

CONSTITUTIONAL LAW-I

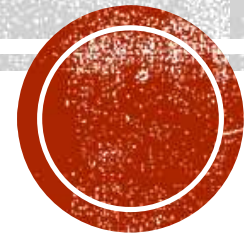
POSITION OF THE PRESIDENT OF INDIA

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POSITION OF THE PRESIDENT UNDER THE CONSTITUTION OF INDIA

The position of President may be understood in three stages:

Prior to the 42nd Constitutional Amendment Act, 1976.

After 42nd Constitutional Amendment Act, 1976.

After 44th Constitutional Amendment Act, 1978 to till present



PRIOR TO THE 42ND CONSTITUTIONAL AMENDMENT ACT, 1976

- There shall be a **President of India** as stated in **Article 52** of the Constitution of India and according to the Article 53(1) the executive power of the Union shall be vested in him(President) and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution.
- Originally Article 74 provides that:
 - (1) There shall be a Council of Ministers with the Prime Minister at the head, to aid and advise the President in the exercise of his functions.
 - (2) The question whether any, and if so what, advice was tendered by the Ministers to the President shall not be inquired into in any court.
- A literal interpretation of this Article conveys that the Council of Ministers headed by the Prime Minister shall aid and advise the President in the exercise of his functions but it was not clear that the President was bound by such advise.



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- In the words of **Dr. Rajendra Prasad**, the President of the Constituent assembly, *“Although there is no specific provision of the Constitution itself making it binding on the President to accept the advice of his ministers, it is hoped that the convention under which in England the King always acted on the advice of his Ministers, would be established in this country also and the President would become constitutional President in all matters”*.
- In the view of **Allen Gladhill**, the President could become a dictator. There are some provisions in the Constitution which make the President real head instead to remain nominal head of the Union. But **Dr. Ambedkar** explain the position of the President in the Constituent Assembly that: *“Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the state but not of the Executive. He represents the nation but does not rule the nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation’s decision are made known”*.



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- The makers of the Constitution of India did not incorporate any specific provision that bound the President to act on the aid and advice of the Council of Ministers because they relied more upon the Parliamentary system or Constitutional convention of Britain but some provisions have also been incorporated in the Constitution which never intended that the President could become dictator.
- In ***Ram Jawaya v. State of Punjab*** (AIR 1955 SC 549), the Supreme Court observed that, “Under Article 53 (1) of the Indian Constitution the executive power of the Union is vested upon the President but under Article 74 there shall be a Council of Ministers with the Prime Minister as the head to aid and advice the President in the exercise of his functions. The President has thus been made a formal or constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet....In Indian Constitution, therefore we have the same system of Parliamentary executive as in England...”



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- In *Shamsher Singh v. State of Punjab* (AIR 1974 SC 2192), the Supreme Court held that the President and the Governors are only “**Constitutional or Formal Heads**”. They exercise their functions under the Constitution only with the aid and on the advice of the Council of Ministers.
- Thus in the view of the Supreme Court the position of the President and the Governors under the Indian Constitution is similar to the position of the Crown under the British Parliamentary system.



AFTER 42ND CONSTITUTIONAL AMENDMENT ACT, 1976

- After the Constitution 42nd (Amendment) Act, 1976 **Article 74** provided that, *“There shall be a Council of Ministers with the Prime Minister at the head to aid and advice the President who shall, in the exercise of his functions, act in accordance with such advice”*.
- The aforesaid Article after amendment make it clear by removing all doubts about the position of the President that he shall be bound to act in accordance with such aid and advice of the Council of Ministers.
- In 1975 this amendment arose the situation when the President had to sign the Emergency Proclamation only on the advice of the then Prime Minister without consulting the other members of the Cabinet.



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- The President is duty bound to advice, to guide, to preserve, protect and defend the Constitution and the law for the well-being of the people of India but after this amendment the President would be a passive spectator, even could not play the role of a guide or an advisor.



AFTER 44TH CONSTITUTIONAL AMENDMENT ACT, 1978 TILL PRESENT

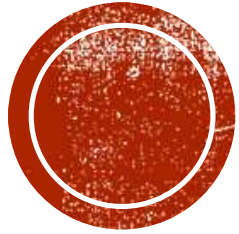
- The Constitution (44th amendment) Act, 1978 has inserted the proviso in the clause (1) of Article 74 says that “*the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration*”.
- This amendment gives a right to the President to ask the Council of Ministers to reconsider the matter. But after reconsideration he is bound to act in accordance with the such advice.
- This amendment is intended to prevent the recurrence of the situation which arose in 1975 when the President invoke the National Emergency only on the advice of the then Prime Minister on the ground of internal disturbance without consulting other members of the Cabinet.



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- According to Article 78 Prime Minister is obliged to inform to the President about the affairs of the Country and all decisions of the Council of Ministers relating to the administration of the affairs of the Union and the proposals for legislation.
- Thus the present position is that the President cannot act “**in his discretion**” but exercise his functions “**according to advice of the Council of Ministers**” . He also have a right to ask, if require **to reconsider the advice made by the Council of Ministers.**
- It also make clear that the President protect the people from dishonour and the Constitution from disgrace.
- The President can advice and guide the Government to take decisions for the well-being of the people of India.





THANK YOU

ALSO REFER THE TEXT BOOKS.