

THE PRESIDENT OF INDIA: POWERS AND DUTIES

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ABSTRACT

The Constitution of India has vested the President with the role 'to aid and advice' (Article 74) while expecting him/her to use authority and influence under certain circumstances, yet leaving the actual decision-making with the Cabinet. The president may be assertive and use his/her discretion under certain circumstances—in appointment and dismissal of the prime minister, maintaining relationship between prime minister/president and Council of Ministers, exercising right to be informed, dissolution of the parliament, use of veto power, etc. In fact, the equation within the Union Executive depends upon the factional balance of forces in the ruling party or coalition, the political conditions of hung parliament, party splits and naked struggle for power along with the personalities of the principal actors involved. The experiences have showed that the president's role was definitely not that of a mere rubber stamp. The President of India Powers and duties are:

Keywords: *President of India, Constitution of India, Parliament, President's role with discretion power.*

INTRODUCTION

India achieved independence from the British on 15 August 1947, initially as a Dominion within the Commonwealth of Nations with George VI as king, represented in the country by a governor-general. Still, following this, the Constituent Assembly of India, under the leadership of Dr.B.R.Ambedkar, undertook the process of drafting a completely new constitution for the country. The Constitution of India was eventually enacted on 26 November 1949 and came into force on 26 January 1950, making India a republic. The offices of monarch and governor-general were replaced by the new office of President of India, with Rajendra Prasad as the first incumbent

The constitution of the Republic of India (Articles 53, 74(2), 79 & 111) gave the President the responsibility and authority to defend and protect the constitution of India and its rule of law.^[7] Invariably, any action taken by the executive or legislature entities of the constitution shall become law only after President's assent. The president shall not accept any actions of the executive or legislature which are unconstitutional. The president is the foremost, most empowered and prompts defender of the constitution (Article 60), who has pre-emptive power for ensuring constitutionality in the actions of the executive or legislature. The role of the judiciary in upholding the constitution of India is the second line of defence in nullifying any unconstitutional actions of the executive and legislative entities of the Indian Union.

The President of the Republic of India is the head of state of India and the commander-in-chief of the Indian Armed Forces. The President is indirectly elected by an electoral college comprising the Parliament of India (both houses) and the Legislative Assemblies of each of India's states and territories, who themselves are all directly elected. Although the Article 53 of the Constitution of India states that the President can exercise his powers directly or by subordinate authority, with few exceptions, all of the executive powers vested in the President are, in practice, exercised by the Prime Minister (a subordinate authority) with the help of the Council of Ministers. The President is bound by the constitution to act on the advice of the Prime Minister and Cabinet as long as the advice is not violating the constitution. In Indian Parliamentary practice, the President is the nominal executive or a Constitutional ruler. He is the head of the nation, but does not govern the nation. Our Union Council of Ministers headed by the Prime Minister is the real executive. And the President rules the country on the advice of the Prime Minister and his colleagues.

DUTY

The primary duty of the President is to preserve, protect and defend the constitution and the law of India as made part of his oath (Article 60 of Indian constitution). The President is the common head of all independent constitutional entities. All his actions, recommendations (Article 3, Article 111, Article 274, etc.) and supervisory powers (Article 74(2), Article 78 c, Article 108, Article 111, etc.) over the executive and legislative entities of India shall be used in accordance to uphold the constitution.^[8] There is no bar on the actions of the President to contest in the court of law

POWERS OF PRESIDENT

1. LEGISLATIVE POWERS: Legislative Powers of President of India. The parliament is composed of president, Lok Sabha and Rajya Sabha so; president of India is a inseparable part of Indian Parliament. President has power to summon or prorogue the two houses of parliament. After a prorogation, the house must be summoned within 6 months.

2. EXECUTIVE POWERS: The President of India is the head of the executive of the Union Government. Therefore, all executive powers are vested in the hands of the President. He can exercise these powers either directly or through the subordinate officers. According to the Constitution of India, all executive action is also taken in his name. The President appoints the Governors of the States, the Judges of the Supreme Court and High Courts of the States. The Prime Minister of India is appointed by the President. The President also appoints other Ministers in consultation with the Prime Minister. The Constitution of India empowers the President to appoint the important officers of the Union Government including the Attorney-General for India, the Comptroller and Auditor-General of India, the Chairman of the Finance Commission, the Election Commissioners etc.

The President is responsible for the administration of the Union Territories. For this reason, he appoints Chief Commissioners and Lieutenant Governors of the centrally administered areas. The President has been empowered to set up a Commission for the settlement of disputes relating to the supply of water between two or more States. Moreover, the Constitution has authorized the President to establish an Inter-State Council to enquire into disputes that may arise between, the States as well as to discuss the matters of the common interests between the Union and the States. The President alone can remove the Council of Ministers, the Governors of States and the Attorney-General for India. The President of India is Supreme Commander-in-Chief of the Army, Navy and the Air Force of the Union. He has the power to declare war.

The President represents India in international affairs. He has the power to conclude treaties with foreign States. **Legislative Powers:** The President of India also enjoys legislative powers. He is an integral part of Indian Parliament. Parliament consists of the President and two Houses—the House of the people (Lok Sabha) and the Council of States (Rajya Sabha).

The President has the power of to summon and prorogue both the House of Parliament. He can also dissolve the House of the People before the expiry of its term. The Constitution of India empowers the President to deliver an address to the Parliament at the commencement of the first session every year. He may also send messages to Parliament. The President nominates two members to the Lok Sabha from the Anglo-Indian Community and twelve members to the Rajya Sabha from among the persons who have acquired special knowledge in art, science, literature and social service. In India, a public bill cannot become an act without the assent of the President. A bill passed by the Union Parliament is sent to the President for his assent. The President may give his assent to the bill or may withhold his assent from the bill or he may return the bill to Parliament for its reconsideration. If the bill is again passed by both Houses of Parliament, the President shall have to give his assent.

When the Parliament is not in session, the President may issue an ordinance. It has the same force as the law or Parliament. But it must be placed before the Parliament when it again assembles. If it is then approved by both the Houses of Parliament, it will cease to operate after six weeks of the date of meeting of Parliament. And the President can call a joint session of both Houses of Parliament to resolve a constitutional deadlock over a public bill. **Financial Powers:** The President of India also exercises financial powers. No money bill can be introduced in Parliament without the recommendations of the President. According to the Constitution of India, the Annual Financial Statement is placed by the President before both the Houses of Parliament. This statement shows the estimates of revenue and expenditure of the central Government for the next year. It may be pointed out that the proposal for taxation and expenditure cannot be made without the approval of the President.

3. JUDICIAL POWERS: The President of India grants, pardons, reprieves or remissions of punishment to any person who has been convicted by a Court of Law.

1. The President plays an important role in the financial administration of the country. He is the fiscal head of India. His duty is to ensure its financial stability. He causes the annual budget to be placed before the Parliament. Without his recommendation no Money Bill can be introduced in the Lok Sabha.
2. The President has, at his disposal, the Contingency Fund of India. Out of this Fund he can sanction advances to meet unforeseen expenditures.
3. He appoints the Finance Commission of India which examines and makes recommendations regarding financial relations between the centre and the states.

The President has some judicial power. He cannot be punished by any court.

(A) APPOINTMENT AND REMOVAL-

The President of India exercises different types of judicial powers. He appoints the Judges of the Supreme Court and High Courts. He can remove a Judge if he receives an address to that effect from both Houses of the Parliament. He can also transfer High Court Judges.

(B) PARDON-

The President has the power to pardon, reprieve, and respite, remit, suspend and commute sentences of convicted persons. This 'pardoning power' has been given to almost all Heads of State. By exercising his power to pardon, the President of India can set free any offender who has been tried and convicted. By reprieve is meant a stay of execution of the sentence pending a proceeding for pardon etc. Respite means that a lesser sentence is awarded instead of the punishment prescribed. To commute means substituting lighter punishment for harder one. He can exercise this power where the punishment is related to the offence against such laws as are within the executive power of the Union. Only the President has the power to grant pardon in cases of punishment to death. He has also the power to grant pardon, respite etc. with respect to punishment awarded by military courts. He exercises this power in his capacity as the Supreme Commander of Indian Armed Forces.

(C) SEEKING ADVICE-

Under Article 143, the President can seek the advisory opinion of the Supreme Court. Any question of law or matter of public importance can be referred by him to the Highest Court of the land for its advisory opinion.

APPOINTMENT POWERS: The President appoints, as Prime Minister, the person most likely to command the support of the majority in the Lok Sabha (usually the leader of the majority party or coalition). The President then appoints the other members of the Council of Ministers, distributing portfolios to them on the advice of the Prime Minister. The Council of Ministers remains in power at the 'pleasure' of the President.

The President appoints 12 members of the Rajya Sabha from amongst persons who have special knowledge or practical experience in respect of such matters as literature, science, art and social service. President may nominate not more than two members of Anglo Indian community as Lok Sabha members per Article 331

Governors of States are also appointed by the President who shall work at the pleasure of the President. Per Article 156, President is empowered to dismiss a governor who has violated the constitution in his acts.

The President is responsible for making a wide variety of appointments. These include:

- The Chief Justice, other judges of the Supreme Court and High Courts of India
- The Chief Minister of the National capital territory of Delhi (Article 239 AA 5 of the constitution)

- The Attorney General
- The Comptroller and Auditor General
- The Chief Election Commissioner and other Election Commissioners
- The Chairman and other Members of the Union Public Service Commission
- Vice-Chancellor of the central university and academic staff of the central university through his nominee
- Ambassadors and High Commissioners to other countries (only through the list of names given by the Prime Minister)

6. FINANCIAL POWERS: The President plays an important role in the financial administration of the country. He is the fiscal head of India. His duty is to ensure its financial stability. He causes the annual budget to be placed before the Parliament. Without his recommendation no Money Bill can be introduced in the Lok Sabha. The President has, at his disposal, the Contingency Fund of India. Out of this Fund he can sanction advances to meet unforeseen expenditures. He appoints the Finance Commission of India which examines and makes recommendations regarding financial relations between the centre and the states.

- A money bill can be introduced in the Parliament only with the President's recommendation.
- The President lays the Annual Financial Statement, i.e. the Union budget, before the Parliament.
- The President can take advances out of the Contingency Fund of India to meet unforeseen expenses.
- The President constitutes a Finance commission after every five years to recommend the distribution of the taxes between the centre and the States

7. DIPLOMATIC POWERS: The President also enjoys the diplomatic power. He appoints the diplomatic representatives of India to the foreign States. He also receives the credential letters of the diplomatic representatives of other States.

8. MILITARY POWERS: The President is the Supreme Commander of the Indian Armed Forces. The President can declare war or conclude peace on the advice of the Union Council of Ministers headed by the Prime Minister. All important treaties and contracts are made in the President's name. He also appoints the chiefs of the service branches of the armed forces.

9 EMERGENCY POWERS: Emergency due to armed rebellion or external aggression; Emergency arising from the breakdown of constitutional machinery in a State;

9.1. FINANCIAL EMERGENCY

Proclamation of National Emergency by the President of India: The President of India may issue a Proclamation of National Emergency when the security of India or any part thereof is threatened by war, armed rebellion or external aggression. Such a Proclamation of Emergency may remain in force for an indefinite period. During a Proclamation of National Emergency, the executive power of the States is to be exercised in accordance with the directions given by the Central Government. Parliament has the power to make laws on the subjects enumerated in the State List. The right to freedom of speech and expression, freedom to form association, freedom to practice and profession, etc., embodied in Article 19 shall remain suspended.

Failure of State Constitutional Machinery: In Case of failure of Constitutional machinery in a State, the President of India is authorized to make a Proclamation to that effect. The maximum duration of this type of emergency is three (3) years. During such an emergency, the President may assume to himself the executive powers of the State. The powers of the legislatures of the State are to be exercised by the Union Parliament. **Proclamation of Financial Emergency by the President:** The President may also issue a Proclamation of Financial Emergency if he is satisfied that the financial stability of India is threatened. This type of emergency may continue to remain in force for an indefinite period. The Central Government may give directions to the States for canons of financial propriety. All money-bills passed by the State Legislatures are to be reserved for the consideration of the President

CONCLUSION

Regarding the powers and position of the Indian President there are two themes - one, that like the British Monarch, he is a ceremonial head, always bound to act on the advice of the Council of Ministers (especially so, after the 42nd and 44th amendments)? The other allows the President powers which he has to exercise according to his own best judgment. So the major role of president whenever saves and serves the society and a hectic ruler in the role of president in particular time takes decision and particular role involve, ,evolve and resolve the problems...

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