an accountability mechanism vis-à-vis the Lok Sabha over governmental policy and action, which is precisely why it remains workable even in a coalition, where individual constituent parties inevitably have divergent public positions on many issues.

3. Impact of Coalition Politics on Collective Responsibility

- **Erosion of solidarity:** When multiple parties with distinct agendas jointly form the government, individual coalition partners frequently prioritise their own party programmes over a uniform national policy line, producing visibly fragmented public positions that sit uneasily with the 'unified voice' ideal.
- **Bypassing the Cabinet:** The constant, credible threat that a coalition partner may withdraw support pressures individual Ministers (often representing allied parties) to act independently and satisfy their own party's political demands, sometimes bypassing full Cabinet deliberation altogether — directly challenging the homogeneity collective responsibility presupposes.
- **Weaker enforceability of the 'stand or fall together' rule:** In coalition settings, a no-confidence motion may be survivable through renegotiation with, or replacement of, a single dissenting partner rather than triggering the fall of the entire government in the classic sense, softening the doctrine's sharpest edge.
- **Institutional workaround — GoMs and Cabinet Committees:** Prime Ministers increasingly rely on smaller Groups of Ministers and Cabinet Committees (informal, extra-constitutional bodies) partly to manage coalition friction by concentrating sensitive decisions in a trusted inner core — but critics argue this response itself further erodes genuine collective Cabinet deliberation, effectively trading full-Council collective responsibility for a narrower, PM-centric version of it.
- **Judicial recalibration:** Kaushal Kishor's narrowing of collective responsibility to a strictly political (CoM-to-Legislature) concept, rather than a blanket vicarious-liability doctrine for every Minister's statement, can itself be read as a judicial accommodation of coalition-era realities — a rigid, expansive doctrine of collective attribution would be practically unworkable where a government is, by definition, a coalition of differing voices.

Conclusion

The proposition that collective responsibility is the 'very basis' of parliamentary government is substantially correct: it is the doctrinal device — explicitly codified in Article 75(3), unlike Britain's purely conventional practice — that converts a plural executive into a single, accountable government answerable to the House. However, the doctrine has never been an absolute or rigid straitjacket; it operates as a political rather than an all-encompassing legal tool, as clarified in Kaushal Kishor. Coalition politics has visibly strained the ideal of a wholly unified executive voice — through fragmented public positioning, bypassing of full Cabinet deliberation, and reliance on smaller GoMs/Cabinet Committees — without eliminating the doctrine altogether. What has changed is less the constitutional text than the practical intensity of its enforcement: collective responsibility today operates more flexibly, tempered by coalition bargaining, yet it remains indispensable, because no alternative mechanism exists in the Indian constitutional scheme to hold a multi-headed executive accountable as a single, coherent government.

PART C — Quick Revision Sheet (For the Last 24 Hours Before the Exam)

C.1 One-Line Answers

- **Who is the formal executive?** The President (Art. 53(1)).
- **Who is the real executive?** The Council of Ministers headed by the PM (Art. 74, as interpreted in Ram Jawaya Kapur and Shamsher Singh).
- **Is the President bound by ministerial advice?** Yes — mandatorily, subject only to a one-time power to require reconsideration (Art. 74(1) proviso, 44th Amdt.).
- **Can courts inquire into what advice was given?** No (Art. 74(2)) — but they can examine the material underlying an executive decision (S.R. Bommai).
- **Who appoints Ministers other than the PM?** The President, on the advice of the PM (Art. 75(1)).
- **Ceiling on Council size?** 15% of Lok Sabha strength (Art. 75(1B), 91st Amdt.).
- **What does 'pleasure of the President' under Art. 75(2) mean in practice?** Dismissal power exercised only on the PM's binding advice.
- **What is the textual basis of collective responsibility?** Art. 75(3).
- **What are the PM's three duties under Art. 78?** (a) communicate CoM decisions/legislative proposals; (b) furnish information the President calls for; (c) place before Council any matter decided individually by a Minister, if the President so requires.
- **Case overruling Sardari Lal?** Shamsher Singh v. State of Punjab (1974), 7-Judge Bench.
- **Case holding CoM must exist even after Lok Sabha dissolution?** U.N.R. Rao v. Indira Gandhi (1971).
- **Tort requiring proof of malice/bad faith?** Misfeasance in public office (Common Cause I & II).
- **2023 case narrowing collective responsibility for Ministers' statements?** Kaushal Kishor v. State of Uttar Pradesh.
- **UK case on Cabinet secrecy?** Attorney-General v. Jonathan Cape Ltd. (Crossman Diaries case).
- **Source of the 'no-shelter' principle for subordinates?** Chagla Commission, Mundhra Affair.

C.2 Answer-Writing Tips for This Cluster of Questions

1. Always open with the formal/real executive distinction (Art. 53 vs Arts. 74–75) — examiners reward this framing even in narrowly-worded questions.
2. Quote the amendment history of Art. 74(1) (42nd and 44th Amendments) whenever the question touches on 'binding advice' — it shows depth beyond the bare text.
3. Distinguish Art. 74(2)'s protection of 'advice' from the reviewability of 'material' (Bommai/Rameshwar Prasad) whenever discretion or judicial review is even tangentially relevant.
4. For any question on responsibility, explicitly separate collective (Art. 75(3), political, CoM-to-Legislature) from individual (departmental/personal, no shelter behind subordinates) before analysing the specific fact pattern asked.
5. Where the question invites 'critical examination' or 'do you agree', always structure as: (i) affirm the core doctrine with authority; (ii) introduce at least one qualifying/critical dimension (coalition politics, Kaushal Kishor, GoMs/Cabinet Committees); (iii) reach a reasoned, balanced conclusion — do not simply agree or disagree flatly.
6. Cite Shamsher Singh's 'right to be consulted, to encourage, and to warn' whenever discussing the President's residual role — it is the single most re-usable line across this entire topic cluster.