

The logo of the University of Delhi is a circular emblem. It features a central figure of a bull (Nandi) facing left, with a lotus flower above its head. The emblem is surrounded by a purple border containing the text 'UNIVERSITY OF DELHI' at the top and '1962' at the bottom. The text is in a serif font, and the entire logo is rendered in a light purple color with a subtle glow effect.

Paper: Constitutional Democracy of India

Lesson: Role and position of the President in India

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Contents:

- 1. Introduction**
- 2. Election of the president of India**
- 3. What is an office of Profit**
- 4. Oath of office**
- 5. Removal from office**
- 6. The power and function**
 - I. Executive Powers**
 - II. Legislative Powers**
 - III. Financial Power**
 - IV. Emergency Power**
 - V. Military Power**
 - VI. Diplomatic Power**
 - VII. Judicial Power**
- 7. The position of the president**



Introduction:

The President occupies a very important place in the constitutional scheme of government in India. He, by virtue of being seen as non-partisan, statesmanlike figure of India's polity, represents unity and integrity of the country and her people. He is the defender of the constitution to the best of his capability and is devoted to the service of the people of the country. President is supposed to enjoy the respect and confidence of all sections of the society, including the political parties across the country. This is implied in the procedure of election to this office as given in our constitution. He is one among the various constitutional mechanisms to keep the system of government on track. He can apply breaks on the hasty parliament, can also tell the executive to rethink about what it has decided and has the potential to further cement India's friendly relations with other countries.

Naturally, several questions about this functionary come to our mind viz how is the president elected? What are the eligibility conditions for contesting elections to this office? what are the conditions of office of the President? Next are the questions concerning the powers and functions vested in the office of the President and finally one is keen to understand and analyse the position which the President enjoys in the political system of the country. This question takes us to explain whether president of India is merely a figurehead like any other parliamentary system like great Britain or is something different.

Let us take these issues one by one.

Election of the President of India.

Any person can contest the election to the presidential office if he/she is the citizen of India; has acquired the age of 35 years; is eligible to contest elections to the Lok sabha; does not hold office of profit under the central, state or local or other authority subject to the control of any of the said government. and his name is proposed and seconded by 50 voters separately. If any member of the parliament or a state legislature is elected president, his membership of the concerned House

is considered as vacant from the date the person enters the office of the president. Further, the candidate shall deposit a security deposit of rupees 15000 which shall stand forfeited if the candidate fails to secure one-sixth of the votes needed to win the election. (Presidential election Act, 2007)

What is an office of profit?

Office of profit was defined by the supreme court in *Jaya Bachchan v. Union of India*, (2006) as an "office which is capable of yielding a profit or pecuniary gain... If the pecuniary gain is receivable in connection with the office, then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not." Earlier in *Satrucharla's case*, (AIR 1992, SC 1959) provided the following criteria to judge whether a person held an office of profit or not. These were:

- (1) The mere control of the government over the authority having the power to appoint, dismiss or control the working of the officer employed by such authority does not disqualify the concerned officer from being a candidate for election as a member of legislature
- (2) The payment from out of the government revenues is an important factor in determining whether a person is holding an office of profit or not of the government.
- (3) The incorporation of a body corporation and entrusting the functions to it by the government may suggest that the statute intended it to be a statutory corporation independent of the government. But it is not conclusive on the question whether it is really so independent. Sometimes the form may be that of a body corporate independent of the government, but in substance, it may be just the alter ego of the government itself.
- (4) The true test of determination of the said question depends upon the degree of control the government has over it, the extent of control exercised by other bodies or committees, and its composition, the degree of its dependence on the government for its financial needs and financial aspect.

Our constitution provides for an indirect election through an electoral college consisting of the elected Members of parliament and elected members of the state

legislative Assemblies.(Article 54).However, the election is characterized by the following features:

1. One man one vote system is not operational here as is the case in the general elections;
2. First past the post system is also not adopted to decide the outcome of elections to the office as is the principle followed in the general elections;
3. Uniformity of scales in the representation, to the extent possible, between the states and parity between the centre and the states as a whole in the election to this office is ensured;
4. Election is held in accordance with proportional representation system and
5. Election is held by single transferable vote and the voting is by secret ballot.
6. Election of the President can be held even if some seats are vacant in the electoral college.
7. Elected members of the legislative Assembly kept under animated suspension are eligible to cast their vote and
8. Presidential election must be held before the expiration of the term of office of the president.

It follows from the above features, that the manner of election of the president is made such as to make the incumbent represent the larger than 50 percent voters and that both the union and the states should be in a balanced position as far as the influence on presidential elections is concerned. How is this balance achieved? This is achieved through assigning almost equal weight to the votes of the all the elected MPs and of all the elected MLAs this is sought through a formulae as stated below:

$$\frac{\text{Votes of each MLA is equivalent to} \quad \text{Population of the state}}{\text{Number of elected MLAs}}$$

The quotient is to be further divided by 1000. If the remainder of the quotient is not less than 500, then one vote shall be added to the total number of votes of the MLA.

Example: suppose the population of the state of Punjab is 13551060. The number of elected seats in the Punjab legislative Assembly is 117. Then the number of votes assigned to each elected MLA in Punjab would be :

13551060 divided by 117. This comes to 115821.0256. This would further be divided by 1000 which comes to 115.8210256 ie.,116. Thus each MLA in Punjab will have a right to cast 116 votes.

Votes of each elected member of the parliament is = $\frac{\text{total number of votes assigned to the MLAs of the states}}{\text{total number of elected MPs}}$. Fractions of one-half are counted as one.

Though a number of members of the constituent Assembly raised their voice in favour of direct election to the presidential office, ultimately the decision to hold indirect election to this post was adopted. The reasons influencing the decision favouring indirect election to the post of president were :

1. In a country following a cabinet system of government, the office of the titular chief executive is a technical one which requires specific competence for the performance of its duties from the incumbent. Very few voters across the country can be competent to judge wisely of the technical abilities of the candidates for any particular office of this type, having specific, limited and defined functions;
2. If the direct elections of the president were adopted, the presidential candidate who has to carry on an election campaign from one corner of the country to the other will certainly be put by some party or the other, which may cause political excitement and generate party feelings. Thus the man elected to the presidential office through this means will never be able to forget his party affiliation. So the ideal of getting a non-party man outside the turmoil of party passions and reasonably respected by all factions to assume the role of Head of the state will be defeated. Further, as India is

almost a sub-continent with crores of enfranchised citizens, it would be impossible to provide an electoral machinery for the purpose of smooth and successful presidential election ;

3. A directly elected chief executive may not be content with his position of a mere constitutional Head and can claim to derive his authority directly from the people. So, if he wanted to assume real powers, it would lead to a constitutional deadlock and an inevitable clash with the cabinet or the real executive. This would definitely produce a confusion of responsibility;
4. The election by the proposed electoral college would meet more or less the demand for a wider representative character of the presidential incumbent. The inclusion of all the elected MLAs all over the country and all the elected MPs has made his election more broad based, as he is the representative in this fashion of the nation. Further, it has an advantage of investing the president with greater moral independence and authority which would not have been possible had he been a man virtually elected by the majority party in parliament;
5. Each citizen of India is represented in the parliament and in the legislative Assemblies in the states. So, the President does not represent any one constituency in the country, but all sections of the people of India.

Article 55(3) of the constitution provides for the election of the president through proportional representation system by means of single transferable vote. The objective behind this decision was to ensure an effective share to the minority electors also in the election to the office of the president by giving every division of opinion among the electors corresponding representation in the election process. In the traditional first pass the post or straight voting system of election, a person elected as president may not really represent the majority of the electors; he may get much less number of votes than the votes caste together to all the other candidates. For example, if there were four (A,B,C,D) candidates in the race for presidential office and the number of votes secured under the traditional first pass the post system was as follows:

- A. 15000
- B. 14500
- C. 7000 and
- D. 5000

In this case, A would have been declared as elected, even though the total votes cast in favour of B,C and D (26500) far outnumbered the votes of A. Instead of this, in proportional representation, a winning candidate shall have to obtain a quota that is determined on the basis of total valid votes cast divided by the number of seats to filled plus one and the quotient to be further added with one. In the case of the president of India, a winning candidate shall have to accordingly obtain fifty percent plus one vote of the total valid votes cast. In the above example of 41500 total valid votes cast, the candidate to win the race would require 41500 divided by 1+1 and again adding 1 to the quotient. Thus a candidate will have to secure 20751 votes to be declared as elected to the office of the president.

In the end it may be stated that the nature of the composition of the presidential electoral college has made him 'the golden thread of federal relationship. In the context of the recently emerging federal trends of the Indian constitutional system and the radical changes in the political scene after 1967, the presidential office is pregnant with possibilities of far reaching consequences and even as the actual balancing wheel of our federal polity'.

The election of the president can be challenged in the supreme court within 30 days of the publication of the declaration of result by any candidate contesting the election or any 25 electors jointly.

Oath of Office:

According to Article 60 of the constitution, every president before entering his office is to make and subscribe in the presence of the chief justice of India or in his absence, the senior most judge of the supreme court available, an oath or affirmation in the following form, that is to say-

"I, A.B., do swear in the name of God

Solemnly affirm

That I shall faithfully execute the office of President(or discharge the functions of the president) of India and will to the best of my ability preserve, protect and defend the constitution and the law and that I will devote myself to the service and well being of the people of India”.

Removal from Office:

The president is elected for a period of five years. However, he can be removed from his office even before the completion of his term for violation of the constitution. Article 61 of the constitutions provides for the procedure for president’s impeachment as follows:

61(1) where a president is to be impeached for violation of the constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless-

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days’ notice in writing 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

(b) such resolution has been passed by by a majority of not less than two-thirds of the total membership of the House.

(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 at such investigation.

(4) If as a result of 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 caused 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.

The powers and functions :

Now comes the next question, that is, about the powers and functions of the president. Broadly speaking, the powers and functions of the president can be placed under the following categories:

- A. Executive powers
- B. Legislative powers
- C. Financial powers
- D. Emergency powers
- E. Military powers
- F. Diplomatic functions
- G. Judicial powers
- H. Miscellaneous functions

Executive powers of the Indian President:

Article 53 of India's constitution says that the executive authority shall be vested in the president of India who can exercise them either directly or through the officers subordinate to him in accordance with the constitution. In this context, the president has vast powers of appointing a number of constitutional authorities and a number of other officials. He not only appoints the prime minister and other members of the council of ministers on the advice of the prime minister, but also the governors in the states, the comptroller and auditor General of India, the Attorney general of India, the chairman and the members of the union public service commission and of the joint public service commission, the chief election commissioner and other election commissioners, chairman and the members of the finance commission, the chairman and members of the national human rights commission, of the national commission for women; of the national commission for scheduled castes and the national commission for scheduled tribes; ambassadors and high commissioners and special officer for linguistic minorities. Most of these appointments are made by him on the advice of the council of ministers while some of them are appointed by him on the recommendations of a committee. For example the NHRC, NCW, NCPCR or the NCM are constituted by him on the advice of a committee as defined under the statutes establishing these commissions. However, the president can exercise his discretion in the appointment of the prime

minister specially when there is a fluid political situation after the elections to the Lok Sabha. So far, the president has been following methods of appointing the prime minister whenever there was the absence of a political party or the coalition of parties with absolute majority in the Lok Sabha after the general elections. For the first time such a situation emerged for the first time in 1989 when no political party or a combination of parties secured absolute majority in the Lok Sabha while Congress emerged as the largest single party. The president invited the leader of the Congress to form the government. When the leader of the Congress legislature party, Rajiv Gandhi refused to form the government, president invited the leader of the next largest single party, VP Singh to form the government who accepted the invitation and was asked to prove majority on the floor of the house which he did with the outside support from the BJP and the CPM. Similar action was taken by him in 1991 when in the absence of a party with absolute majority, invited the leader of the Congress, the largest single party, PV Narsimha Rao to form the government who agreed to form the government. He later proved majority, as required by the president, on the floor of the Lok Sabha. In 1996 again, the president invited the leader of the BJP, the largest single party, Atal Bihari Vajpayee, to form the government but he had to resign within 13 days of forming the government because he was not in a position to prove majority in the Lok Sabha. The president then invited the leader of the National Front after Congress, the next largest party not only refused to form the government but extended outside support to the National Front led by HD Deve Gowda and later IK Gujral. In 1998, the president invited the leader of the largest single party, the BJP, to form the government but with a rider and that rider was to satisfy the president that Atal Bihari Vajpayee had the support of other parties to command majority. It was only after Vajpayee submitted the letters of support from different political parties that he was invited by him to form the government. In 1999, there was a pre-poll alliance under the National Democratic Alliance that emerged with absolute majority and therefore the president had no option but to invite the leader of the NDA, Atal Bihari Vajpayee to form the government. In 2004, the president invited the leader of the largest single party, the Congress to form the government who was asked to prove majority. The Congress formed a post-poll alliance, the United Progressive

Alliance and was successful in proving the majority on the floor of the Lok Sabha. In 2009, the UPA was returned back to power with absolute majority and the leader of that alliance was invited by the president to form the government.

So far so good. The presidential action in all the above situations was considered as non-partisan and unbiased. But his actions came in for questioning when he appointed those as prime minister who not only were responsible for bringing down the duly formed government, but had a very small support of their own party. Those decisions were criticised as ones promoting politics of opportunism, horse trading and politics of instability. This is what happened when Charan Singh was invited to form the government in 1978 and Chandra Shekhar after he split the Janata Dal under the leadership of VP Singh. Charan Singh had the support of only 100 MPs of his own and Chandra Shekhar had the support of only 40 MPs of his own. The appointment might have been technically correct; it was politically and morally incorrect. None of them could provide a stable alternative government and Congress used them to dislodge the Janata Party government and Janata Dal governments were louder than reality.

Another question relating to the executive powers of the president is with regard to his power of dismissing the council of ministers and the prime minister. Can he dismiss them? In normal situations no. The constitution makes the council of ministers headed by the prime minister collectively and individually responsible to the parliament, that is, Lok Sabha. It means the council of ministers including the prime minister shall remain in office till they enjoy the confidence of the majority of the members of the Lok Sabha. However, if the council of ministers does not resign even after losing the majority support, the president can remove it from office by dismissing it under the constitutional provision that the council of ministers shall remain in office till the pleasure of the president. The president can also dismiss the individual minister/s on the advice of the prime minister. Can he dismiss the prime minister if he thinks in his judgement that the prime minister was not performing his duties as per the provisions of the constitution? This he can do because he is under oath to protect and preserve the constitution. For instance it is the constitutional duty of the prime minister to keep the president informed of the

decisions of the cabinet on the union affairs and further to furnish the information to him whenever he seeks any information relating those matters. Even though there has been no precedent of dismissal of the prime minister in the history of independent India, the matter is quite uncertain still. It was in the mid eighties that then president Gyani Zail Singh sought the report of the Thakkar Commission and Mishra Commission on anti-Sikh riots of 1984 and the Council of Ministers headed by the then prime minister, Rajiv Gandhi decided not to furnish that report to the president. Similarly, the Union Cabinet decided against providing to the president the technical and classified information when the president asked for the entire information regarding the Bofors Deal including the technical details. The Council of Ministers asserted its supremacy with reference to Articles 74, 78 and 86 of the Constitution in regard to taking decision on giving information to the president. (JR Siwach, Dynamics of Indian Government and Politics, 1990, p. 133) It is a known secret that the president at that time thought the prime minister was failing to perform his constitutional obligation to provide information sought by the president to him. He explored both the political and legal possibilities to dismiss the then prime minister and install an alternative government. He failed to persuade the other Congress leaders in the efforts to have alternative prime minister while the attorney general expressed himself against the dismissal of the prime minister enjoying majority support in the Lok Sabha. He also advised the president to act in accordance with the advice tendered to him in that regard by the Council of Ministers. Even then, the president made it clear that the Constitution gave the power to dismiss the prime minister, though he had no intention to do so. H.M. Seervai agreed with this view of the president in an earlier Article when he opined that "if the Council of Ministers advised the president to take an action which is admittedly contrary to the Constitution, it was imperative on the president to reject such advice and if necessary dismiss the ministry. Under Article 60, the president takes an oath to preserve, protect and defend the Constitution. Under Article 61 he can be impeached for violation of the Constitution. The necessary implication of these two Articles is that the president must refuse to act on such advice of the Council of Ministers as might lead to a violation of the Constitution". (The Times of India, August 30, 1979, P.6)

The second abnormal situation may arise when the prime minister falls into minority either on account of a split in the legislature party or the coalition or on account of losing on the floor of the house on any policy or legislative matter and he neither resigns nor seeks the confidence of the Lok Sabha if and as suggested by the president to do so. Will he be justified in dismissing such a prime minister who seeks to gain time to prove majority (through undesirable means) tantamounting to the subversion of the constitution? Though no such situation has arisen at the centre so far, the Governors have taken such a step by dismissing the chief ministers on this count in the past.

Legislative powers:

President is an integral part of the parliament. Parliament has been defined under the constitution as president in parliament. Further, he plays a significant role in the legislative field in so far as no Bill can become an Act without the consent of the president which can either give straight or can withheld or can keep under suspension. He can also return the Bill for reconsideration of the parliament with or without a message. But he shall give his consent after the parliament passes the bill in its earlier form or otherwise after the reconsideration of the Bill. He has the following other functions to perform in this area:

No money Bill, No state reorganization Bill, , Bills affecting the taxation in which states are interested or Bills imposing restriction on trade and commerce within a state or with other states can be introduced in parliament or the state legislature without the prior recommendation of the president. He is to consider certain Bills reserved for that purpose by the Governor of a state. He can give his consent, withhold his consent and return it for reconsideration of the state legislature. However, he is not bound to give his consent if the state legislature has passed the Bill in its original form again after the reconsideration.

The president has the power to issue ordinance when parliament is not in session and he is satisfied that it is necessary to take immediate action in a particular matter. This power is generally exercised by him on the advice of the council of ministers. In certain exceptional circumstances, however, he may exercise his

discretion as was done by (1) Dr. Shankar Dayal Sharma who decided not to issue two ordinances on the eve of elections (2) APJ Abdul Kalam on major policy matter;(3) Shri Pranab Mukherjee to issue five ordinances as conceived by the Man Mohan Singh Government on anti- graft matters on the eve of elections to the 16th Lok Sabha. The UPA government did not recommend the issue of these ordinances after it was convinced that the president was not prepared to sign any of these ordinances.(Times of India, March 10,2014)

The president has been given powers to decide the case of disqualification of members of parliament if any such case arises on any of the grounds mentioned under Article 102 of the constitution which states as follows: a person shall be disqualified for being chosen as ,and for being, a member of either House of Parliament if (a) he holds any office of profit under the government of India or the government of any state, other than an office declared by parliament by law not to disqualify its holder; (b) he is of unsound mind and stands so declared by a competent court;(c) he is an undischarged insolvent and (d) he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state, or is under any acknowledgement of allegiance or adherence to a foreign state. However, such cases shall be decided by him only in consultation with the election commission.

Further, he can send messages to either House of parliament whether with respect to a Bill then pending in parliament or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration.(Article 86) It may be stated here that there is lack of unanimity on whether the president is to send messages only on the advice of the council of ministers or he is free to exercise this power in his discretion. This question first emerged when Dr. Rajendra Prasad made it very clear to Jawahar Lal Nehru that the power of the president to send messages to either House of Parliament was free from the advice of the council of ministers. Even today, similar view is considered to be valid. For details see JR Siwach, 1990) Moreover, the president has the power to summon, prorogue and dissolve the Parliament which in effect means the Lok sabha. On a simple reading, it will appear that the president performs all these legislative functions on the advice of the

council of ministers. But in reality there are several grey areas that require a deeper analyses and scrutiny. For instance, there is a view of several constitutional experts in favour of the president's power to summon, prorogue or dissolve the parliament in case he is satisfied that the prime minister/ council of ministers is trying to avoid the parliament for personal/political/party ends or interests. For instance, the prime minister may try to avoid to convene the session of parliament in case he loses the majority or the council of ministers advises the president to prorogue the parliament when faced with the no confidence motion against the government or when the council of ministers advises the president to dissolve the parliament after it loses the confidence motion or if the no confidence motion is adopted against the government. There are instances when the president accepted the advice of the council of ministers to dissolve parliament and there are also examples of refusal by the president to do so. The then president dissolved the parliament when Mrs Indira Gandhi advised the president, shri VV Giri, to dissolve the Lok Sabha and order fresh elections in 1970. But the same action was not taken by President N Sanjiva Reddy when he preferred to form alternative government instead of dissolving the parliament after the split of the janata party in 1979 and fall of the Morarji Desai government. Similarly, the advice of the then prime minister, VP Singh was also not accepted by the then president and an alternative government was formed under the leadership of Chandra Shekhar. However, he dissolved the Lok Sabha on the advice of the then respective prime ministers in 1979, 1991, 1997, 1999 and 2004. The opinion among the legal and constitutional experts is divided on the issue whether the president is bound to act on the advice of the council of ministers to dissolve the parliament and allow the cabinet to seek fresh mandate of the people. This variation is also reflected in the decisions of the several presidents in the matter.

President nominates two Anglo- Indians to the Lok Sabha if there is no representation of this community after the general elections and twelve members to the Rajya Sabha from out of those who have special knowledge or practical experience in the field of Art, science, literature or social service. This power is exercised by him on the basis of the advice of the council of ministers.

President has powers under Article 364 to make inapplicable a central or a state law either partly or wholly, in the national interest, to any Port or Aerodrome from any date he deems it necessary. Further, he can extend various provisions of the constitution of India to the state of Jammu and Kashmir, with the concurrence of that government, under Article 370. Power to make regulations for the peace, prosperity and good governance of all the union territories, except Delhi and Chandigarh, also lies with the president.

The president delivers his address to the joint session of parliament at the first session each year as well as the first session after the elections to the Lok Sabha. The presence of the members of parliament at the time of address to such joint sessions may be made mandatory by the president.

Financial Powers:

The president enjoys the following financial powers:

1. He causes the audit reports for presentation before parliament;
2. He receives the reports of the finance commission and is to act on its recommendations;
3. Contingency fund of India is at the disposal of the president out of which he can grant advances to the government to meet an unforeseen expenditure. Such expenditure has, however, to get parliament's approval later.
4. The budget is presented to the Lok Sabha with the prior approval of the president and no member of the Lok Sabha can move any amendment to budget aiming at increasing or decreasing the amount of any item without his recommendation.
5. The demand for supplementary or additional grants is also made and proposed on behalf of the president to meet any additional expenditure of the government during the middle of the year.

Emergency Powers:

The president of India has been entrusted with the following emergency powers under the constitution:

- A. National emergency under Article 352
- B. Emergency powers under Article 356 on account of failure of constitutional machinery in a state and
- C. Financial emergency under 360

Article 352 of the constitution says that the president can proclaim national emergency either on account of war or external aggression or on account of armed rebellion (internal revolt). Before 44th constitutional amendment to the constitution the ground mentioned was internal disturbances. The ground internal revolt, instead of internal disturbances, was inserted by the 44th constitutional amendment. This was mainly to prevent the misuse or abuse of the vagueness of the term, internal disturbances as was done in 1975 to impose internal emergency by interpreting one of the speeches of Jai Prakash Narain as internal disturbance in so far as that speech was construed to instigate the bureaucracy and the armed forces against the state. This power has some limitations as well as some implications which can be identified as below:

Limitations: 1. the imposition of the emergency can be made by the president only on the written advice of the cabinet; 2. It can be declared either in the entire territory of India or a part of it; 3. It should be ratified by the parliament within one month of its declaration and if at the time of such proclamation, the Lok Sabha was dissolved, it should be approved by the Rajya Sabha within one month and by the newly constituted Lok Sabha within one month of its first sitting. Further, the proclamation should be approved by not less than the majority of the total members of the Houses separately which should not be less than two third majority of the members present and voting; 4. It can continue to be in force for 6 months at a time and is to be approved, therefore, every 6 months until revoked by the president by another proclamation to that effect; 5. it is open to judicial review; 6. it can be extended to other parts of the country after it was imposed only in one part of the Indian territory; 6. Ten per cent or more member can requisition a meeting of the Lok Sabha to approve or revoke the proclamation and the decision at

such a meeting can be taken by a simple majority.7. such an emergency can be declared by the president only when he thinks that the security of India has been threatened or is likely to be threatened by war or external aggression or by armed rebellion.

It may be stated here that the power of the president has been constrained by 44th constitutional amendment by putting it under legislative and judicial control.

Implications or effects of the national emergency: 1. The state list also becomes concurrent list for practical purposes. However, any law framed by the parliament under this provision shall be valid only for 6 months after the expiry of the national emergency; 2. The fundamental rights guaranteed under Articles 14, 19 and 32 can be suspended by an order of the president; 44th CAA, however, provided that provisions under Articles 20 and 21 shall not be beyond the reach of Article 32. This was done in order to uphold the sanctity of the rule of law even during the period of national emergency or to prevent the violation of the rights of the people without following the safeguards provided in the constitution as was done during the 19 months of internal emergency imposed in June 1975; 3. The compliance of the executive orders issued by the centre to the states becomes mandatory in so far as the manner in which the exercise of the executive authority of that state is concerned; 4. Parliament may by law extend the tenure of the Lok Sabha by one year at one time. But it will not extend beyond 6 months after the expiration of the proclamation of national emergency; 5. The provisions under Articles 268-279 can be modified by the president by order for distribution of revenues between the union and the states. It follows that the people of India are expected to forego their fundamental rights if the president deems it necessary so to do in the interest of the security, integrity and sovereignty of our country during the period of emergency or the time specified in the presidential order suspending fundamental rights.

Such national emergencies have been declared in India thrice in 1962, 1971 and 1975. The first two were imposed on account of actual aggression by China and Pakistan respectively and the third was declared on account of internal disturbances. It may be pointed out that internal emergency was declared

separately even when national emergency declared in 1971 was still operational. The declarations were made by the respective presidents of those times only on the advice of the then prime ministers and the orders were revoked also on the advice of the prime ministers. It was in the light of not a happy experience of emergency being imposed under the discretionary use of advisory powers by the prime ministers that 44th CAA made it obligatory for the advice to be of the council of ministers and that too in writing

Emergency under the constitutional failure of the Machinery of a state:.

The central government is duty bound under the constitution (ART. 355) to protect every state against external aggression and internal disturbance and also to ensure that government of every state is carried on in accordance with the provisions of this constitution. Article 356 of the constitution says that if the president is satisfied on the report of the governor or otherwise that the government of a state can not be carried on in accordance with the provisions of this constitution, the president may by proclamation –

- a) Assume to himself all or any of the functions of the government of the state and all or any of the powers vested in or exercisable by the governor or any body or authority in the state other than the Legislature of the state;
- b) Declare that the powers of the legislature of the state shall be exercised by or under the authority of the parliament
- c) Make such incidental and consequential provisions as appear to the president to be necessary or desirable for giving effect to the objects of the proclamation, including provisions for suspending in whole or in part the operation of the provisions of this constitution relating to any body or authority in the state. However, this power does not include the provisions relating to the state High Court.

Under this provision, thus, the president, after imposing president's rule in the state dismisses the state council of ministers and dissolves the state legislature. However, the Sarkaria commission recommended that the State Legislative Assembly should not be dissolved either by the Governor or the President before a

Proclamation issued under Article 356(1) has been laid before Parliament and the latter has had an opportunity to consider it.

According to the Sarkaria commission the Governor's Report, under Article 356, should be a 'speaking document, containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.' The commission further recommended that the provisions under Article 356 should be used very sparingly and as a last resort when all other alternatives to prevent the constitutional breakdown of the state government have been explored and failed.

Any proclamation made by the president under Art. 356 should be approved by the parliament within a period of two months and if the Lok Sabha is dissolved during that period without giving its consent, it should be approved by the Rajya Sabha within the stipulated time frame and by the Lok Sabha within thirty days of its first sitting after it has been reconstituted. The proclamation once approved can remain in force, until revoked earlier by the president, for a period of 6 months which can be renewed every 6 months but not beyond a period of 3 years.

What constitutes failure of the constitutional machinery of a state? The constitution does not explicitly provide any answer to this question. There are neither any guidelines, as they existed under the Government of India Act, 1935, for the governor or any set of grounds mentioned to tell him to reach the conclusion that the government of the state can not be carried in accordance with the provisions of this constitution. The experience in the past about 64 years of the coming of the constitution into force shows that president's rule has been imposed in several states on the following grounds:

1. Failure to constitute a government after the elections as no political party or a combination of political parties formed before or after the elections to the legislative Assembly;
2. Fluid political situation either on frequent splits in the political parties – ruling or the opposition – and the question of majority at any given point of time is difficult;
3. Violence and disturbance inside the legislative Assembly as was done in Gujarat. However, it has been criticized on the ground that such a ground for

imposition of president's rule could be misused by the centre particularly to dislodge a government run by a party other than the one running the central government;

4. President's rule has also been imposed on the ground of the breakdown of law and order in the state;
5. The president has taken over the government of the state on the ground that the government of that state has not been able or likely not to be able to uphold the secular character of the state;
6. The change of the leader of the ruling legislature party, specially if the central high command is not in a position to find a substitute in time and easily. This is what happened once in U.P.

The clearly mentioned ground under the constitution for the imposition of president's rule in a state is under Art. 365 which states as under:

"Where any state has failed to comply with or to give effect to any directions given in the exercise of the executive power of the union under any of the provisions of this constitution, it shall be lawful for the president to hold that a situation has arisen in which the government of the state can not be carried in accordance with the provisions of this constitution".

The use of emergency powers under Art. 356 has been a subject of criticism from the parliamentarians, the constitutional experts, the press and the public on the ground that the provision that was considered to be used only in rare circumstances and was supposed to remain generally a dead letter was used very frequently by the centre and that too on flimsy grounds. According to the report of the national commission to review the working of the constitution, 2002, this power was blatantly misused in 22 out of the more than 100 cases of bringing the different states under central rule. The power was also used to serve the political interests of the ruling party or the ruling coalition of parties at the centre. This issue was rightly addressed by sarkaria commission who suggested some safeguards against any such misuse and thereafter the Supreme court in SR Bommai and others v union of India in 1994 also put limitations on the use of this power. The Bommai

case judgement stated the following (PM Bakshi, The Constitution of India, 2000, p.299)

1. Presidential proclamation dissolving a state legislative Assembly is subject to judicial review.
2. Burden lies on the government of India to prove that relevant material existed to justify the issue of proclamation.
3. Courts will not go into the correctness of the material.
4. If the court strikes down the proclamation, it has power to restore the dismissed government of the state to office.
5. A state government pursuing anti-secular politics is liable to action under Article 356.

The president himself has been enabled to exercise check over the union executive decision in so far as he is empowered to send the advice of the council of ministers for reconsideration. There have been instances when the council of ministers did not pursue the advice further after it was returned by the president for its reconsideration. For example, this is what happened in case of Bihar as well as in case of U.P. After the Supreme court judgement and the implementation of some of the restraining recommendations of the Sarkaria commission with regard to Art. 356, there has been a decline in the frequency of the use of Article 356 and it is not that easy to dismiss a state government under that provision of the constitution.

Financial Emergency:

This emergency power has been provide under Article 360 of the constitution which states that the president shall be authorized to impose financial emergency if he is satisfied that financial stability or credit of India, or of any part of the territory thereof, is threatened.

The proclamation so issued may be revoked or varied by a subsequent proclamation and is subject to the approval by the parliament in a similar manner as is done in case of emergency under Art. 356. When any such proclamation is under operation, the executive authority of the union extends to giving directions to any state to observe such canons of financial propriety as may be specified in the directions and to the giving of such other directions as the president may deem necessary and adequate for the purpose. Any such direction may include –

- i. A provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the union including the judges of the supreme court and High courts; of all or any class of persons serving in connection with the affairs of a state;
- ii. A provision requiring all money Bills or other Bills to which the provisions of Art. 207 apply to be reserved for the consideration of the president after they are passed by the legislature of the state;

It may be pointed out here that this power has never been used in the history of independent India so far despite the fact there have been several occasions when the country was faced with severe financial crisis, e.g., in the late 1980s and early 1990s. We were faced with quite a grave financial situation.

Military powers:

President is the supreme commander of the defence forces of India- Army, Naval and the Air Force and appoints the chiefs of all the three forces. War and peace are declared in his name. It may be pointed out that the powers vested by constitution are subject to the regulation as provided by the parliament by law. Besides, the president is the chairman of the defence council consisting of the prime minister, the defence minister and the three chiefs of Staff. The military powers of the president are not discretionary.

Diplomatic powers:

President performs wide ranging role in the diplomatic areas in maintaining relations with other countries. He appoints the High commissioners and the ambassadors to other countries and are considered his representatives in those countries. Similarly, it is he who recognizes the ambassadors and High Commissioners of other countries in India and receives their papers and credentials. He can negotiate treaties and agreements with other countries prior to ratification by the parliament. However all these functions are not his discretionary powers.

Judicial Functions:

A number of judicial functions are also performed by the President. He appoints the chief justice and the judges of the Supreme court and of the state high courts. He appoints them on the advice of the collegiums consisting of the chief justice of India and 4 senior most judges of the supreme court. There is now a proposal to

constitute a national judicial appointments commission to assist the president in the process of appointing the members of the higher judiciary in the country. Besides this, the president has the right to seek advice /opinion of the supreme court on the legal and constitutional matters and on the matters of national and peoples' interests. The president can grant pardon and can suspend, remit or commute sentences in certain cases under Article 72(1) of Indian constitution. The president is empowered to grant pardon in case the sentence is-

a). death sentence

b). is by a court martial

c). in respect of offences against any law relating to a matter to which the executive power of the union extends.

There has been a debate whether it is correct to give this power to the executive and whether it does not come in conflict with the powers of the judiciary. Does it not tantamount to over rule the judiciary. The answer to these questions have been that the president, which in effect means the executive, does not sit over the judgement of the judiciary in terms of the legality or constitutionality of the decision. Rather, this power was vested in him to ensure that the factors that are beyond the purview of the court should also be given some consideration. For example, the issues of the harshness of the punishment, the age of the convict or the harshness of the domestic and family conditions could be given consideration by the executive while examining the cases of granting pardon or reprieve or commutation or pardon to a convict. The Judiciary goes by the witnesses, the law and the factual material of the case while delivering punishment or sentence.

The second thing to be born in mind is that the decision of the president is open to judicial scrutiny, i.e., judicial review. Recently, the supreme court changed the death sentence to life imprisonment of the convicts in the Rajiv Gandhi murder case because there was unduly long delay in the disposal of the petition filed with president on the issue of grant of pardon. This Article does not restrict the power of the governor of a state to suspend, remit or commute a sentence of death nor does it prohibit any officer of the Armed forces of the union to exercise power conferred upon him by law to remit, suspend or commute a sentence passed by a court martial. However, the power to grant reprieve in all cases of sentence of

death belongs solely to the president. The president can also grant pardon in cases involving contempt of court and contempt of either of the Houses of parliament.

Miscellaneous functions:

There are some functions that are ceremonial in nature including the inaugural functions or book release functions etc. The president is the highest authority in the educational administration of some central universities. He appoints and removes the vice chancellors and can cause investigations and enquiries into the financial and administrative functioning of the universities. Though he is supposed to act on the advice of the council of ministers in these matters, there have been instances in the past when the president has sought to function independently of the cabinet and appointed vice chancellor in his discretion. The role of the then president KR Narayanan in the appointment of the vice chancellors of the university of Delhi, the JNU, the BHU etc is a known case of discretionary action by the president.

The Position of the president:

There is no unanimity among the constitutional experts, politicians and the academicians about the position of the president of India. This has been the case right from the constituent Assembly debates till to day. Even the occupants of the office from the first president, Dr. Rajendra Prasad to the present incumbent, Shri Pranab Mukherji. Even the framers of the constitution, instead of providing it clearly in the constitution that the president shall act only on the advice of the council of ministers, left it to the wisdom of the president who will follow the British traditions in this respect and would never think of acting as the real head of the state. But, it became very clear that Dr. Rajendra Prasad was not that convinced about the position of the president to that of a titular Head. This is evident from the exchange of letters between Dr. Rajendra Prasad and Jawahar Lal Nehru on the relationship between the president and the cabinet and the prime minister on several occasions like on the Hindu code Bill. His opinion found expression when he laid the foundation stone of the National Law Institute. The later presidents have also proved by their actions and statements that they were not supposed to be rubber stamps of the executive. The actions of Dr. Radha Krishnan, N. Sanjiva Reddy, Giani Zail Singh, R. Venkat Raman, Dr. Shankar Dayal Sharma, KR Narayanan, Dr. APJ Abdul Kalam and now Pranab Mukherji have established that the president has the right

to warn, to suggest and to guide the cabinet, but can also act as a check on the hasty and motivated or unfederal advice of the cabinet. This is so even after it was provided in the constitution through 42 and 44 Constitutional Amendments that the president shall act in accordance with the advice tendered to him by the cabinet. At the same time, there have been presidents like Dr. Zakir Husain, VV Giri, Fakhruddin Ali Ahmed, Pratibha Patil who had chosen for them the role of a constitutional head without having any real powers to take decisions in his discretion. In the end, it can be concluded that the president of India, though largely a figure Head, can act in his discretion in some exceptional situations specially in matters of dissolution of parliament, issue of ordinances, appointment of prime minister, deciding the cases of disqualification of MPs on account , among others, of holding the office of profit or sending the advice of the cabinet for reconsideration of the cabinet.

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