

Course Name - B.A.LL.B 4TH sem/
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Subject - Constitution of India

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Concept - Powers of President

Powers of President

President of India is the head of the government and supreme commander of armed forces. His powers can be classified into several heads such as executive powers, legislative powers, financial powers, judicial powers, Diplomatic powers, Military powers as well as emergency powers.

- Executive powers
- Legislative Powers of President
 - Pocket veto
 - President's Assent in case of Constitution Amendment Bills
 - President's assent in case of Money Bills
 - The bills that need prior recommendation of President
- Judicial Powers / Power to Pardon
 - Comparison of Pardoning Power of President and Governor
 - Role of Union Government and Supreme Court in Pardoning Power
- Military Powers of President
- Diplomatic Powers of President
- Emergency Powers
- Ordinance Making Powers of President
 - Maximum Possible Life of an Ordinance

Executive powers

Article 53(1) vests the executive power of the union in the president. All executive actions of the Government of India and all contracts and assurances of the property are made by the Government of India are formally taken in the name in president.

Appointments made by president

President of India makes appointment to other constitutional officers and other important members of union government. These include:

- Prime Minister
- Other ministers on advice of Prime Minister
- Chief Justice of India
- Other Judges of Supreme Court on advice of the Chief Justice
- Chief Justice and other judges of high courts
- Chairman and other members of UPSC and Joint Public Service Commissions
- Attorney General of India
- Comptroller and Auditor General of India
- Chief Election Commissioner and other members of election commission
- Governors of states
- Administrators of Union Territories
- Chairman and members of National Commission of Scheduled Caste
- Chairman and members of National Commission of Scheduled Tribes
- Finance Commission chairman and members

- Central Chief Information Commissioner
 - Central Vigilance Commissioner
 - Chairperson of National Human Rights Commission
 - Union Lokpal Chairman and its members on recommendation of selection committee
- At the same time, also note that:
- Chairperson of National Commission of Women is *not* appointed by President but by Central Government.
 - Solicitor General is *NOT* appointed by President. His appointment is done by Central Government.
 - *The chairman and member of state public service commissions are although appointed by Governor, the removal of any of them (chairman or members) will be done by president.*

Role of Council of Ministers in Executive Powers

The executive powers vested in the president have to be exercised in accordance with the advice of the Council of Minister as per Article 74(1). However, he has the power to send back the advice to council of Ministers for reconsideration. If the council of Ministers adheres to the previous advice, the president has to act as per this advice. This is the reason that real executive powers are with the Central Government.

Further, Article 74 (2) says that what advice was tendered by minister to the president shall not be inquired into in any court. Thus, relation between president and council of ministers are confidential and cannot be questioned in a court.

Further, constitution also mentions some duties of the Prime Minister towards President in article 78. These are:

To communicate to the President all decisions of the Council of Ministers Regarding the administration and legislation of India.

To furnish such information as the President may call for.

To submit for the Consideration of the Council of Ministers as desired by the President.

Legislative Powers of President

President as part of Parliament

The parliament is composed of president, Lok Sabha and Rajya Sabha, thus president of India is a inseparable part of Indian Parliament despite not being member of any house.

Power to summon, prorogue two houses of parliament

President has power to summon or prorogue {Prorogue means discontinuing without dissolving. It refers to end of a session of parliament) the two houses of parliament. After a prorogation, the house must be summoned within 6 months. The President may dissolve the Lok Sabha. (Rajya Sabha is never dissolved). After the general Elections, president addresses both the houses of the parliament. He may address either house or a joint sitting.

Nomination of MPs

President nominated 2 members of Anglo Indian Community in the Lok Sabha (Article 331). He also nominates 12 members of Rajya Sabha if they excel in Art, Literature, Science, Social Science, Culture etc. (Article 80)

Giving assent to bills

The bills passed by the parliament become acts only after assent of president. When a bill is sent to President after it is passed in parliament, President has the following options:

can either give his assent (he must give assent in case of Constitution Amendment bill)

withhold his assent *if it is not a Constitution amendment bill*

Return the bill to the parliament for reconsideration *if it is not a money bill*

When Parliament passes again a bill sent to it with or without amendments, the president has to give assent to that bill.

The bills passed by state legislatures are sent to governor for assent. Governor has been given power to reserve a bill for consideration of president, provided such bill is not a money bill of that state. When the governor sends such bill to president, president has the following options:

give his assent to the bill

withhold his assent to the bill

Direct the governor to return the bill for reconsideration of the state legislature. If the state legislature again passes the bill with or without amendments; and if the governor again sent to president, it is *NOT obligatory for president to give assent to such bill.*

Pocket veto

In case of an ordinary bill or a bill got introduced by a private member and passed by both houses, the president can just keep the bill in his pocket and forget it. When president neither gives assent nor returns the bill, it is also called “**Pocket Veto**”. Pocket Veto is applicable to only ordinary bills. This is also called **Absolute Veto**.

President's Assent in case of Constitution Amendment Bills

Before 24th amendment 1971, President could withhold assent to a Constitution amendment bill. After this amendment, it has been made clear that once passed by parliament, president has to give his assent. Thus, while president cannot block a constitution amendment bill, such bill are subject to judicial scrutiny and can be nullified by Supreme Court if they are violative of basic structure doctrine.

The President may either give or withhold his assent to a Money Bill. Under the Constitution, a Money Bill cannot be returned to the House by the President for reconsideration.

President's assent in case of Money Bills

Money bills can be introduced in the Parliament only with prior recommendation of President. Due to this President can agree to that bill or withhold his assent but can NOT return a money bill to the house for reconsideration.

The bills that need prior recommendation of President

The bills that need prior recommendation of the president for introduction in parliament are as follows:

Any bill that seeks to alter the boundaries of the states and names of the states. (Article 3)

Money Bill (as per Article 110)

Any bill which affects the taxation in which the states are interested (Article 274)

State Bills which impose restriction upon freedom of trade (Article 304).

Judicial Powers / Power to Pardon

Article 72 says that 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. The meaning of these terms is as follows:

Pardon: Complete pardon

Reprieve: Temporary suspension of sentence

Respite: awarding less sentence

Remission: Reducing amount of sentence

Commutation: Changing one punishment to another

Comparison of Pardoning Power of President and Governor

Governor also has powers to pardon under article 161. However, while president can grant pardon to a person awarded death sentence; governor does not enjoy this power. *Governor can commute death sentence to some other kind of sentence.*

Role of Union Government and Supreme Court in Pardoning Power

Power to grant pardon is not absolute and is exercised by the President on the advice of Council of Ministers like any other powers. Further, the power to pardon is subject to judicial review and Supreme Court retains the power of judicial review even on matters which has been vested by the Constitution solely in the Executive.

Military Powers of President

Article 53 vests the supreme command of the Armed Forces of India in the President. President of India can declare war or conclude peace, under the regulation by the parliament.

Diplomatic Powers of President

India is represented on International forum by President of India. He sends and receives ambassadors.

All international treaties and agreements are concluded on behalf of the President subject to ratification by the parliament.

Emergency Powers

President has been conferred upon by extraordinary powers in case of national emergency (Article 352), President's rule (Article 356 & 365) and financial emergency (article 360).

Ordinance Making Powers of President

Parliament is not always in session and when it becomes necessary to have a law on some urgent public matter, the constitution via article 123 provides the power to the president to issue ordinances if he is satisfied with the circumstances of issuing such ordinance.

Ordinances are promulgated when parliament is not in session.

The ordinance has similar effect to an act of parliament. However, every ordinance must be laid before both houses of the parliament within 6 weeks from the reassembling of the parliament.

If it is not placed in parliament within 6 weeks from reassembly, it becomes invalid. If it does not get approval of parliament, it becomes invalid. However, it may be withdrawn by the president.

Maximum Possible Life of an Ordinance

An ordinance is in force as long as parliament does not meet. But, there cannot be a gap of more than 6 months between two meetings of parliament. Further, a time of 6 weeks is given after the parliament reassembles. So, 6 months + 6 weeks = $7^{1/2}$ month is maximum possible life of an ordinance.

Reports and Statements get by President to be laid before parliament:

Annual Financial Statement

Reports of Auditor General

Annual report of UPSC and JPSCs

Reports of Finance Commission

Reports of Special officers of SC & ST

Report of the Special officers of Linguistic Minorities and Backward Classes

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.