

Introduction

In India, the Constitution of India establishes a Parliamentary form of government, which means Head of the State is the Constitutional head and real executive powers are vested in the Council of Ministers. Articles 52 to 78 in Part V of the Constitution deals with Union Executive. Union Executive consists of President, Vice-President, Prime Minister and Council of Minister.

Art 52 of the Constitution says that there shall be the President of India. He is the Head of the State. Art 53 of the Constitution says that the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officer's subordinate to him in accordance with this Constitution. Art 73 the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws; and includes the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty or agreement. Thus, the Executive power of President is co-existent with the legislation.

Election of President:

Article 54: The President shall be elected by the members of an electoral college consisting of the elected members of both Houses of Parliament; and the elected members of the Legislative Assemblies of the States.

Explanation:

The election of President is done by indirect election. Article 54 provides the manner of election of the President. This article provides that there should be an Electoral college

Electoral college for President's election includes:—

- ❑ The Elected Members of the Houses of Parliament
- ❑ The Elected Members of the State Legislative Assemblies
- ❑ The Elected Members of the Union Territories of Delhi and Puducherry having Legislative Assemblies (this part was added later by the 70th amendment Act; for inclusion of Jammu and Kashmir Union Territory similar amendment will be needed).

Thus, in the Electoral College, the **nominated**

members of the legislature are not allowed to vote for President. The following group of people is not involved in electing the President of India:

- ❑ Nominated Members of Rajya Sabha (12)
- ❑ Nominated Members of State Legislative Assemblies
- ❑ Members of Legislative Councils (Both elected and nominated) in bicameral legislatures
- ❑ Nominated Members of union territories of Delhi and Puducherry

Article 55: Manner of election of President

Article 55(1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President

Article 55(2) For the purpose of securing such uniformity among the States inter se as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:

- ❑ **Article 55(2)(a)** every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;
- ❑ **Article 55(2)(b)** if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub clause (a) shall be further increased by one;
- ❑ **Article 55(2)(c)** each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub clause (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one half being counted as one and other fractions being disregarded

Article 55(3) The election of the President shall be held in accordance with the system of proportional

representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Explanation:

The system of proportional voting is adopted for this election, in which the number of votes is provided in proportion to the population of the state in case of State Legislature. Members and the Members of Parliament get their number of votes by dividing the total votes of the State Legislature with the total number of elected members of Parliament.

Calculation of votes:

The Presidential election uses a special voting to tally the votes. A different voting weightage is assigned to an MP and an MLA. The value of each MLA's vote is determined based on the population of their state and the number of MLAs. For instance, an MLA from UP has a value of 208 while an MLA from Sikkim has 7. Due to a Constitutional Amendment passed in 2002, the population of the state as per the 1971 census is taken for the calculation.

The value of an MP's vote is the sum of all votes of MLAs across the country divided by the number of elected MPs

For e.g., to find the number of votes for the members of Legislature of a State, the total population of the State will be divided by the number of elected members. The quotient which will be obtained will be divided by 1000 to find out the multiples of 1000. If the quotient is 10,55,000 then after dividing it by 1000, we get 1055. So, each member of the Legislature will get 1055 votes. Similarly, to get the votes for Members of Parliament, the total votes of all the State legislature will be divided by the total number of members of Parliament who have been elected.

The value of an MP's vote will change from 708 in 2017 to 700 in 2022. As Jammu and Kashmir is not a state now, Jammu and Kashmir's MLAs cannot participate in the voting process hence the value will drop from 708 to 700.

$$\begin{aligned}\text{Value of one MP's vote} &= \frac{\text{Total value of all votes of MLAs}}{\text{Total number of elected MPs}} \\ &= \frac{543231}{776} = 700\end{aligned}$$

Note that the value of an MP's vote is rounded off to the closest whole number. This brings the combined value of the votes of all MPs to 543,200 (700 x 776).

What is the number of votes required to win?

The voting for the Presidential elections is done through

the system of single transferable vote. In this system, electors rank the candidates in the order of their preference. The winning candidate must secure more than half of the total value of valid votes to win the election. This is known as the quota.

Assuming that each elector casts his vote and that each vote is valid:

$$\begin{aligned}\text{Quota} &= \frac{\text{Total value of MP's votes} + \text{Total value of MLA's votes}}{2} + 1 \\ &= \frac{543200 + 543231}{2} + 1 = \frac{1086431+1}{2} = 543,216\end{aligned}$$

There is a single transferable vote which is cast by every elected member of the legislature through a secret ballot. The counting of votes takes place in rounds. In Round 1, only the first preference marked on each ballot is counted. If any of the candidates secures the quota at this stage, he or she is declared the winner.

If no candidate secures the quota in the first round, then another round of counting takes place. In this round, the votes cast to the candidate who secures the least number of votes in Round 1 are transferred. This means that these votes are now added to the second preference candidate marked on each ballot. This process is repeated till only one candidate remains.

The anti-defection law which disallows MPs from crossing the party line does not apply to the Presidential election. This means that the MPs and MLAs can keep their ballot secret.

Note that it is not compulsory for an elector to mark his preference for all candidates. If no second preference is marked, then the ballots are treated as exhausted ballots in Round 2 and are not counted further.

Article 71: Disputes regarding the election of the President

Article 71 deals matters relating to the election of the President. It states that any dispute arising with respect to the election of the President will be adjudicated by the Supreme court and its decision will be considered final.

If the election of a person as President is declared void, acts done by him in the exercise of the powers of the office of President will not be considered invalid by reason of the order of the Supreme Court.

Parliament can formulate any law regarding the election of a President in consonance with the provisions of the Constitution.

The election of a person as President or Vice President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

Term of Office of President:

Article 56(1) The President shall hold office for a term of five years from the date on which he enters upon his office: Provided that

- ❑ **Article 56(1)(a)** the President may, by writing under his hand addressed to the Vice President, resign his office;
- ❑ **Article 56(1)(b)** the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in Article 61
- ❑ **Article 56(1)(c)** the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office

Article 56(2) Any resignation addressed to the Vice President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

Explanation:

Article 56 defines the term of the office of the President to be of five years unless:

- ❑ A new President enters the office, the incumbent President shall hold it;
- ❑ President resigns before the expiry of the term by writing it to the Vice President;
- ❑ The President is removed from his office, for violation of the Constitution, by the process of impeachment provided under article 61.

The article also states that any resignation made by the President to the Vice President must be communicated to the Speaker of the Lok Sabha by the Vice President himself.

Article 57: Eligibility for re-election: A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

Explanation: In India, there is no restrictions on number of terms the person can become President. In USA a person can be President for a maximum of two terms.

Qualifications:

Article 58 talks about the eligibility of a person to become President of India. It says that a person is eligible for election as President if he:

- ❑ is a citizen of India;
- ❑ has completed the age of thirty-five years;

- ❑ is qualified for election as a member of the House of the People.
- ❑ A person can be disqualified for election as President if he holds any office of profit under
 - the Union of India or;
 - the Government of any State or;
 - under any local or other authority subject to the control of any Government of India.

Office Of Profit: The law does not clearly define what constitutes an office of profit but the definition has evolved over the years with interpretations made in various court judgments. An office of profit has been interpreted to be a position that brings to the office-holder some financial gain, or advantage, or benefit. The amount of such profit is immaterial.

In 1964, the Supreme Court ruled that the test for determining whether a person holds an office of profit is the test of appointment. Several factors are considered in this determination including factors such as:

- i. whether the government is the appointing authority,
- ii. whether the government has the power to terminate the appointment,
- iii. whether the government determines the remuneration,
- iv. what is the source of remuneration, and;
- v. the power that comes with the position.

Conditions of President's Office:

Article 59 talks about the condition of the President's Office:

Article 59 (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.

Article 59 (2) The President shall not hold any other office of profit.

Article 59 (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.

Article 59 (4) The emoluments and allowances of the President shall not be diminished during his term.

Explanation:

The Constitution lays down the following condition for President's office:

- ❑ The President cannot be a member of either House of Parliament or of any other House of the Legislature of any State.
- ❑ If he is a member of either House of Parliament or a member of a House of the Legislature of any State, he will need to vacate his seat in that House on the date of entering into his office as President.
- ❑ The President shall not hold any other office of profit.
- ❑ The President shall be authorized to the use of his official residences without rent.
- ❑ He shall be also authorized to emoluments, allowances, and privileges determined by Parliament.
- ❑ The emoluments and allowances of the President cannot be diminished or reduced during his term of office.

Official residence, emoluments, and allowances of President

The President of India is also entitled to certain allowances and privileges, as he is the first citizen of the country. The President of India is entitled to rent-free accommodation, allowances, and privileges by law. He is also entitled to:

- ❑ Free medical facilities;
- ❑ Free accommodation;
- ❑ Free treatment for life;
- ❑ The official state car of the President.
- ❑ The salary of the President has undergone several changes since independence-in 2016, the salary was increased to Rs. 5,00,000.
- ❑ Rashtrapati Bhavan is the President's official residence.

Oath by the President:

Article 60: Any person holding the office of the President or delivering the functions of the President must, before entering into the office of the President, be made to subscribe in the presence of the Chief Justice of the country or any other senior-most judge of the Supreme Court, to an oath or affirmation in the name of God to faithfully execute the office of President of India and to preserve, protect and defend the Constitution and the law to the best of his abilities and that he would devote himself to serve the people of India and ensure their well-being.

Impeachment of the President

In India, the impeachment is used in two contexts.

- ❑ Impeachment of President of India
- ❑ Impeachment of the Supreme Court Judge

Article 61: Procedure for impeachment of the President

Article 61(1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

Article 61(2) No such charge shall be preferred unless

- ❑ **Article 61(2)(a)** the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one fourth of the total number of members of the House has been given of their intention to move the resolution, and
- ❑ **Article 61(2)(b)** such resolution has been passed by a majority of not less than two thirds of the total membership of the House.

Article 61(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented as such investigation.

Article 61(4) If as a result of the investigation a resolution is passed by a majority of not less than two thirds of the total membership of the House by which the charge was investigated or cause to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

Explanation:

- ❑ No President has so far faced impeachment proceedings. However, the procedure has been laid down by the law of the land. The President may be removed before his tenure through impeachment for violating the Constitution of India by the Parliament of India. The process may begin in either of the two Houses of the Parliament.
- ❑ A House starts by levelling charges against the President. The charges are present in a notice which must be signed by at least a quarter of the total members of that House. The notice is then sent up to the President and taken up for consideration after 14 days.
- ❑ An impeachment resolution on the President must be made by a two-thirds majority (special majority)

of the total members of the originating House, to be later sent to the other House. The other House conducts an investigation of the charges made.

- ❑ Meanwhile, the President can defend himself through an authorised counsel. But if the second House also approves the charges levelled by a special majority, the President stands impeached. Consequently, he is deemed to have vacated his office from the date of passing the resolution.
- ❑ In another instance, the Supreme Court inquires and decides disputes or ambiguities about the election of a President as per Article 71(1) of the Indian Constitution. The Supreme Court can remove the President for the electoral misconducts or upon becoming ineligible for Lok Sabha member as laid under the Representation of the People Act, 1951.

Time of holding the election on expiry of the term and filling casual vacancies

Article 62. Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy

Article 62 (1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term

Article 62 (2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of Article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office

Explanation:

Art 62 provides for the filling up of the vacancy to the office of the President. It defines the terms of office of the person filling the casual vacancy as well as the time of holding elections to fill the vacancy.

It states that an election to fill the vacancies must be fulfilled before the expiration of the term of the office of the President.

A vacancy at the President's office can occur in any of the following ways:

- ❑ Expiry of his tenure of five years
- ❑ Resignation
- ❑ Removal by the impeachment process.
- ❑ Death
- ❑ Becomes disqualified to hold office or when his election is declared void.

An election to fill the vacancies must be done as soon as possible. The elections, in any case, must be conducted within a time period of six months from the date of occurrence of the vacancy. The new person elected to the office of the President will be subject to all the provisions of Article 56 and will hold his office for a five-year term from the date of entering into the office

When vacancy occurs in the office of President, Vice President discharges his functions until the President resumes his office. In case the office of Vice President is vacant, the Chief justice of India (if his office is also vacant, then the senior most judge of Supreme Court available) acts as a President and discharges the functions of the President.

When any person is acting as a President, he enjoys all the powers and immunities of the President and is entitled to get the emoluments, privileges and allowances as the President.

Powers and Duties of President

Legislative powers of the President of India

- ❑ According to Article 85 of the Indian Constitution, the President of India can summon, prorogue and dissolve the house-either before its complete term or after the completion of the term, in either case fresh general elections will have to take place to appoint new members to the house.
- ❑ The President can adjourn a house sine die which means it is adjourned for an indefinite period and the next date to assemble or appear hasn't been announced.
- ❑ According to Article 108, The President of India can call both Houses for a joint meeting in the presence of the speaker of Lok Sabha. Such meetings are conducted to clear the conflict between both the Houses which arises over passing of a bill.
- ❑ According to Article 87, the President gives a special opening address to both the Houses of the Parliament assembled during, the first session after each general election to both the House of the people, after all the members have taken their oath and the Speaker has been elected. And also, at the beginning of the first session every year where both the Houses are present together. In this session, the President talks about the various policies and programmes of the ruling government and also highlights the important works that were done by them in the previous year.
- ❑ According to Article 86(1), the President is bestowed

with the right to summon both the Houses of the Parliament separately or for a joint meeting at any time. This meeting is different from the special opening address that he makes at the first session of each year and at the first session after every general election. This right is termed as the 'Right to address' which can be exercised by him at any time of the year.

- ❑ He also has the right to nominate 12 members in the Council of States from the field of Arts, Literature, Science, Social Science etc.
- ❑ The President of India while holding the office has to present several reports in front of the Parliament from time to time, those reports are-
 - **Under Article 112(1)**- The President has to present reports in front of both the Houses that includes a statement of receipts and expenditure of Government of India for that year.
 - **According to Article 112(2)**, President shows separate reports of the sum of total expenditure that was said to be charged from Consolidated fund of India and the actual expenditure spent.
 - **Under Article 151(1)**- The Annual Audit of expenditures of the funds of the Indian Government, these reports are prepared by the Auditor-General of India.
 - **Under Article 323(1)**- Annual report of the Union Public Service Commission, these reports contain the details about the work done by UPSC in that year and also some interesting facts about the civil examinations that are held every year, like for example, the total number of candidates belonging to different fields of subject who appeared in the examination.
 - **Under Article 281**- Reports of Finance Commission explaining the details in written form about the actions taken by the commission.
 - Reports of Special officers of Scheduled Castes (SC) and Scheduled Tribes (ST).
 - Reports of Special officers of Linguistic Minorities and Backward Classes.
- ❑ Under Article 239, The President has the power to formulate special rules for the Union Territories.
- ❑ In certain circumstances, the President can make rules for the peace, progress, and good governance of the Union Territories of Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Puducherry.
- ❑ In the case of Puducherry, the President can only

make rules when the assembly is dissolved and suspended.

- ❑ He appoints Speaker, Deputy Speaker of Lok Sabha, Chairman and Deputy chairman of Rajya Sabha
- ❑ He consults the Election Commission of India on questions of disqualifications of MPs.

Executive Powers of the President

As the Executive Head of the State, the President enjoys many executive powers.

- ❑ All the actions and decisions of the Government are taken in the name of the President.
- ❑ He may/may not make rules to simplify the transaction of business of the Central government.
- ❑ He seeks administrative information from the Union government
- ❑ He requires Prime Minister to submit, for 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.
- ❑ He can declare any area as a scheduled area and has powers with respect to the administration of scheduled areas and tribal areas

Power of the President to make appointments

The President has the power to appoint many Constitutional officers and the members of the Union Government. They include:

- ❑ The Prime Minister
- ❑ Chief Justice of India and other judges of Supreme Court and High Courts.
- ❑ Attorney General of India and determines his remuneration.
- ❑ Comptroller and Auditor General of India
- ❑ Governors of State
- ❑ Chairman and members of UPSC
- ❑ Chairman and members of Finance Commission
- ❑ Chairman of National Human Rights Commission
- ❑ Chief Election Commissioners and other Election Commissioners
- ❑ Administrators of Union Territories.
- ❑ He appoints National Commissioners of:
 - Scheduled Castes
 - Scheduled Tribes
 - Other Backward Classes
- ❑ He appoints Inter-State Council

Military powers of the President

- ❑ He is the commander in chief of all the Indian armed

forces.

- ❑ He has the power to declare war or maintain peace with any nation on the advice of the ministers and the Prime Minister.
- ❑ All kinds of treaties with other nations are signed in the name of the President of the nation.

Financial powers of the President

- ❑ The Contingency Funds of India are at the disposal of the President to meet any unforeseen expenses.
- ❑ He also causes the presentation of audits in the Parliament.
- ❑ No demand of grant can be made without President's recommendation.
- ❑ Money bills can be introduced in the Parliament only with his prior recommendation.
- ❑ Lays before the Parliament the annual Financial Statement.
- ❑ Constitutes Finance Commission to recommend the distribution of revenues between Centre and States.

Diplomatic powers

The President forms the face of Indian diplomacy and helps the nation to maintain cordial relationships with countries across the globe.

- ❑ All the Ambassadors and high commissioners in foreign nations are his representatives;
- ❑ He receives the credentials of the Diplomatic representatives of other nations;
- ❑ Prior to ratification by Parliament, the treaties and agreements with other nations, are negotiated by the President.

Emergency related powers of the President

The President can exercise emergency powers in following cases –

- ❑ National Emergency (Article 352(1))- On the request made by the cabinet of ministers, the President can declare national emergency if he gets convinced that the national security or any part of the country is threatened by war or external aggression, or armed rebellion.
- ❑ State Emergency (Article 356 and Article 365)- It is also known as President's Rule. If the state administrative body collapses due to any reason or if it is found that the State government cannot govern the state according to the provisions of the Constitution, then the President can declare an emergency.
- ❑ Financial Emergency (Article 360)- It is imposed by the President if he reckons financial stability of

the country is in danger. A proclamation declaring financial emergency must be approved by both the Houses within 2 months from the date of its issue.

Judicial powers of President

The President enjoys the following privileges as his judicial powers:

- ❑ He can rectify the judicial errors;
- ❑ He exercises the power of grant of pardons and reprieves of punishments;
- ❑ President can seek the advice of Supreme Courts on:
 - Legal matters,
 - Constitutional matter,
 - Matters of national importance. However, the advice tendered by the Supreme Court is not binding on the President.

Article 72: Power of President to grant pardons, etc, and to suspend, remit or commute sentences in certain cases

Article 72 (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence

Article 72 (1) (a) in all cases where the punishment or sentence is by a court Martial;

Article 72 (1) (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

Article 72 (1) (c) in all cases where the sentence is a sentence of death

Article 72(2) Noting in sub clause (a) of Clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

When can the President use his Pardoning Powers?

The President shall have the power to grant pardon to any person convicted of any offence in all cases:

- ❑ Where the punishment was given by a Court Martial
- ❑ Where the sentence is a death sentence
- ❑ Where the punishment is for an offence which is related to a matter which can be decided by the executive power of the Union
- ❑ The President cannot act as per his wishes while granting a pardon. He must be guided by the Home Minister and the Council of Ministers before taking any decision. The President must act on the advice

provided by the ministers under Article 74 of the Constitution.

Five types of pardons can be granted under Article 72 of the Indian Constitution, as stated below:

Pardon

When the person is granted a pardon by the President, the conviction, sentence, and all the restrictions on him are removed. After being granted pardon, it appears that there was no criminal record on the person, and he is free to live in society.

Commute

When the President uses this power, one form of punishment is substituted with another. For example, rigorous imprisonment can be commuted to simple imprisonment. The conviction will stay on the record of the accused.

Respite

Respite which means reducing the quantum or degree of punishment of the convicted person considering to some special circumstances of the convict, such as physical disability or pregnancy of the offender.

Reprieve

When the President uses this power, the punishment or the sentence is delayed for a temporary period. It is done so that the President can have time to decide about pardoning the sentence.

Remission

When the President uses this power, the type of punishment remains the same, but the period of punishment is reduced. Rigorous imprisonment of ten years can be reduced to five years under this power. It states that the appropriate government with or without conditions may at any time accept, suspend or remit the punishment for an offence wholly or any part of the punishment.

Pardoning Power of President and Governor:

Article 161 grants the power to the Governor of the state to suspend, remit or commute sentences of the offenders in certain cases relating to a violation of provisions or laws to which the executive power of the state extends.

Article 72	Article 161
Grants power to the President of India.	Grants powers to the Governor of state.

The power is wider in scope.	The scope of powers is narrower.
The powers of pardon extend to cases of Court Martial as well.	Power cannot interfere with cases of Court Martial.
Allows President to grant pardon in cases of death sentence.	Governor cannot grant pardon in cases of death sentence.

Ordinance making powers of the President

Article 123 deals with the ordinance making power of the President. President has many legislative powers and this power is one of them.

Article 123: Power of President to promulgate Ordinances during recess of Parliament

Article 123 (1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require;

Article 123 (2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance;

- ❑ **Article 123 (2) (a)** shall be laid before both House of Parliament and shall cease to operate at the expiration of six weeks from the reassemble of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and
- ❑ **Article 123 (2) (b)** may be withdrawn at any time by the President;

Explanation Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause

Article 123 (3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

Explanation:

Ordinance is a type of law that is promulgated by the President when both of the Houses are not in session or when either of them is not in session. The recommendation of the Union Cabinet is a must for the promulgation of the Ordinance. Ordinance can only be issued on the matters on which Parliament can legislate.

The President with the issuance of the Ordinance can amend or repeal an act of the Parliament, but this will be prevalent only for a short duration of time, because Ordinances are issued for a shorter term itself.

The President though has the power of promulgating

the ordinances but it cannot be done unless he is satisfied that there are circumstances that require him to take immediate action.

Once the ordinance has been passed it requires to be approved by the Parliament within six weeks of reassembling. The same will cease to operate if disapproved by either House. Hence President lays before the Parliament the ordinance issued by him during the recess of the Parliament. If Parliament does not take any action, then ordinance ceases to operate on the expiry of six weeks from the reassembly of Parliament.

The President may withdraw an ordinance at any time. However, he exercises his power with the consent of the Council of Ministers headed by the Prime Minister.

Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be counted from the later of those dates.

The maximum life of an ordinance can be six months and six weeks, in case of non-approval by the government (six months being the maximum gap between the two sessions of the Parliament).

The Ordinances may have retrospective effect and may modify or repeal any act of Parliament or other ordinances. It may be used to amend a tax law but it can never amend the Constitution.

Legislative Development	Argument
R.C. Cooper vs. Union of India (1970)	The Supreme Court, while examining the Constitutionality of the Banking Companies (Acquisition of Undertakings) Ordinance, 1969 which sought to nationalise 14 of India's largest commercial banks, held that the President's decision could be challenged on the grounds that 'immediate action' was not required; and the Ordinance had been passed primarily to by-pass debate and discussion in the legislature.
38th Constitutional Amendment Act, 1975	Inserted a new clause (4) in Article 123 stating that the President's satisfaction while promulgating an Ordinance was final and could not be questioned in any court on any ground.
44th Constitutional Amendment Act, 1978	Deleted clause (4) inserted by the 38th CAA and therefore reopened the possibility for the judicial review of the President's decision to promulgate an Ordinance.

A.K. Roy vs. Union of India (1982)	In A.K. Roy vs. Union of India (1982) while examining the Constitutionality of the National Security Ordinance, 1980, which sought to provide for preventive detention in certain cases, the Court argued that the President's Ordinance making power is not beyond the scope of judicial review.
	However, it did not explore the issue further as there was insufficient evidence before it and the Ordinance was replaced by an Act. It also pointed out the need to exercise judicial review over the President's decision only when there were substantial grounds to challenge the decision, and not at "every casual and passing challenge".
T. Venkata Reddy vs. State of Andhra Pradesh (1985)	In T Venkata Reddy vs. State of Andhra Pradesh (1985), while deliberating on the promulgation of the Andhra Pradesh Abolition of Posts of Part-time Village Officers Ordinance, 1984 which abolished certain village level posts. The Court reiterated that the Ordinance making power of the President and the Governor was a legislative power, comparable to the legislative power of the Parliament and state legislatures respectively. This implies that the motives behind the exercise of this power cannot be questioned, just as is the case with legislation by the Parliament and state legislatures.
D.C. Wadhwa vs. State of Bihar (1987)	It was argued in D.C. Wadhwa vs. State of Bihar (1987) the legislative power of the executive to promulgate Ordinances is to be used in exceptional circumstances and not as a substitute for the law-making power of the legislature. Here, the court was examining a case where a state government (under the authority of the Governor) continued to re-promulgate ordinances, that is, it repeatedly issued new Ordinances to replace the old ones, instead of laying them before the state legislature. A total of 259 Ordinances were re-promulgated, some of them for as long as 14 years. The Supreme Court argued that if Ordinance making was made a usual practice, creating an 'Ordinance raj' the courts could strike down re-promulgated Ordinances.
S.R. Bommai v. Union of India	In this case the scope of Judicial Review was expanded as to where the court told that where the action by the President is taken without the relevant materials, the same would be falling under the category of "obviously perverse" and the action would be considered to be in bad faith. The Supreme Court held that the exercise of power by the President under the Article 356(1) to issue proclamation is Justiciable and subject to Judicial Review to challenge on the ground of mala-fide.

An ordinance would be made open to challenge on the following grounds:

- ❑ It constitutes colourable Legislation.
- ❑ It violates any of the Fundamental Rights as mentioned in our Constitution.
- ❑ It is violative of substantive provisions of our Constitution such as an article 301.
- ❑ Its retrospective enforcement is unconstitutional.

Veto Power of President

Constitutional Provision: Article 111 of the Constitution provides guidelines for the use of the Presidential veto in different situations.

Article 111 says that “When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall-

- ❑ Give his assent to the Bill or
- ❑ Withholds his assent or
- ❑ Returns the Bill (except Money Bill) to the Parliament with a message for reconsideration of the Bill

Types of Veto Powers available to the President

The power of Veto is basically the power of the executive (through President) to override any act of the legislature. The veto powers can be classified into four categories-

- ❑ Absolute Veto
- ❑ Suspensive Veto
- ❑ Pocket Veto
- ❑ Qualified Veto

Veto powers available to President of India: The President of India has Suspensive Veto, Pocket Veto and Absolute Veto but does not have Qualified Veto (unlike USA President).

Absolute Veto:

- ❑ It refers to the power of the President to withhold his assent to a bill passed by the Parliament. The bill then ends and does not become an act.
- ❑ Used in following two cases:
 - When the bill passed by the Parliament is a Private Member Bill.
 - When the cabinet resigns before the President could give his assent to the bill. The new cabinet may advise the President to not give his assent to the bill passed by the old cabinet.

Note: President does not use Absolute veto power on his discretion. The President shall act on the advice of the Council of the Minister.

Example- In 1954, an Absolute veto was exercised by Dr. Rajendra Prasad as a President when he withheld the assent for the PEPSU Appropriation bill.

The reason was that the Bill was passed by the Parliament during the President’s rule in the state of PEPSU. However, by the time of Presidential assent, it was revoked.

Suspensive Veto:

- ❑ President uses a suspensive veto when he returns the bill to the Indian Parliament for its reconsideration.
- ❑ If the Parliament resends the bill with or without amendment to the President, he has to approve the bill without using any of his veto powers.
- ❑ Exception: The President cannot exercise his suspensive veto in relation to Money Bill.

Pocket Veto:

- ❑ The bill is kept pending by the President for an indefinite period when he exercises his pocket veto.
- ❑ He neither rejects the bill nor returns the bill for reconsideration.
- ❑ Unlike, the American President who has to resend the bill within 10 days, the Indian President has no such time-rule.

Example- The Indian President Giani Zail Singh had exercised a pocket veto for the Indian Post Office (Amendment) Bill. The reason was that the Bill was facing criticism for violating the right to freedom of speech of the press. In the end, the Bill became dead when Parliament decided not to move forward with it.

Qualified Veto:

- ❑ President can withhold the assent but it can be overridden by the legislature with a higher majority.

Veto over State Bills:

- ❑ The Governor is empowered to reserve certain types of bills passed by the State Legislature for the consideration of the President.
- ❑ The President can withhold his assent to such bills not only in the first instance but also in the second instance.
- ❑ Thus, the President enjoys absolute veto (and not suspensive veto) over state bills.
- ❑ Further, the President can exercise pocket veto in respect of state legislation also.

Few important points:

- ❑ Veto powers of the President are **not available against the money bill and the Constitutional amendment bill** of the Parliament.

- ❑ Pocket veto of the President is his/her situational discretionary power and has not been mentioned on the Constitution.

Privileges of the President:

Article 361: Protection of President and Governors and Rajpramukhs

Article 361 (1) The President, or the Governor or Rajpramukhs of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties: Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under Article 61: Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Governor of India or the Government of a State.

Article 361 (2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

Article 361 (3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.

Article 361 (4) any civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

Explanation:

Under Article 361, the President is protected from being answerable to any court for:

- ❑ For exercise and performance of his powers and duties of his office;
- ❑ For doing any act or claimed of doing any act in the exercise of those powers and duties;

The conduct of the President can be reviewed only

if either House of Parliament designates or appoints any court tribunal or any other body to investigate the charges under Article 61.

But it does not prevent any person from bringing any valid proceeding against the Governor or President

The Article immunises the President against all types of criminal proceedings during the term of his office. No issuance of any order relating to the arrest and imprisonment of the President can be made by any court during his term of office.

A civil proceeding can be constituted against the President during his term of office if:

- ❑ The act is done or alleged to have been done, whether before or entering the office of the President, by him was in his personal capacity;
- ❑ Two months prior notice is provided, to the President or was sent to his office, stating:
- ❑ The nature of the proceeding;
- ❑ The cause of action;
- ❑ The details of the other party including name, description, and place of residence;
- ❑ The relief claimed by the other party

Position of the President

The position of the President has changed, with respect to his discretion to use his power, has changed since the inception of the Constitution. The two major changes came through the 42nd and 44th Amendment Act of the Constitution.

Prior to the 42nd Amendment Act of 1976

Prior to the 42nd amendment to the Constitution, the President was free to make decisions based on his wisdom. He may also consider the Council of Ministers for their advice on the action. As the Constitution at that time talks about constituting a Council of Ministers with a Prime Minister, as its head, to aid and advise the President in carrying out his duties.

After the 42nd Amendment Act, 1976

Later, the Constitution was amended to add the phrase that the President shall act on the aid and advice of the council of ministers. But the provision was still ambiguous whether the advice given by the Council of Ministers is binding on the President or not.

44th Amendment Act, 1978

This amendment was brought in to wipe off the ambiguity created by the 42nd amendment. This provision said that:

- ❑ President can send back the advice to the Council of Ministers for reconsideration once;
- ❑ If the same advice is sent again without modifications by the Council, then President is bound to accept it.

Is the President a Titular head?

From the various positions, it can be seen that the President has been vested with many powers under the Constitution and all the decisions and actions of the Government are taken in his name. But while there are many powers which are enjoyed by the President, many of them are in actual practice, residing with the Council of Ministers which is headed by the Prime Minister.

This position of the President is the same as the King of England and thus the Statement that the President is the Nominal or Titular Head of the State is true and the Prime Minister is the actual head.

Conclusion

In India, the President is called the Executive head but he is only a titular head. Even though the President is given many powers, many of them are not very effective for e.g., even if the President sends a bill back to the Houses of Parliament for some modifications, the Parliament can resend it without any modifications and the President is bound to give his assent.

Also, the President does not play an active role in the affairs of the State and the real Executive power is vested in the Council of Ministers headed by the Prime Minister. So, the Prime Minister is the real head of the state and the President is the head only in name.