

# **Constitution Law I**

## **Unit II**

**LLB 3rd, BALLB 5<sup>th</sup>**

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## **Position of the President and Prime Minister of India**

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.

The Constitution provides a Council of Ministers with the Prime Minister at the head to aid and advise the President. The amendments made during and after emergency of 1975 have substantial changes in the content of Article 74th. The 44th Amendment Act, attempted to follow a middle path.

The amended provision runs as under “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. The question whether any, and if so what, advice was tendered by ministers to the President shall not be inquired into in any court”.

The controversy regarding the role of the President originated from different interpretations of Articles 53, 74 and 75. The President has to exercise his power in accordance with the Constitution. The Council of Ministers with the Prime Minister will aid and advise the President. But Article 75 states: “The ministers shall hold office during the pleasure of President, and the Council of Ministers shall be collectively responsible to the Parliament”.

The terms ‘aid and advise’ may mean that the ministers have to act as advisers to the President and it is for the President to make decisions. But the interpretation runs counter to the spirit of the parliamentary government. The President can dismiss his council of ministers. But the council of ministers is responsible to the House of the People.

If the President dismisses a council of ministers which enjoys confidence of the House of the People, the whole constitutional framework would topple down. Thus, a correct interpretation of the seemingly conflicting provisions leads to the conclusion that the President is a constitutional head of the state. Still it cannot be denied that there was ambiguity in the text of provisions.

Still the President is not a cypher or a mere rubber stamp. The proviso to Article 74(1) empowers the President to ask the council of ministers to reconsider the advice tendered to him. Besides, Article 78 confers significant powers on the President. 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.

The Prime Minister should furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for. He should 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.

Thus, although the President has to act on the advice of the ministers, acting on ministerial advice does not mean immediate acceptance of the ministers' first thought. The President can state his objections to any proposed course of action and ask his Minister-in-Council, if necessary, to reconsider the matter. It is only in the last resort that he must accept their final advice.

The Constitution defines, in general terms, the relationship between the head of the state and the actual head of the government, i.e., the Prime Minister. The discussions in the Constituent Assembly, as well as the working of the Constitution since 1950 leave no doubt on the point that the President is a mere formal head of the Indian Union.

There are some scholars, however, who have argued at length to prove that the President is a 'constitutional autocrat'. In the words of K.V. Rao, "our Constitution creates a very powerful executive, perhaps the most powerful in the world; our Constitution concentrates that power in the President who is king for five years, and on whom the only check against abuse is the impotent impeachment". So far nothing concrete has happened to prove that the President is anything but a mere formal head.

The 42nd Amendment of the Constitution in 1976 (which came into operation on January 3, 1977) made the position more explicit. The 44th Amendment added, “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”.

Matters like the right of the President to be informed, his right to act only on the advice of his council, the right to dismiss a government at his discretion, the right to decide if new elections are to be held in place of the dissolved Lok Sabha, the right to reconsider a legislation if assented by the President, the open confrontation will finally go in favour of the Prime Minister.

The jurists maintain that there is virtually no point in an aid being binding. Aid is just assistance, and cannot be regarded as an admonition. At the same time, it is not so superfluous as to be merely an adulation. An advice is not an order and, therefore, is not mandatory in any sense. Yet Article 74 makes it clear that the PM and his ministers alone are responsible to advise the President on all matters.

Since the Constitution does not assign any other specific role to the Prime Minister and his ministers, rendering aid and tendering advice becomes critical. The advice is not superfluous and cannot be ignored. Besides, “advice, as a term, has to fulfill a purpose. It must be of assistance rather than an obstruction”. The aid and advice may not be binding because the President cannot be impeached for violating this advice. When a PM suggests dissolution of the house, the President can refuse to

accept the advice, because an alternative government may not be formed or the fresh elections could be detrimental to national interests.

The Constitution provides that the President must consult certain other authorities in certain further cases. He has to consult the Chief Justice of India in the matter of determination of the age of a High Court Judge under Article 217(3). In the matter of a disqualification of a Member of Parliament, he must consult the Election Commission under Article 103(2). The Forty-fourth Amendment Act says: “The President shall obtain the opinion of the Election Commission and shall act according to such opinion”.

The 44th Amendment ensures that the President abides by the aid and advice of the council of ministers, although, it does not mean immediate acceptance of the ministry’s first thought and compliance with such advice. He can state his objections and ask the ministry to reconsider such advice.

However, if the ministry sticks by its decision, the President has to sign it in the second instance. Several articles of the Constitution also point to the reality that the advice is binding. Article 78(a) demands that the PM communicate all decisions of the council of ministers to the President. The Governors explicitly have the right to act in their discretion. The President has no such areas of discretionary authority.

Besides if the President does not heed the advice, he can be impeached for violation of Article 74 of the Constitution. Similarly, the President is not answerable to any court for the exercise and performance of the powers and duties of his office. It follows that he may commit no wrong. Article 74 provides that what advice was tendered cannot be enquired into by courts. So, no legal relief can

be obtained against the President if he refuses to abide by the advice. The courts are barred by the Constitution from compelling production of the advice.

Still, there are a number of open ended questions to which the Constitution provides no answer. The President is always performing duties on someone else's advice, so he cannot be impeached for something he has not done individually. He need not obey any unconstitutional advice. He owes no personal responsibility to the nation, for these politico judicial riddles. Naturally 'The Presidency' to quote Dr Rajendra Prasad, "will be what the President will choose to make it".

# Constitutional Law I

Unit II LLB 3<sup>rd</sup> & BALLB

By Dr. Syed Asima Refayi

## Powers and Functions of President in India

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. There is no bar on the actions of the President to contest in the court of law.

The President of India is the Head of State. The system of government of India is a cabinet form of government. The Indian President is, therefore, a constitutional head like the King or Queen of Britain—that is, all executive powers are constitutionally vested in him, although those are actually exercised and executed by the cabinet.

In India the powers of the Union government are treated as the powers of the President because these powers are used in his name in pursuance of the constitutional stipulation under Article 53 which reads: The executive powers of the Union shall be vested in the President and shall be exercised by him either directly or through the officers subordinate to him in accordance with this Constitution.

The constitutional powers and functions of the President of India may be classified into six principal types.

### Executive Functions

**1. Head of the Union:** The President is at the head of the Union Executive. Consequently, all executive powers are exercised in his name. The executive power of the Union to be exercised by the President is extended to the matters with respect to which Parliament has power to make laws and to conclude treaty and agreement.

**2. Appointments:** As head of the executive, the President appoints the Governors of States, the Judges of the Supreme Court and the High Courts, the Auditor General of India and many other high officials, such as the members of Finance Commission, Election commission, Union Public commission etc.

**3. Appointment of the Prime Minister and other Ministers:** The President also appoints the Prime Minister and with his advice the other Ministers of the Union Council of Ministers. But here too, as in all other appointments, the President can seldom use his discretion. He is, ordinarily, duty-bound to summon the leader of the political party which secures an absolute majority in the Lok Sabha to become the Prime Minister and form the Ministry. He does enjoy some discretionary powers in the matter only under exceptional circumstances. When no single political party wins a clear absolute majority and, as a result, no Council of Ministers can be formed without a coalition of parties the President can exercise his discretion judiciously in appointing the Prime Minister. Such situations developed in the past.

India has entered into an age of coalition politics. And it may so happen that no single party will be able to secure an absolute majority, and the President may be required to exercise his discretionary power for some time to come, in appointing Prime Minister.

**4. Can ask to prove Majority in Lok Sabha:** Union Council of Ministers normally remains in office for five years, unless dissolved earlier for any reason. The President must be satisfied that the Council of Ministers enjoys the confidence of the majority of the Lok Sabha. In case of any doubt he can ask the Council of Ministers to prove its majority in the Lok Sabha, as the Prime Ministers Sri H.D. Deve Gowda was asked by the President after the official withdrawal of support by the Congress Party from Ministry. The President can also dissolve the Union Council of Ministers in accordance with Article 75(2) of the constitution, if he finds that the Ministry does not enjoy the support of the majorities in the Lok Sabha.

**5. Supreme Commander:** As head of State, the President is the supreme Commander of the Armed Forces of India and is entitled to declare war or conclude a treaty.

## Legislative Powers and Functions

**1. President is a part of Parliament:** The Union Legislature or Parliament consists of the President and two Houses of Parliament. The President is, therefore, an integral part of Union Legislature. He shall summon from time to time, either separately or jointly, the Houses of Parliament. The President can prorogue the Houses or either House of Parliament and, if necessary, can dissolve the lower Chamber of Parliament, the Lok Sabha. For example, the President dissolved the twelfth Lok Sabha in early 1999 when the confidence motion in favour of the Vajpayee government was lost in the Lok Sabha.

**2. Summons and Addresses Parliament:** The President may address either or both House of Parliament. In such address, at the first session after general election to the Lok Sabha and at beginning of a joint session of Parliament each year, he may place the reasons for summoning it. Apart from addressing Parliament, the President may also, in case of



necessities, send messages to either House, or to both Houses [Article 86(2)]. Normally, the President does not send such a message, unless however, he has a serious disagreement with the Council of Ministers.

**3. Nomination:** The President nominates a number of members in both Houses. The chief purpose of the nomination is to ensure adequate representation in Parliament of all sections of population which many not always be achieved through elections.

**4. Power in respect of Bills:** The President has certain functions in respect of passing of a Bill. A bill passed by both the Houses of Parliament requires his assent in order to become an Act. He may give his assent to a bill or can withhold assent when a bill, after getting approved in both the Houses, is placed before the President. But, if Parliament, acting on President's refusal to assent to a bill, passes it again with or without amendment, for the second time and presents it to the President for his approval, the President shall not withhold his assent there from under Article 111. In other words, it becomes obligatory upon him to give his assent.

In certain cases, prior sanction of the President is required for initiating any legislation. For instance, bill for formation of a new State or altering the boundaries of the existing State or States is to be placed before Parliament with prior approval of the President. Money bill is another example where obtaining of such approval of the President is a constitutional necessity.

**5. Bill passed by a State Legislature:** A bill passed by a State Legislature may also be reserved for the consideration of the President by the Governor of that State. The President enjoys this right in relation to a bill passed by a State Legislature only in such cases where those are referred to him by the Government of a State under Article 200.

## Power to Promulgate Ordinances

Except when both Houses of Parliament are in session, the President may promulgate such Ordinances as the circumstances appear to him to require (Article 123). Such an ordinance can have the same force and effect of an Act of Parliament. Such an ordinance shall cease to operate unless passed by both Houses of Parliament within the stipulated period. *A.K. Roy vs. Union of India* (1982) illustrates the proposition that the satisfaction of the President must be as to the existence of a situation which makes it necessary for the President to promulgate such on Ordinance.

The more controversial and debatable legislative power of the President has always been the Ordinance Making Power. Usually the power to make the laws rests with the Parliament. However, special power on the President empowering him to promulgate ordinances when the Parliament is not in session and the circumstances are such which

require immediate action. An ordinance cannot be promulgated when both the houses of parliament are in session. However, it may be passed when only one house is in session, the reason being that a law cannot be passed by only one house and thus it cannot meet a situation calling for immediate legislation. This power granted to the President in the Indian Constitution is unique and no such power has been conferred upon the executive in Britain or the USA.

In justification of the inception of the Ordinance Making power in the Constitution, Dr Ambedkar said that there might be a situation of emergency when the Houses of the parliament are not in session. It is important that this situation should be dealt with and it seems to me that the only solution is to confer upon the President the power to promulgate the law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because the legislature is not in session.

## Financial Powers and Functions

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. No proposal for spending money or raising revenues for purposes of government can be introduced in Parliament without the previous permission of the President.

## Emergency Powers of the President

1. The constitution of India empowers the President to proclaim three kinds of Emergencies: National Emergency (Art. 352);
2. Emergency for failure of Constitutional Machinery in a State (Art. 356);
3. Financial Emergency (Art. 360)

### 1 National Emergency

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 of form association, freedom to practice and profession, etc., embodied in Article 19 shall remain suspended.

## 2. 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.

## 3. Financial Emergency

The President may also issue a Proclamation of Financial 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.

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

## **Diplomatic powers**

All international treaties and agreements are negotiated and concluded on behalf of the President. However, in practice, such negotiations are usually carried out by the Prime Minister along with his Cabinet (especially the Foreign). Also, such treaties are subject to the approval of the Parliament. The President represents India in international forums and affairs where such a function is chiefly ceremonial. The President may also send and receive diplomats, i.e. the officers from the Indian Foreign Service. The President is the first citizen of the country.

## **Military powers**

The President is the Supreme Commander of the Indian Armed Forces. The President can declare war or conclude peace,<sup>[20]</sup> 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.<sup>[25]</sup> He also appoints the chiefs of the service branches of the armed forces.

## **Pardoning Powers / 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. As mentioned in Article 72 of the Indian Constitution, the President is empowered with the powers to grant pardons in the following situations:

- Punishment is for an offence against Union Law

- Punishment is by a Military Court
- Sentence is that of death

The decisions involving pardoning and other rights by the President are independent of the opinion of the Prime Minister or the Lok Sabha majority. In most cases, however, the President exercises his executive powers on the advice of the Prime Minister and the cabinet.

# **Constitutional Law I**

**LLB 3<sup>rd</sup>, BALLB 5<sup>th</sup>**

**By Dr.Syed Asima Refayi**

## **President of India**

The office of the President is very august and the Constitution attaches to it many privileges and immunities. The President along with the Council of Ministers headed by the Prime Minister comprises the Central executive which has been dealt from Article 52 to 78 of the Constitution.

The President is the head of the state and the formal executive. All executive action at the centre is expressed to be taken in his name. This power has been granted to him under Article 53(1) which states that the executive power shall be vested in the President and shall be exercised by him directly or through officers subordinate to him.

The President of India is the head of state and first citizen of India and the Supreme Commander of the Indian armed forces. In theory, the President possesses considerable power. In practice, the President's role is comparable to those of a constitutional monarch, and indeed the office replaced that of the British monarch (represented by the Governor General) upon India's independence.

The Constitution only formally vests functions in the hands of the President. In reality he has no function to discharge his discretion and or his individual judgment. He has to act on ministerial advice and therefore the Prime Minister and the Council of Ministers constitute the real and effective executive.

It is said that this structure of the central executive closely resembles the British Model which functions on the basis of unwritten conventions. In India some of these conventions have been written in the Constitution with regards to tenure, appointment and collective responsibility of the Ministers. However, still some matters have been left to conventions for example the accountability of the Cabinet and the Minister for the acts of his subordinates.

The office of the president is created by Article 52 of the Constitution and the matters of election are dealt from Article 54 to 60 of the Constitution. The President is elected by the method of indirect election i.e. by an electoral college consisting of elected members of both Houses of Parliament and of the State legislative assemblies. The method of indirect election was to emphasize the ministerial character of the executive that the effective power resides in the

Ministry and not in the President as such. Secondly, the method of direct election would have been very costly and energy consuming. There was also the fear that a directly elected President may in course of time assume all the power.

The President derives its power from Article 53 which vests in him all the executive authority including the Supreme Command of the Armed forces. There are several other provisions in the Constitution which mention specific functions of the President. Briefly the President has the power to appoint all important offices including those of the Prime Minister and other Central Ministers, Governors, Judges of the Supreme Court and the High Courts and even Election commissioners. He even he has the authority to appoint commissions with respect to the administration of scheduled areas. Most importantly the President is vested with wide powers during Emergency under Article 352 to 360 of the Constitution including suspension of Fundamental rights. Moreover every bill comes to him for his assent and can either refuse to give his assent or send it back for reconsideration.

## ELECTION OF THE PRESIDENT

The office of the president is created by Article 52 of the constitution. The president is elected not directly by the people but my method of indirect election.

### . Eligibility

Article 58 of the Constitution sets the principle qualifications one must meet to be eligible to the office of the President. A President must be:

- A citizen of India
- Of 35 years of age or above
- Qualified to become a member of the Lok Sabha

A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Certain office-holders, however, are permitted to stand as Presidential candidates. These are:

- The current Vice-President.
- The Governor of any State.
- A Minister of the Union or of any State (Including Prime Minister and Chief Ministers).

In the event that the Vice-President, a State Governor or a Minister is elected President, they are considered to have vacated their previous office on the date they begin serving as President.

Under The Presidential and Vice-Presidential Elections Act, 1952, a candidate to be nominated for the office of president needs 50 electors as proposers and 50 electors as seconders for his name to appear on ballot.

### **Conditions for the Presidency**

Certain conditions, per Article 59 of the Constitution, debar an otherwise eligible citizen from contesting the presidential elections. The conditions are:

- 1. The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.*
- 2. The President shall not hold any other office of profit.*
- 3. The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.*
- 4. The emoluments and allowances of the President shall not be diminished during his term of office.*

### **Election process**

Whenever the office becomes vacant, the new President is chosen by an electoral college consisting of the elected members of both houses of Parliament (M.P.s), the elected members of the State Legislative Assemblies (Vidhan Sabha) of all States and the elected members of the legislative assemblies (M.L.A.s) of two Union Territories (i.e., National Capital Territory (NCT) of Delhi and Union Territory of Puducherry). The election process of President is more extensive process than Prime Minister who is also elected indirectly (not elected by people directly) by the Lok Sabha members only. Whereas President being constitutional head with duties to protect, defend and preserve the constitution and rule of law in a constitutional democracy with constitutional supremacy, is elected in an extensive manner by the members of Lok Sabha, Rajya Sabha and state legislative assemblies in a secret ballot procedure.

The nomination of a candidate for election to the office of the President must be subscribed by at least 50 electors as proposers and 50 electors as seconders. Each

candidate has to make a security deposit of ₹ 15,000 (US\$220) in the Reserve Bank of India. The security deposit is liable to be forfeited in case the candidate fails to secure one-sixth of the votes polled.

The election is held in accordance to the system of Proportional representation by means of the Single transferable vote method. The voting takes place by secret ballot system. The manner of election of President is provided by Article 55 of the Constitution.

Each elector casts a different number of votes. The general principle is that the total number of votes cast by Members of Parliament equals the total number of votes cast by State Legislators. Also, legislators from larger states cast more votes than those from smaller states. Finally, the number of legislators in a state matters; if a state has few legislators, then each legislator has more votes; if a state has many legislators, then each legislator has fewer votes.

The actual calculation for votes cast by a particular state is calculated by dividing the state's population by 1000, which is divided again by the number of legislators from the State voting in the Electoral College. This number is the number of votes per legislator in a given state. Every elected member of the parliament enjoys the same number of votes, which may be obtained by dividing the total number of votes assigned to the members of legislative assemblies by the total number of elected representatives of the parliament.

Although Indian presidential elections involve actual voting by MPs and MLAs, they tend to vote for the candidate supported by their respective parties.

### **Oath or affirmation**

The President is required to make and subscribe in the presence of the Chief Justice of India (or in his absence, the senior-most Judge of the Supreme Court), an oath or affirmation that he/she shall protect, preserve and defend the Constitution as follows:

I, (name), do swear in the name of God (or solemnly affirm) that I will faithfully execute the office of President (or discharge the functions of the President) of the Republic of India, and will to the best of my ability preserve, protect and defend the Constitution and the law, and that I will devote myself to the service and well-being of the people of the Republic of India.

### **Process of Impeachment**

The President may be removed before the expiry of the term through impeachment for violating the Constitution of India. The process may start



in either of the two houses of the Parliament. The house initiates the process by leveling the charges against the President. The charges are contained in a notice that has to be signed by at least one quarter of the total members of that house. The notice is sent up to the President and 14 days later, it is taken up for consideration.

A resolution to impeach the President has to be passed by a two-third majority of the total number of members of the originating house. It is then sent to the other house. The other house investigates the charges that have been made. During this process, the President has the right to defend oneself through an authorised counsel. If the second house also approves the charges made by special majority again, the President stands impeached and is deemed to have vacated his/her office from the date when such a resolution stands passed. No president has faced impeachment proceedings so the above provisions have never been used.<sup>[52]</sup>

Under Article 361 of the constitution, though president cannot be summoned for questioning except on his voluntary willingness to testify in the court in support of his controversial deeds, the unconstitutional decisions taken by the president would be declared invalid by the courts. The case would be decided by the courts based on the facts furnished by the union government for the president's role. As clarified by the Supreme Court in the case 'Rameshwar Prasad & Ors vs Union Of India & Anr on 24 January 2006', though president cannot be prosecuted and imprisoned during his term of office, he can be prosecuted after his term of office for the guilty committed during his term of presidency as declared earlier by the courts.<sup>[53]</sup> No president has resigned on impropriety to continue in office for declaring and nullifying his unconstitutional decisions by the courts till now. No criminal case at least on the grounds of disrespecting constitution is lodged till now against former presidents to punish them for their unconstitutional acts though many decisions taken during the term of presidency had been declared by Supreme Court as unconstitutional, mala fides, void, *ultra vires*, etc.

Supreme Court shall inquire and decide regarding *doubts* and *disputes* arising out of or in connection with the election of a President per Article 71(1) of the constitution. Supreme Court can remove the president for the electoral malpractices or upon being not eligible to be Lok Sabha member under the Representation of the People Act, 1951. Subject to Article 71 (3), Parliament made applicable rules/procedure to petition the Supreme Court for resolving the *disputes* only that arise during the election process of the president but not the *doubts* that arise from his unconstitutional actions/deeds or changing Indian citizenship during the tenure of president which may violate the requisite election qualifications

The Office of the President falls vacant in the following scenarios:

1. On the expiry of his/her term
2. By reason of death
3. By reason of resignation
4. Removal by Supreme Court
5. Removal by impeachment

Article 65 of the Indian Constitution says that the Vice-President of India will have to discharge the duties, if the Office falls vacant due to any reason other than expiry of the term. The Vice-President reverts to office when a new President is elected and enters office. When the President is unable to act because of absence, illness or any other cause, the Vice-President discharges the President's functions until the President resumes the duties.

A Vice-President who acts as or discharges the functions of the President has all the powers and immunities of the President and is entitled to the same emoluments as the President. It should be noted here that when the Vice-President discharges the duties of the President, he/she does not function as the Chairperson of the Rajya Sabha.

The Indian Parliament has enacted the law (The President (Discharge of Functions) Act, 1969) for the discharge of the functions of the President when vacancies occur in the offices of the President and of the Vice-President simultaneously, owing to removal, death, resignation of the incumbent or otherwise. In such an eventuality, the Chief Justice, or in his absence, the senior most Judge of the Supreme Court of India available discharges the functions of the President until a newly elected President enters upon his office or a newly elected Vice-President begins to act as President under Article 65 of the Constitution, whichever is the earlier.<sup>[21]:96</sup> For example, in 1969, when President Zakir Husain died in Office, Vice-President V. V. Giri served as the acting President of India. However, later, V.V Giri resigned from both posts (Acting President of India and Vice-President of India) as he became a candidate in the 1969 Presidential election in India. In this event, the then Chief Justice of India, Justice Mohammad Hidayatullah served as the acting President of India until the next President was elected.

## **President versus Chief Justice**

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### **President versus Chief Justice of India**

<b>President</b>	<b>Chief Justice of India/ Judiciary</b>
The duties of President under his oath is to protect, defend and preserve the constitution and the law	Similar to President to uphold the Constitution and the laws (Third Schedule of the constitution) <sup>[11]</sup>
Oath is taken in the presence of the Chief Justice	In the presence of the President
Impeachment by Parliament with majority of not less than two-thirds of the total membership of each House of the Parliament for violation of the Constitution as per Article 61.	Impeachment by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting on the ground of proved misbehavior or incapacity as per Article 124 (4)
President can be removed by the Supreme Court per Article 71(1) for committing electoral malpractices and upon ceasing to possess the requisite qualifications to be president.	President can not remove judges once appointed by him without impeachment process per Article 124 (4).
An individual heads the autonomous institution of President.	Judiciary/Supreme Court is also an autonomous institution represented by team of Supreme Court judges with Chief justice as its chief.
President being head of Parliament, Executive and supreme commander of armed forces is fully empowered by the constitution to fulfil his judicial responsibility. He can also take the expert	Chief Justice/Supreme Court is also empowered by the constitution to repeal the unconstitutional activities of parliament and executive only after a

<p>advise of Attorney General and also Chief Justice in performing his judicial role. It is President's duty to ensure that every state's governance is carried on in accordance with the provisions of the constitution under Articles 355 and 356.</p>	<p>fair trial.</p>
<p>President's prime duty is to prevent unconstitutional decisions of union and state governments and Parliament or state assemblies by denying his compulsory assent for making them in to applicable laws. He is the foremost defender of the constitution who can pre-empt the unconstitutional activities of executive and legislatures. The other duties of President are just ceremonial as head of the country which are attached to him for being protector, defender and preserver of the constitution. The institution of President becomes redundant if the president is confining to other ceremonial duties only.</p>	<p>Can intervene or nullify the unlawful actions of union/state governments and unconstitutional laws enacted by the Parliament or a state legislative after presidential assent only.</p>
<p>President has constitutional immunity for his unconstitutional, mala fides activities during his/her tenure but liable for judicial action / punishment for his unconstitutional activity after the term of presidency. However per Article 361 (1), President is answerable to a court designated by either house of Parliament with two-thirds majority for the investigation of a charge against him under article 61.</p>	<p>Chief justice/Judges of Supreme Court are also immune from punishment for not delivering correct judgments' or for their incompetence and mala fides. However, Judges verdict can be repealed by a higher level bench of other judges.</p>
<p>President can not be recalled by the</p>	<p>Chief justice/Judge of Supreme Court</p>

people of India for not fulfilling his constitutional duties in case Parliament is not impeaching the President or removed by the Supreme Court.	also can not be recalled by the people of India in case Parliament is not impeaching the judges.
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## President versus Prime minister

<b>President versus Prime minister</b>	
<b>President</b>	<b>Prime minister/ Union cabinet</b>
The duties of President under his oath is to protect, defend and preserve the constitution and the law	Swears allegiance to the Constitution of India as by law established, swears to uphold the sovereignty and integrity of India and swears to do right to all manner of people without fear or favour, affection or ill-will (Third Schedule of the constitution) <sup>[11]</sup>
Oath is taken in the presence of the Chief Justice	In the presence of the President
Elected in an extensive manner indirectly by the members of Lok Sabha, Rajya Sabha, and state legislative assemblies in a secret ballot conducted by the Election Commission	Elected indirectly by the Lok Sabha members and secret ballot is not mandatory.
Impeachment by Parliament with majority of not less than two-thirds of the total membership of each House of the Parliament for violation of the Constitution as per Article 61	Steps down upon losing majority support in Lok Sabha.

<p>President can be removed by the Supreme Court per Article 71(1) for committing electoral malpractices and upon ceasing to possess the requisite qualifications to be president</p>	<p>Similar to Prime minister and ministers also.</p>
<p>An individual heads the autonomous institution of President</p>	<p>Union cabinet with Prime minister as its chief is collectively responsible.</p>
<p>President being head of Parliament, Executive and supreme commander of armed forces is fully empowered by the constitution to fulfil his judicial responsibility. He can also take the expert advise of Attorney General and also Chief Justice in performing his judicial role. It is President's duty to ensure that every state's governance is carried on in accordance with the provisions of the constitution under Articles 355 and 356</p>	<p>Rest of the governance of the union and reporting to the President on all important matters. Being leader of the majority/ ruling party in the Parliament, union cabinet takes lead in law making by the parliament needed for policy finalisation on various aspects, annual budgets finalisation, planning and implementation, etc.</p>
<p>President's prime function is to prevent unconstitutional decisions of union and state governments and parliament or state assemblies by denying his compulsory assent/government orders (GO) for making them in to applicable laws. He is the foremost defender of the constitution who can pre-empt the unconstitutional activities of executive and legislatures.</p>	<p>Prime minister /union cabinet shall aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice as long as not unconstitutional. Prime minister shall 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 and on President's desire submit related information. No minister shall decide on any matter without the council of ministers/ union cabinet</p>

	approval per Article 78.
President has constitutional immunity for his unconstitutional, mala fides activities during his/her tenure but liable for judicial action / punishment for his unconstitutional activity after the term of presidency	The union cabinet has constitutional immunity from legal proceedings in any court for their mala fide and unconstitutional advice tendered by union ministers to the President per Article 74 (2).
President cannot escape from his constitutional duty by citing constitutional amendment to Article 74 (para 2 of 1) which makes him to abide by the union cabinet advice after sending for reconsideration. As clarified by the Supreme Court, the object of Article 74 (2) is only to make the question whether the President had followed the advice of the union cabinet or acted contrary thereto, non-justifiable. Refer page Article 74#Court cases for more clarity	The union cabinet may escape from the punishment or responsibility for implementing unconstitutional laws citing Article 74 (2).
President cannot be recalled by the people of India for not fulfilling his constitutional duties in case parliament is not impeaching the President or removed by the Supreme Court or resigns on his own on moral grounds	Prime minister/ union cabinet cannot be recalled by the people of India till the end of his term in case he is not losing majority support in Lok Shaba or resigns on his own on moral grounds.

### Important presidential interventions in the past

The President's role as defender of the Constitution and the powers as Head of State, especially in relation to those exercised by the Prime Minister as leader of the government, have changed over time. In particular, Presidents have made a number of interventions into government and lawmaking, which have established and challenged some conventions concerning Presidential intervention.

### Proving majority in the parliament

In 1979, the Prime Minister, Charan Singh, did not enjoy a Parliamentary majority. He responded to this by simply not advising the President to summon Parliament.<sup>[20]</sup> Since then, Presidents have been more diligent in directing incoming Prime Ministers to convene Parliament and prove their majority within reasonable deadlines (2 to 3 weeks). In the interim period, the Prime Ministers are generally restrained from making policy decisions.

### **Proof of Majority to form a Government**

Since the 1990s, Parliamentary elections have generally not resulted in a single party or group of parties having a distinct majority, until the 2014 Lok Sabha elections when BJP received a clear majority. In such cases, Presidents have used their discretion and directed Prime Ministerial aspirants to establish their credentials before being invited to form the government. Typically, the aspirants have been asked to produce letters from various party leaders, with the signatures of all the MPs who are pledging support to their candidature. This is in addition to the requirement that a Prime Minister prove he has the support of the Lok Sabha (by a vote on the floor of the House) within weeks of being sworn into office.

### **Pocket veto of the Postal Bill**

Since the Indian Constitution does not provide any time limit within which the President is to declare his assent or refusal, the President could exercise a "pocket veto" by not taking any action for an indefinite time. The veto was used in 1986 by the then President Zail Singh over the Postal Bill. The President did not give assent to the bill, arguing that its scope was too sweeping and would give the government arbitrary powers to intercept postal communications indiscriminately.

### **Rashtrapati Bhavan communiqués**

In the late 1990s, President K. R. Narayanan introduced explaining to the nation (by means of Rashtrapati Bhavan communiqués), the thinking that led to the various decisions he took while exercising his discretionary powers; this has led to openness and transparency in the functioning of the President.

### **Offices of Profit Bill**

The constitution gives the President the power to return a bill unsigned but it circumscribes the power to send it back only once for reconsideration. If the Parliament sends back the bill with or without changes, the President is obliged to



sign it. In mid-2006, President Dr.A. P. J. Abdul Kalam sent back a controversial bill regarding the exclusion of certain offices from the scope of 'offices of profit', the holding of which would disqualify a person from being a member of parliament. The combined opposition, the NDA, hailed the move. The UPA chose to send the bill back to the president without any changes and, after 17 days, Kalam gave his assent on 18 August 2006.

### **Sacking state governors**

Arunachal Pradesh governor who was earlier appointed by the ruling party at the centre has been sacked by the President after the Supreme Court has quashed his unconstitutional acts. It is a good act on the part of President by giving a strong message to all state governors that they should not come under the influence of the ruling party at the centre to commit unconstitutional acts.