

THE PRESIDENT

The Constitution provides for the office of the President of India. The President is the head of the Indian state. The executive power of the Union is vested in him. However, he is only a nominal executive.

Election

The President is elected by the members of an electoral college consisting of (a) elected members of both the houses of Parliament, and (b) elected members of the Legislative Assemblies of states. Thus, the nominated members of both the houses of Parliament, the nominated members of the state Legislative Assemblies and the members of the state Legislative Council (in case of a Bicameral Legislature) do not participate in his election. Also, the term 'state' in this context includes the national capital territory of Delhi and the union territory of Pondicherry.

The Constitution provides that, as far as practicable, there shall be uniformity in the scale of representation of different states as well as parity between the state as a whole and the Union. The President's election is held in accordance with a system of proportional representation by means of a single transferable vote and the voting is by secret ballot. A person to be eligible as President should fulfill the following qualifications.

- (i) He should be a citizen of India;
- (ii) He should have completed 35 years of age;
- (iii) He should be qualified for election as a member of the Lok Sabha ; and
- (iv) He should not hold any office of profit under the Union Government or any state government or any local or other authority.

Besides, the Constitution lays down the following conditions of the President's office.

- (i) He should not be member of either the Parliament or a state legislature,

- (ii) He should not hold any other office of profit,
- (iii) His emoluments, allowance and privileges shall be determined by the Parliament,
- (iv) His emoluments and allowance shall not be diminished during the term of office.
- (v) The oath of office to the President is administered by the Chief Justice of India and in his absence, the senior most judge of the Supreme Court available.

Removal

The President holds office for a term of five years. However, he can resign from his office at any time by addressing the resignation letter to the Vice-President of India. Any resignation addressed to the Vice-President shall forthwith be communicated by him to the Speaker of the Lok Sabha. He can also be removed from the office before completion of his term by impeachment of violation of the Constitution. The impeachment charges can be initiated by either houses of Parliament. These charges should be signed by one-fourth members of the houses (which framed the charges) and a 14 days; notice should be given to the President. After, the impeachment bill is passed by a majority of two-third of the total membership of the houses, then the President stands removed from his office from the date on which the bill is so passed.

When a vacancy occurs in the office of the President due to his death, resignation or removal or otherwise, the Vice-President acts as the President until a new President is elected. Further, when the President is unable to discharge his functions due to absence, illness or any other causes, the Vice-President discharges his functions until the President resumes his Office. When the Vice-President is acting as President or discharging the function of President, he shall have all the powers and immunities of the President and shall be entitled

to such emoluments, allowance and privileges as are determined by the Parliament.

A person who holds or who helps the office of a President is eligible for re-election to that office. An election to fill the vacancy caused by expiration of term of office of a President should be completed before the expiration of that term. Further, an election to fill any vacancy in the office of President occurring due to his death, resignation or removal or otherwise, should be held within six months from the date of occurrence of such a vacancy.

All doubts and disputes in connection with election of the President and inquired into and decided by the Supreme Court whose decision is final. The election of a person as President cannot be challenged on the ground that the Electoral College was incomplete (i.e., existence of any vacancy among the members of Electoral College). If the election of a person as President is declared void by the Supreme Court, acts done by him before the date of such declaration of the Supreme Court are not invalidated (i.e. they continue to remain in force).

Powers and Functions

The powers enjoyed and the functions performed by the President if India can be studied under the following heads.

1. Executive Powers
2. Legislative Powers
3. Financial Powers
4. Judicial Powers
5. Diplomatic Powers
6. Military Powers
7. Emergency Powers

Executive Powers

The executive powers and functions of the President are:

- (i) All executive actions of the Government of India are formally taken in his name.
- (ii) He can make rules specifying the manner in which the orders and other instruments made and

executed in his name shall be authenticated.

- (iii) He can make rules for more convenient transaction of business of the Union Government, and for allocation among the ministers, of the said business.
- (iv) He appoints the Prime Ministers and the other ministers. They hold office during his pleasure.
- (v) He appoints the Attorney-General of India and determines his remuneration. The Attorney-General holds office during the pleasure of the President.
- (vi) He appoints the Comptroller and Auditor-General of India, the Chief Election Commissioners and other Election Commissioners, the Chairman and members of Finance Commission, and so on.
- (vii) He can seek any information relating to the administration of affairs of the Union, and proposals for Legislation from the Prime Ministers.
- (viii) He can require the Prime Ministers to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a ministers but, which has not been considered by the council.
- (ix) He can appoint a commission to investigate into the conditions of SCs, STs and other backward classes.
- (x) He can appoint an inter-state council to promote Centre-states and inter-state cooperation.
- (xi) He directly administers the union territories through administration appointed by him.
- (xii) He can declare any area as scheduled area and has powers with respect to the administration of schedule areas and tribal areas.

Legislative Powers

The President is an integral part of the Parliament of India. In this capacity, he enjoys the following legislative powers.

- (i) He can summon or prorogue the Parliament and dissolve the Lok Sabha. He can also summon a joint sitting of both the houses of Parliament which is presided over by the Speaker of the Lok Sabha.
- (ii) He can address the Parliament at the commencement of the first session after each general election and the first session of each year.
- (iii) He can send messages to the houses of Parliament, whether with respect to a bill pending in the Parliament or otherwise.
- (iv) He can appoint any member of the Lok Sabha to preside over its proceedings when the office of both, the Speaker and the Deputy Speaker fall vacant. Similarly, he can also appoint any member of the Rajya Sabha to preside over its proceeding when the office of both, the Chairman and the Deputy Chairman fall vacant.
- (v) He nominates 12 members of the Rajya Sabha from amongst the persons having special knowledge or practical experience in respect of Literature, science, art and social services.
- (vi) He can nominate two members to the Lok Sabha from the Anglo-Indian Community.
- (vii) He decided on question as to disqualifications of members of the Parliament, in consultation with the Election Commission.
- (viii) His prior recommendation or permission is needed to introduce

certain types of bills in the Parliament. For example, (i) a bill involving expenditure from the Consolidated Fund of India, and 9ii) a bill for the alteration of boundaries of states or creation of a new state.

- (ix) When a bill is sent to the President after it has been passed by the Parliament, he can:
 - (a) Give his assent to the bill, or
 - (b) Withhold his assent to the bill, or
- (i) © Return the bill (if it is not a money bill) for reconsideration of the Parliament.

However, if the bill is passed again by the Parliament, with or without amendments, the President has to give his assent to the bill. Thus, the President has the power to veto with respect to the bills passed by the Parliament. A veto is of the following four types.

- (a) Absolute veto that is, withholding of assent to the bill passed by the legislature.
- (b) Qualified veto, which can be over-ridden by the legislature with a higher majority.
- © Suspension veto, which can be over-ridden by the legislature with an ordinary majority.
- (d) Pocket veto that is, taking no action on the bill passed by the legislature.

The veto power enjoyed by the President if India is a combination of absolute, suspension and pockets vetos.

It should be noted here that the President that the President has no veto power in respect of a constitutional Amendment bill. The 24th Amendment (1971) made it obligatory for the President to give his assent to a constitutional amendment bill.

- (x) When a bill passed by a state legislature is reserved by the Governor for consideration of the President, the President can.
 - (a) Give his assent to the bill, or
 - (b) Withhold his assent to the bill, or
 - (c) Direct the governor to return the bill (if it is not a money bill) for reconsideration of the state legislature. It should be noted here that it is not obligatory for the President to give his assent even if the bill is again passed by the state

legislature and sent again to him for his consideration. Thus, the President enjoys absolute veto over state bills.

(xi) He can promulgate ordinances when the Parliament is not in session. These ordinances must be approved by the Parliament within six weeks from its assembly. He can also withdraw an ordinance at any time.

(xii) He lays the reports of the Comptroller and Auditor-General, Union Public Services Commission, Finance Commission, and other, before the Parliament.

(xiii) He can make regulation for the peace, progress and good government of Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, and Daman and Diu. In case of Pondicherry also, the President can legislate by making regulation but only when the assembly is suspended or dissolved.

Financial Powers

The financial powers and functions of the President are:

- (i) Money bills can be introduced in the Parliament only with his prior recommendation.
- (ii) He causes to be laid before the Parliament the annual financial statements (i.e., Union Budget).
- (iii) No demand for a grant can be made except on his recommendation.
- (iv) He can make advances out of the Contingency Fund of India to meet any unforeseen expenditure.
- (v) He constitutes a Finance Commission after every five years to recommend the distribution of taxes between the Centre and the states.

Judicial Powers

The judicial powers and functions of the President are:

(i) He appoints the Chief Justice and the judge of Supreme Court and High Courts.

(ii) He can seek advice from the Supreme Court on any question of law or fact. However, the advice tendered by the Supreme Court is not binding on the President.

(iii) He can grant pardon, reprieve, respite and remission of punishment, or suspended, remit or commute the sentence of any person convicted of any offence:

(a) In all cases where the punishment or sentence is by court martial;

(b) In all cases where the punishment or sentence is for an offence against any law relating to matter to which the executive power of the Union extends; and

(c) In all cases where the sentence is a sentence of death.

Pardon sets free a person from all punishment imposed on him by a court of law for some offence.

Reprieve implies a stay of the execution of a sentence for a temporary period.

Respite denotes awarding a lesser sentence instead of the penalty prescribed by law.

Remission implies reducing the amount of sentence without changing its character.

Commutation denotes the substitution of one form of punishment for another form which is of lighter character.

Diplomatic Powers

The international treaties and agreements are negotiated and concluded on behalf of the president. However, they are subject to the approval of the Parliament. He represents India in international forms and affairs and sends and receives diplomats like ambassador, high commissioners, and so on.

Military Powers

He is the supreme commander of the defense forces of India. In that capacity, he appoints the chiefs of the Army, the Navy and the Air force. He can declare war or conclude peace subject to the approval of the Parliament.

Emergency Powers

In addition to the normal powers mentioned above, the Constitution confers extraordinary powers on the President to deal with the following three types of emergencies.

- (i) National Emergency (Article 352)
- (ii) President's Rule (Article 356 & 365)
- (iii) Financial Emergency (Article 360)

National Emergency

The President can proclaim emergency in the entire country or in any part of it on the following grounds.

- (i) War, or
- (ii) External aggression, or
- (iii) Armed rebellion.

The term 'armed rebellion' was inserted by the 44th Constitutional Amendment Act (1978), replacing the original term 'internal disturbance'.

The President can proclaim this emergency only after receiving a written recommendation from the Cabinet. The Article 352 (3) defines the term 'Cabinet' as "the council consisting of the Prime Minister and other ministers of Cabinet rank."

The proclamation of emergency must be approved by the Parliament (both houses) within one month. If approved, the emergency shall continue for six months. It can be extended for an indefinite period with an approval of the Parliament for every six months.

A national emergency has been proclaimed three times so far-in 1962, 1971 and 1975.

The president acquires the following extraordinary powers during a national emergency.

- (i) He can give direction to any state with regard to the manner in which its executive power is to be exercised.
- (ii) He can modified the pattern of the distribution of financial resources between the Union and the states.
- (iii) He can suspended the Fundamental Rights of citizens except the right to life and personal

liberty (Article 21) and the right to protection in respect of conviction for offences (Article 20). Moreover, the right to six freedoms (Article 19) can only be suspended in case of internal emergency (i.e. on the grounds of an armed rebellion).

It should also be mentioned here that the Parliament acquires two powers during a national emergency: (a) It can make laws on any subject mentioned in the state list. Such laws becomes ineffective six months after the emergency. (b) It can extend the normal tenure (five years) of the Lok Sabha as well as a State Legislative Assembly by one year at a time (for any length of time). Such extension cannot continue beyond six months after the emergency.

President's Rule

It is also known as a state emergency or a constitutional emergency. It can be proclaimed by the President on the following grounds.

- (i) Failure of constitutional machinery in the state (Article 356), or
- (ii) Failure to comply with or to give effect to directions given by the Union (Article 365).

Thus, President's rule can be imposed when the President is satisfied, on the basis of either a report of the state or governor or otherwise, that the governance of a state cannot be carried on in accordance with the provision of the Constitution.

The above proclamation in a State should be approved by the Parliament (both houses) within two months. If approved, it remains in force for six months. It can be extended for a minimum period of three years with the approval of Parliament every six months. However, beyond one year, it can be extended by six month at a time only when the following two conditions are fulfilled.

- (i) A proclamation of national emergency should be in operation in the entire country, or in the whole or any part of the concerned state; and
- (ii) The Election Commission must certify that the general elections to the concerned state

Legislative Assembly cannot be held on account of difficulties.

The President acquires the following extraordinary powers when the President's rule is imposed in a state.

(i) He can assign to himself all or any of the functions of the state government and all or any of the powers vested in the governor or anybody or authority in the state.

(ii) He can declare that the powers of the state legislature shall be exercisable by or under the authority of the Parliament.

(iii) He can authorize, when the Lok Sabha is not in session, expenditure by the Parliament.

(iv) He can promulgate ordinance for the administration of the state when the Parliament is not in session.

Therefore, when the President's rule is imposed in a state, the President dismisses the state council of ministers headed by the chief ministers. The state governor, on behalf of the President, carries on the state administration with the help of the chief secretary of the state or the advisors appointed by the President. This is the reason why a proclamation under Article 356 is popularly known as the imposition of 'President's Rule' in a state. Further, the President suspends or dissolves the state legislative assembly. The Parliament passes the state legislative bills and the state budget.

It should also be mentioned here that the constitutional status, position, powers and functions of the concerned state High Court are not affected by such a proclamation. In other words, the President cannot interfere with the jurisdiction of the concerned state High Court.

Financial Emergency

The President can proclaim financial emergency if he is satisfied that the financial stability or credit of India or any part thereof, is threatened. Such a proclamation must be approved by the Parliament within two months.

The President acquires the following extraordinary powers when a financial emergency is proclaimed.

- I. He can give directions to the state to observe the canons of financial propriety.
- II. He can issue directions for the reduction of salaries and allowances of all or any class of persons serving under the state.
- III. He can require that all money bills and other financial bills passed by the state legislature be reserved for his consideration.
- IV. He can issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union, including the judge of the Supreme Court and High Courts.

This type of emergency has not been declared so far.

Constitutional Position

The Constitution of India has provided for a parliamentary form of government. Consequently, the President has been made only a nominal executive; the real executive consisting the council of ministers headed by the Prime Ministers. In other words, the President has to exercise his powers and functions with the aid and advice of the council of ministers headed by the Prime Ministers. The following are the three provisions in the constitution in this context.

(i) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this constitution (Article 53).

(ii) There shall be a council of ministers with the Prime Ministers at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice (Article 74).

(iii) The council of ministers shall be collectively responsible to the Lok Sabha (Article 75). This provision is the foundation of the parliamentary system of government.

The 42nd Constitutional Amendment Act of 1976 has made the President bound by the advice of

the council of ministers headed by the Prime Ministers. The 44th Constitutional Amendment Act of 1978 has authorized the President to require the council of ministers to reconsider such advice either generally or otherwise. However, he 'shall' act in accordance with the advice tendered after such reconsideration.

Though the President has no constitutional discretion, he has some situational discretion. In other words, the President can act in his discretion (i.e. without the advice of the ministers) under the following situations.

- (i) Appointment of Prime Ministers when no party has a clear-cut majority in the Lok Sabha or when the Prime Minister in office dies suddenly and there is no obvious successor.
- (ii) Dismissal of the council of ministers when it cannot prove the confidence of the Lok Sabha.
- (iii) Dissolution of the Lok Sabha if the council of ministers has lost its majority.

