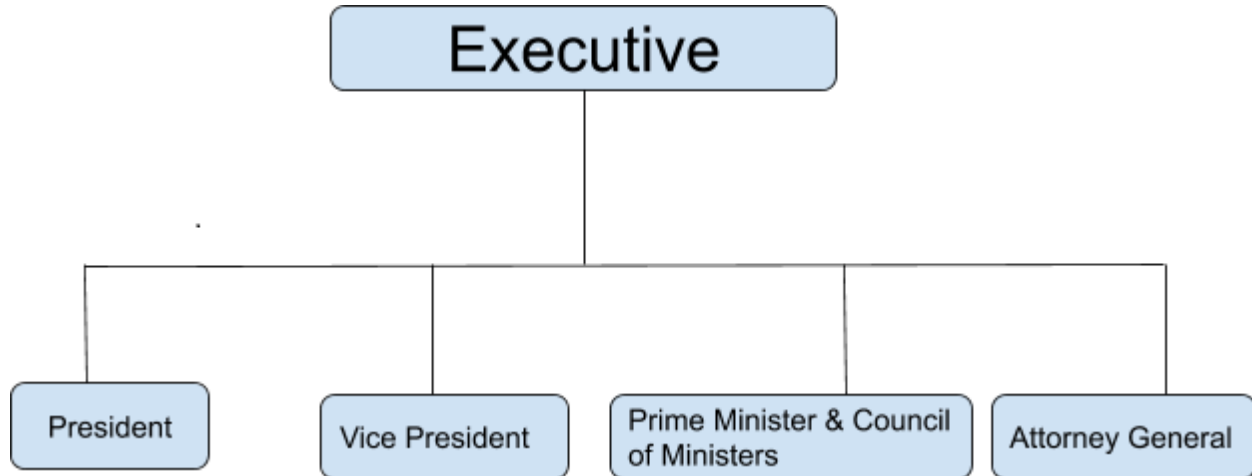


THE UNION EXECUTIVE [PART V, ARTICLES 52-72]



THE PRESIDENT

Article 52 provides that there shall be a President of India.

- The president is the head of Indian state. He is first citizen of India

Executive power of union article 53

- Article 53 provides that 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 the constitution.
- The president shall be **supreme commander of Defence forces in India**.

Election of president article 54

- Article 54 provides that president shall be elected by the members of electoral college consisting of:
 - A. Elected members of both houses of parliament and
 - B. Elected members of Legislative assemblies of state
- State includes the national capital territory of **Delhi** and union territory of **Pondicherry**. It means that elected members of Legislative assemblies of NCT of

Delhi and union territory of Pondicherry shall also be eligible to vote in the election of president.

- **Member who do not participate in election of president: it is to be noted that**

1. nominated members of both the houses of parliament; and
2. nominated members of state legislative assembly; and
3. **members both elected and nominated of state legislative council[in case of bicameral Legislature] and**
4. Nominated members of legislative assemblies of Delhi and Puducherry do not participate in the election of president.

- **Article 55**

- Provides that there shall be uniformity in the scale of Representation of different states as well as parity between the state as whole and union at the election of the president.

- **the president election is held in accordance with the system of proportional representation by the means of Single Transferable Vote and the voting is by secret ballot[article 55(3)]**

- **Term, Resignation And Re Election [Article 56]**

- Provides that president shall hold office for the term of **five years from** the date on which he enters upon his office.

- the president may **resign** by addressing his resignation to the **vice president**

- The president may for **violation of constitution** be removed from office by impeachment in the manner provided in **article 61.**

- The president shall not withstanding the expiration of his term, continue to hold the office until his successor enters upon his office.

- Resignation address to vice president shall be communicated by him to the speaker of the house of people.

- **Resignation**

- **President** —————→ **Vice President** —————→ **Speaker**

- **Article 57** provides that the person who holds or has held the office of president shall subject to the other provisions of the Constitution be eligible for re-election to that office.

Qualification for the election of president [article 58]

- **Article 58** provides that following shall be the qualification for election of president.
 1. He should be a citizen of India.
 2. He should have completed 35 years of age.
 3. He should be qualified for election as a member of Lok Sabha.
 4. He should not hold any office of profit under the union government or any State government or any local authority or any other public authority.
- A sitting president or vice president of the union, the governor of any state and a Minister of the union or any state is not deemed to hold any office of profit and hence qualified as presidential candidate.

Conditions of president's office [article 59]

- Article 59 provides that the president shall not be a member of either the House of Parliament or of the House of Legislature of any state.
- If a member of either House of Parliament or of house of the Legislature of any state be elected president, he shall be deemed to have vacated his office in that house on the date on which he enters upon his office as a president.
- The president shall not hold any other office of profit.
- The president shall be entitled without payment of rent to the use of his official residence and shall be also entitled to search emoluments, Allowances and privileges as maybe determined by the Parliament by law.
- The emoluments and allowances of president shall not be diminished during his term of office.

Oath or affirmation by president [article 60]

- Article 60 provides that before entering upon his office, the president has to make and subscribe to an oath or affirmation. In his oath the president swears:
 1. To faithfully execute the office.

2. To preserve, protect and Defend the constitution and law; and
 3. To devote himself to the service and well-being of the people of India.
- The Oath of the office of president is administered by Chief Justice of India and in his absence, the senior most judge of Supreme Court available.
 - Any other person acting as a president or discharging the functions of the president also undertake the similar oath or affirmation.

Impeachment of the president [article 61]

- Article 61 provides the procedure for impeachment of president.
- Grounds: president is impeached on the ground of violation of constitution. The constitution does not define the meaning of phrase 'violation of the constitution'.
- The impeachment charges can be initiated by either House of the Parliament.
- 14 days prior notice
- These charges should be signed by one fourth member of the house (that framed the charges).
- The president has the right to appear and to be represented at such investigation.
- If the other house also sustains the charges and passes the impeachment resolution by a majority of two third and total memberships, then the president stands removed from his office from the date on which the resolution is so passed.
- in context of impeachment, two things should be noted:-
 1. The nominated members Of either House of Parliament can participate in impeachment of the president though they do not participate in his election;
 2. The elected member of legislative assemblies of the states and union territories of Delhi and Puducherry do not participate in the impeachment of president do they participate in his election.
 - Till date no president has been impeached.

Vacancy, time for holding election etc [article 62]

- Article 62 provides that an election to fill a vacancy caused by expiration of the term of office of president shall be completed before the expiration of the term of the president.
- vacancy in president's office
 1. On expiry of his tenure of 5 year
 2. by his resignation
 3. on his removal by the process of impeachment
 4. by his death
 5. Otherwise [when he becomes disqualified to hold the office or when his election is declared void].
- In the case of any delay in conducting the elections of new president by any reason, the outgoing president continues to hold office the on his term of 5 years until his successor assumes the charge. It is to be noted that in this situation the Vice-President does not get an opportunity to act as a president.
- If the office false vacant by resignation, removal, death or otherwise, then the election to fill the vacancy should be held within six months from the date of occurrence of such a vacancy.
- The newly elected president remains an office for a full term of five years from the date he assume the charge of his office.

Situations where vice president act as a president article 65

- When a vacancy occurs in the office of president due to his resignation, removal, death or otherwise, the vice president acts as the President until our new President is elected article 65(1).
- When the sitting president is unable to discharge is function due to absence, illness or any other cause the vice president discharges his functions until the president resumes his office article 65(2)
- in the case of office of vice president is vacant, the Chief Justice of India for if his office is also vacant the senior most judge of Supreme Court available acts as the President of discharges the functions of president.

Powers of president

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

- **Executive powers:**

- Powers of the union Vest in the president. few important executive powers and functions of President are:
 - i. All executive actions of Government of India are formally taken in the name of president [article 77]
 - ii. Appoints the Prime Minister and other ministers. they hold office during his pleasure [article 75 (1)]
 - iii. He appoints office bearers of constitutional post like the governor of state, Attorney General of India, Comptroller and Auditor General of India, the election commissioner and other Election Commissioner, the Chairman and members of Union Public Service Commission the Chairman and member of finance commission etc.
 - iv. he can appoint commissions to investigate into conditions of SC ST and other backward classes[article 338, 338 a 338 b]
 - v. He can appoint the Interstate Council to promote Centre state and interested Corporation.[263]
 - vi. He directly administers union territories through administrator appointed by him.[239]
 - vii. He can declare any area as scheduled area and has powers with respect to administration of Scheduled Areas and tribal areas.[244(1) V SCHEDULE]

- **Legislative powers**

Following are the few important legislative powers of the president:-

1. He can summon or prorogue the Parliament and dissolve the Lok Sabha. article 85 [1]
2. He can summon a joint sitting of both the houses of parliament [article 108]
3. He can appoint any member of Lok Sabha to preside over its proceedings when the offices of both the speaker and deputy speaker fall vacant. Similarly he can also appoint any member of Rajya Sabha to preside over its proceedings when the offices of both the Chairman and Deputy Chairman fall vacant.
4. nominates 12 members of Rajya Sabha from person having special knowledge or practical experience in Literature, science, art and social service [article 80(3)]
5. He can nominate two members of Lok Sabha from Anglo Indian community **article 331**. Repealed by 104th constitutional amendment 2019.
6. He decides on question as to disqualification of members of parliament in consultation with election commission (article 103).
7. when a bill is sent to the president after it has been passed by the parliament he can Give his assent to the bill or
 - a. withhold his assent to the bill or
 - b. Return the bill [if it is not a money bill] for reconsideration of the Parliament.
 - c. if the bill is passed Again by the parliament, with or without amendment, the president has to give his assent to the bill [article 111]
8. He can promulgate Ordinance is when Parliament is not in session

Military Powers

Article 53 also states that the President shall be the Supreme Commander of all the Armed Forces of the Union of India. It also states that no specific provisions can reduce the scope of this general principle.

As the Supreme Commander of the Armed Forces of the Union, President has powers regarding:

- Appointment of all the officers, including the appointment of the chiefs of the forces;
- Wars are waged in the name of the President;
- Peace is concluded in the name of the President.

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.

Ordinance making power of the President: Article 123

Article 123 talks about the presidential powers to promulgate ordinances. An ordinance can be promulgated if:

- neither of the House of the Parliament is in session;
- And the President feels a need for immediate action.

The ordinance which is promulgated by the President will have the same effect as that of an act or law of the Parliament.

The essential conditions to be met by an ordinance are:

- It shall be presented before both the Houses of Parliament for passing when it comes to the session;

- The ordinance shall cease to **operate six weeks** after the date of reassembling of the parliament;
- The ordinance may also expire if the resolutions disapproving it are passed by both the Houses of Parliament;
- Therefore every Ordinance issued by the president during the Recess of Parliament must be laid before both the houses of Parliament when it reassembles. if the ordinance is approved by both the houses it becomes an act and if Parliament takes no action at all, all the ordinance ceases to operate on expiry of 6 Weeks from reassembly of parliament.
- It can be withdrawn at any time by the President;
- **The ordinance must be in consonance to the Constitution of India else it shall be declared void.**
- It is to be noted an ordinance made when both the houses are in session is void. Thus the power of the president to legislate by Ordinance is not a parallel power of legislation.
- **Grounds of promulgation** he can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action.
- In **RC Cooper vs. Union of India 1970** the supreme court held that the president's satisfaction can be questioned in a court on the ground of malafide.
- In **A K Roy versus Union of India** the supreme court held that Ordinance would be subject to the test of vagueness, arbitrariness, reasonableness and Public Interest.
- Scope of Ordinance making power is coextensive with that of Legislative powers of parliament. It means that an ordinance can be issued only on those subjects on which Parliament can make laws.
- The ordinance making power of the president is not a discretionary power, and he can promulgate or withdraw an ordinance only on the advice of Council of Ministers headed by the Prime Minister.
- In **D C Wadhwa vs. State of Bihar 1987** the Supreme Court ruled that successive Re promulgation of Ordinance without any attempt to get the Bill passed by the Assembly would amount to fraud on constitution and the ordinance so promulgated is liable to be struck down. it held that the

exceptional power of law making through Ordinance cannot be used as a substitute for legislative powers of state legislative assembly.

Financial Roles

- Money bills can be introduced in the Parliament only with the prior recommendation of president [article 109 and 110]
- He Causes to be laid before the Parliament the annual financial statement that is the union budget [article 112]
- The Contingency Funds of India are at the disposal of the President. He can make advances out of the contingency fund of India to meet any unforeseen expenditure. [ART 267]
- He also causes the presentation of audits in the Parliament. [151]
- He constitutes a finance commission after every five years to recommend the distribution of revenues between the centre and the states [article 280]

Judicial powers

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; or suspend, remit or commute sentences of any person convicted of any offence.
- President can seek the advice of Supreme Courts on: article 143
 1. Legal matters,
 2. Constitutional matter,
 3. Matters of national importance.

So 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.

Pardoning power: Article 72

Article 72 provides for the provisions relating to the pardoning powers of the President. President can grant pardons, respites, reprieves, and remissions of punishments or

remit suspend or commute the sentence given to a person by the court in the following cases:

- When the sentence is granted through a court-martial;
- When the sentence or punishment is given for offense of violation of any law relating to matters that fall in the ambit of Union's executive powers;
- When a death sentence is passed by a court.
- **Pardon:** it removes both the sentence and the conviction and completely absolved the Convict from all sentences punishments and disqualification
- **Commutation:** it denotes the substitution of one form of punishment for a lighter form. For example a death sentence may be commuted to rigorous imprisonment.
- **Remission:** it applies reducing the period of sentence without changing its character. for example sentence of rigorous imprisonment for two years may be limited to a rigorous imprisonment for one year
- **Respite:** it denotes awarding a lesser sentence in place of one originally awarded due to some special facts such as physical disability of a Convict for pregnancy of a women offender.
- **Reprieve:** it implies a stay of execution of sentence [especially that of death] for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the president.

In **Maru Ram v Union of India**, Supreme Court held that pardoning power under Article 72 is to be exercised by the President, on the advice of the Central Government and not on his own will and that the advice is binding on the head of the Republic.

Pardoning Power: subject to judicial review

In **Kuljit Singh Alias Ranga Vs Lt. Governor of Delhi & Ors** In this case, death sentence of one of the appellants was confirmed by the Supreme Court. His mercy petition was also rejected by the President. Then, the appellant filed a writ petition in the Supreme Court challenging the discretion of the President to grant pardon on the ground that no reasons were given for rejection of his mercy petition. The court dismissed the petition and observed that the term "pardon" itself signifies that it is entirely a discretionary remedy and grant or rejection of it need not to be reasoned.

In **Kehar Singh vs. Union of India and Anr 1989**: the Supreme Court held that while exercising the pardoning power of president can scrutinize the evidence on record and can come to a different conclusion. In doing so the president does not modify or supersede the judicial records. The petition for Mercy has no right to an oral hearing by the president.

In **Epuru Sudhakar vs. government of Andhra Pradesh 2006** the Supreme Court held that pardoning power of president under article 72 and of governor under article 161 are subject to judicial review. Pardoning cannot be exercised on the basis of caste and political reasons.

Articles 72 and 161 of Constitution

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.

<u>Article 72</u>	<u>Article 161</u>
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 the President to grant pardon in cases of death sentence.	Governor cannot grant pardon in cases of death sentence.

Emergency Powers

Article 352 of the Constitution of India grants President, three kinds of emergency powers as well:

- When a National Emergency is declared in case of external aggression or internal armed rebellion, the President holds the powers to declare a state of

emergency. Thus the President's rule gets established in the country. However, the prime minister and the Council of Ministers must recommend such an emergency;

- When there exists a constitutional or law and order breakdown situation in a state, the President may declare a state of emergency in such cases. The state would then come under Governor's rule;
- Whenever the financial stability of the nation or any country is seriously affected, the President has the right to intervene and direct the state to check and maintain public expenditure.

Privileges of the President: Article 361

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 bars no person from bringing any valid proceeding against the Governor or Government of India.

This 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:
 1. The nature of the proceeding;
 2. The cause of action;

3. The details of the other party including name, description, and place of residence;
4. The relief claimed by the other party;

Position of the President [art. 74(1)]

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 to swipe 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 the President is bound to accept it.