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THE PRESIDENT OF INDIA: A CONSTITUTIONAL ANALYSIS

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Introduction

The President of India is the Constitutional head of the Indian Republic and the First Citizen of India. As a ceremonial head of State, the president represents the unity and integrity of the nation while performing essential constitutional, legislative, and executive functions. Although the real executive power vests in the Prime Minister and the Council of Ministers, the President plays a crucial role in ensuring the smooth functioning of India's democracy.

Under the Constitution of India, the President serves as the chief executive of the Union Government, vested with a long list of powers and functions. These powers are generally exercised on the advice and aid of the Council of Ministers, under the leadership of the Prime Minister as Head, as per Article 74¹⁰³⁸. This framework is based on the British parliamentary system. However, it is hard to find a Head of State who has a wide range of powers and functions, but these powers are not supposed to be directly exercised by him.

The President is often perceived as the most powerful authority within the state; however, this is a partial truth. The President functions as the constitutional Head, while all the powers and functions are exercised by the Council of Ministers. The president, acting merely as a formal figurehead, is like a silent spectator who has to act on the aid and advice of the Council of Ministers.

According to Article 52¹⁰³⁹ The existence of the President is mandated under any circumstances. One of the paramount duties of the President, as mentioned in Article 60¹⁰⁴⁰ It is to preserve, protect, and defend the Constitution (Article 60¹⁰⁴¹ – oath of President). A failure to protect would also amount to a

breach of his duty and subject him to impeachment proceedings under Article 61.¹⁰⁴²

This article explores the constitutional provisions, historical context, and practical functioning of the Indian presidency, examining its similarities with and distinctions from the British monarch. It also analyses the President's discretionary powers, the impeachment process, and the evolving role in India's parliamentary democracy. By delving into these aspects, the article aims to provide a comprehensive understanding of one of India's most prestigious yet often misunderstood institutions.

Historical perspective

The President in the Indian context emerged after the institution of the Constitution of India. Prior to this, the role was known as 'Governor-general of India', who was representative of the British monarch. The term 'President' has been taken from the Constitution of the USA, even though the underlying authority was vested in the British monarch.

Dr. Rajendra Prasad observed that "We have had to reconcile the position of an elected President with an elected legislature and, in doing so, we have adopted more or less the position of the British monarch for the president".

¹⁰³⁸ The Constitution of India, Art. 74

¹⁰³⁹ The Constitution of India, Art. 52

¹⁰⁴⁰ The Constitution of India, Art. 60

¹⁰⁴¹ The Constitution of India, Art. 60

¹⁰⁴² The Constitution of India, Art. 61

Justice Krishna Iyer in the case of 'Shamsher Singh vs. State of Punjab'¹⁰⁴³ beautifully explained that "Not the Potomac, but the Thames, fertilises the flow of Yamuna if we may adopt a riverine imagery".

Under the Government of India Act, 1919¹⁰⁴⁴, superintendence, direction and control of the civil and military government of the country was under the purview of the Governor-General. The Governor General acted as agent and represented the British monarch on Indian soil, possessing extensive powers across the administrative, legislative, and financial domains. He was vested with the powers of summon, prorogue and dissolve both houses of the central legislature, as outlined in section 63-D¹⁰⁴⁵. Moreover, the governor general enjoyed immunity from any judicial proceedings, remaining beyond the jurisdiction of the court of law in India. He was empowered to exercise the pardoning power as the "Head of the State" and was authorised to issue the ordinances for the peace and good government of British India or any part thereof. The Governor General also retained the power to grant the final assent to legislative enactments and to lay down the 'annual financial Statement' before the legislature. The Governor-General, vested with the vast array of powers as mentioned above, was advised and assisted by his Executive Council.

The Government of India Act, 1935¹⁰⁴⁶, delineated the framework within which the Governor-general will exercise his executive powers " shall be exercised on behalf of his majesty, by the Governor-general, either directly or through officers subordinate to him" (section 9 of the Government of India Act). Furthermore, the act mandated the formation of a Council of Ministers not exceeding 10 in number to aid and advise the Governor-General in the execution of his executive responsibilities.

According to Section 12 of the Government of India Act, 1935, the Governor-General was entrusted with several responsibilities, including the maintenance of peace and tranquillity across India, safeguarding the financial stability and credit of the federal government, and the protection of the legitimate interests of the minorities, etc.

The debates of the Constituent Assembly provide the critical insight into the intention of the Founding Fathers regarding the constitutional role of the President of India. Notably, the word 'republic' in the Constitution of India signifies that the Head of the State is to be elected.

B.R Ambedkar said about the post of President that "In the Draft Constitution, there is placed at the Head of the Indian Union a functionary, who is called the President of the Union. The title reminds one of the President of the United States, but, beyond the identity of names, there is nothing in common between the form of Government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government. What the Draft Constitution proposes is the Parliamentary system. The two are fundamentally different. Under the Presidential system of America, the President is the Chief Head of Executive. 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 decisions are made known".

Subsequently, Iyer¹⁰⁴⁷ went on to say that "These debates in the constituent assembly are conclusive on the question of what the assembly intended regarding the power of the president. And the most exhaustive and persistent search of all the volumes of debates

¹⁰⁴³ Shamsher Singh and anr. vs. State of Punjab, AIR 1974 SC 2192

¹⁰⁴⁴ The Government of India Act 1919 (9 & 10 Geo. 5. c. 101)

¹⁰⁴⁵ Government of India Act 1919 (9 & 10 Geo. 5. c. 101), section 63-D

¹⁰⁴⁶ Government of India Act 1935 (25 & 26 Geo. 5. c. 42)

¹⁰⁴⁷ X, Constituent Assembly Debates, 269

in the constituent assembly will not give the slightest support to the proposition being advanced today that the President is vested with power, apart from and different from the power that he exercises on the advice of his Council of Ministers”

It indicated that the founding fathers intended to make the President of India a ceremonial Head of the Union government, just like the British monarch, acting solely on the aid and advice of the Prime Minister-led Council of Ministers. Article 74(1)¹⁰⁴⁸ Puts into writing the principles of responsible government as they exist in Britain.

During the Constituent Assembly discussions, Jawaharlal Nehru¹⁰⁴⁹. Stated that: At the same time, we did not want to make the President just a mere figurehead like the French President, but we did not give him real power, but we have made his position one of great authority and dignity.

Dr. Rajendra Prasad¹⁰⁵⁰ Clarified this framework by remarking that: We have had to reconcile the position of an elected President with an elected Legislature, and in doing so, we have adopted more or less the position of the British Monarch for the President... His position is that of a Constitutional President. Then we come to the Ministers. They are, of course, responsible to the Legislature and tender advice to the President, who is bound to act according to that advice. Although there are no specific provisions, so far as I know, in the Constitution itself making it binding on the President to accept the advice of his Ministers, it is hoped that convention under which in England the King acts always on the advice of his Ministers will be established in this country also and the President, no so much on account of the written word in the Constitution but as a result of this very healthy convention, will become a Constitutional President in all matters. However, it is noteworthy that Rajendra Prasad changed his opinion after occupying the

country's highest office, as he sought to expand the powers associated with the presidency.

This shift highlights a critical aspect of the interplay between established parliamentary governance, characterised by the President's Constitutional role, and the dynamic nature of executive authority exercised by the Council of Ministers. Thus, the parliamentary government system, as envisioned by the founding fathers, delineates the President's position strictly as a constitutional head, with real executive power residing with the Council of Ministers.

It is well established that the parliamentary government system was established by the founding fathers of our country, which makes the President only a Constitutional Head of the government, and the real power is to be exercised by the Council of Ministers.¹⁰⁵¹

But it cannot be said that the President is only a rubber stamp. The President has been conferred with the highest form of institutional dignity and has some discretion too. In the Shamsher Singh's case¹⁰⁵² Justice Krishna Iyer held that “The President in India is not at all a glorified cypher. He represents the majesty of the State, is at the apex, though only symbolically, and has a rapport with the people and parties, being above politics. His vigilant presence makes for good government if only he uses what Bagehot described as the right to be consulted, to warn and encourage. Indeed, Article 78 wisely used, keeps the President in close touch with the Prime Minister on matters of national importance and policy significance, and there is no doubt that the imprint of his personality may chasten and correct the political government, although the actual exercise of the functions entrusted to him by law is in effect and law carried on by his duly appointed mentors, i.e. the Prime Minister and his colleagues. In short, the President, like the King, has not merely been constitutionally romanticised but vested with a persuasive role.”

11. The Constitution of India, Art. 74(1)

¹⁰⁴⁹ IV, Constituent Assembly Debates, 732

¹⁰⁵⁰ XI, Constituent Assembly Debates, 988

¹⁰⁵¹ Rai Sahib Ram Jawaya Kapur And Ors. V. The State Of Punjab, AIR 1955 SC 549

¹⁰⁵² Shamsher Singh and anr. vs. State of Punjab, AIR 1974 SC 2192

It is a matter of fact that the President of India has to act as a guardian of the Constitution and also ensure the compliance of Constitutional norms and principles by the Government in its decision-making process.

Having conducted a thorough analysis of the historical background of the institution of the Head of State in our country, it is posited that the present institution of the Head of State is fundamentally different from the British monarch as well as from the Head of State during the British regime. The Founding Fathers rejected the American presidential system in favour of adopting the Westminster parliamentary system. They articulated a clear intention that the President would not be merely a cypher or a rubber stamp; rather, in certain contexts, he would have the power to use his discretion.

BASIC CONSTITUTIONAL PROVISIONS

Under the Constitution of India, the President is conferred with a large number of powers and functions which he generally exercises through the aid and advice of the Council of Ministers headed by the Prime Minister. These Interpretations have been affirmed by the Hon'ble Apex Court in various judgements (Ram Jawaya Kapur case,¹⁰⁵³ U. N. Rao case¹⁰⁵⁴ Shamsheer Singh case¹⁰⁵⁵, etc.)

Election of the President

Article 54¹⁰⁵⁶ States that the president is elected by an electoral college consisting of – Elected members of both the Houses of Parliament, Elected members of Legislative assemblies of all States, and Elected members of Legislative assemblies of Delhi and Puducherry.

An examination of the debates within the Constituent Assembly reveals that the main debate surrounding the election of the President was choosing the President by Direct Election or Indirect Election. The Debates of the Constituent

Assembly reveal that the Founding Fathers were averse to the idea of a direct election for the two principal constitutional functionaries, i.e. President and Prime Minister. For instance, Jawahar Lal Nehru¹⁰⁵⁷ Expressed his concerns by stating that “ If we had an election by an adult franchise and yet did not give him any real powers, it might be just an extraordinary expense of time, money and energy without any adequate result”

Dr. B. R. Ambedkar opined that “The reason that the President is not directly elected because he may not consent to his mere constitutional position and can claim to derive his authority directly from the people. So if he wanted to assume real power, this led to a Constitutional deadlock. And clash with the cabinet.”

B. N. Rao proposed that the President be elected by the parliament because he was to be a nominal Head of the government. Additionally, Gopalswami Ayyangar also asserted that the President of India must be elected with the participation of both the State and Central governments.

In Practical terms, the ruling party significantly influences the election of the President. However, the ruling party also has to gain the support of the State legislatures to elect the President of their choice. It is pertinent to mention here that the candidates contesting for the post of President do not release their manifestos or promises before their election, distinguishing them from other election candidates.

Manner of election of the President

The manner of the President's election is delineated in Article 55¹⁰⁵⁸. The presidential election is held by the system of proportional representation using a single transferable vote, and the voting is by secret ballot.

Tenure of office of the president

Regulations regarding the President's term are specified in Article 56¹⁰⁵⁹. It states that the President hold office for a term of five years

¹⁰⁵³ Rai Sahib Ram Jawaya Kapur And Ors. V. The State Of Punjab, AIR 1955 SC 549

¹⁰⁵⁴ U.N.A Rao v. Indira Gandhi, AIR 1972 SC 1002

¹⁰⁵⁵ Shamsheer Singh and anr. vs. State of Punjab, AIR 1974 SC 2192

¹⁰⁵⁶ The Constitution of India, Art.54

¹⁰⁵⁷ IV, Constituent Assembly Debates, 713

¹⁰⁵⁸ The Constitution of India, Art.55

¹⁰⁵⁹ The Constitution of India, Art.56

from the date he enters upon his office. Even after the expiration of his term, he would continue as President until his successor takes over. It also states that the office of President may terminate before the expiry of the term of 5 years, either by submitting his resignation in writing to the Vice-President, or by the process of impeachment provided in Art. 61.

Eligibility for re-election

Article 57¹⁰⁶⁰ Stipulates that there is no bar under the Constitution on the re-election of the same person to the office of the President. A person may be elected President for any number of terms. Dr. Rajendra Prasad is the only President to have been elected twice, and Dr. Neelam Sanjeeva Reddy is the only President to have been elected unopposed.

Qualifications for election as President

The qualifications for election as President are outlined in Article 58¹⁰⁶¹. It states that a person to be eligible for being elected as President, only in case if he is a citizen of India with completed the age of 35 years, is qualified for election as a member of the House of People, and must not hold any office of profit under any Government. However, a sitting President or Vice-President of India, a Governor of any State, and a Minister of the Union or of any state, are not deemed to be holding any office of profit and hence they are not disqualified for election as the President.

The term "Office of Profit" connotes any place or position that carries or offers some remuneration, financial advantage, benefit, etc. It has been adopted from the British Parliamentary Model. According to this concept, a person may not be eligible to hold a post if he is holding any other post in the Government and getting remuneration or other pecuniary benefits. This encourages separation of power between the three organs of State, i.e. Executive, Legislature and Judiciary. In *Purno Agitok Sangma vs. Pranab Mukherjee*¹⁰⁶² The Supreme Court observed that in order to be called an office of Profit, the office must carry various

pecuniary benefits, such as providing official accommodation or a chauffeur-driven car.

Conditions for the Office of the President

Art. 59 outlines the Conditions for the President's office. It states that the President elected shall not be a member of either House of Parliament or of a House of Legislature of any State. If a person who is a member of the Parliament or of a State Legislature is elected as the President, he shall be deemed to have vacated his seat in that House on the day he enters upon his office as the President. The President shall not hold any other office of profit. The President shall be entitled to use his official residence free of rent. The President is also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule. The President's salary and allowances shall not be diminished during his term of office.

Oath or affirmation by the President

The purpose of the President's oath is to impose a moral obligation upon the incumbent, signifying an undertaking to bear fidelity and allegiance to the Constitution and to protect India's sovereignty and integrity.

Article 60¹⁰⁶³ Mandates that every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the Senior-Most Judge of the Supreme Court.

" An oath is a form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully. It involves the idea of calling in God to witness what is averred as truth, and it is supposed to be accomplished with an invocation of this vengeance of remuneration of his favour in the event of falsehood. Oath includes affirmation also".¹⁰⁶⁴

¹⁰⁶⁰ The Constitution of India, Art.57

¹⁰⁶¹ The Constitution of India, Art. 58

¹⁰⁶² *Purno Agitok Sangma vs. Pranab Mukherjee*, AIR 2013 SC 372,

¹⁰⁶³ The Constitution of India, Art. 60

¹⁰⁶⁴ *Haridasan Palayil vs The Speaker, Kerala Legislative Assembly*, AIR 2003 KER 328

The president's oath under Article 60 makes him the guardian of the Constitution. The oath is not only ceremonial; it carries substantive obligation. In accordance with the mandate of his oath, the President is ethically bound to preserve, protect and defend the Constitution. Failure to fulfil this duty may result in impeachment by the Parliament, as provided for under Article 61 of the Constitution.

Eminent Constitutional scholar H. M. Seervai¹⁰⁶⁵ reinforces this interpretation, asserting: "It is a necessary implication of Articles 60 and 61, that if the Council of Ministers should advise the President to take action which is contrary to the Constitution and the law, or that the Ministers are driven to admit is contrary to the Constitution and the law, the President should reject such advice, and if necessary dismiss the Ministry if it persists in its advice. And if he is unable to form another Ministry, he can direct a dissolution of the House of the People and order a fresh general election. Again, if the President is reliably informed that the Ministry has lost the confidence of the House of the People, and despite his repeated requests to summon the House where the Ministry's claim that it commands the confidence of the House can be tested, the Ministry declines to do so, the President can dismiss the Ministry, appoint another Ministry and summon the house of people, where the new ministry can establish its claim of commanding the confidence of the house.

Time to hold the Presidential election

Art.62¹⁰⁶⁶ Focuses on the timing of the election to fill the vacancy of the President and the terms of office of those elected to do so. It ensures the timely vacancy of the President. It directs that the election must be held promptly to prevent any prolonged vacancy. It also states that a person elected to fill a vacancy arising due to reason of death, resignation, removal, or otherwise is entitled to complete a five-year tenure.

¹⁰⁶⁵ H.M. Seervai, II, Constitutional Law of India, 2044 (Universal Law Publishing Company Pvt. Ltd, New Delhi, 4th edn.)

¹⁰⁶⁶ The Constitution of India, Art. 62

Disputes Concerning the Office of the President

Article 71¹⁰⁶⁷ Contains provisions relating to the disputes regarding the election of the President or Vice President. It states that any dispute or doubt arising out of or in connection with the election of the President shall be decided by the Supreme Court, whose decision shall be final. If the Supreme Court declares the election of the President void, then or before the date of this decision, the act done by him in exercise of powers and duties of his office shall remain valid. It also gives Parliament the power to make law for the regulation of the election of the President, but it does not take away the jurisdiction of the Supreme Court to decide the matter. The Parliament, by exercising its jurisdiction, enacted the "The Presidential and Vice- Vice-Presidential Elections Act, 1952" to regulate matters related to the election of the offices of President and Vice-President.

The Supreme Court¹⁰⁶⁸ has held that "it would not entertain any petition challenging the election of the President before the completion of the electoral process and declaration of the result. "This judicial precedent is underscored by the concern that early judicial intervention in electoral disputes could potentially hinder the entire electoral process, then conceivably, "the entire election may be held up till after the expiry of a five-year term, which will involve a non-compliance with the mandatory provisions of Article 62"¹⁰⁶⁹

"In accordance with Section 14 of the Presidential and Vice-Presidential Election Act, an election can be called into question either by a candidate at such election or by 10 or more electors. The Supreme Court has further clarified that a person who is neither a candidate nor an elector could not file a petition to challenge the President's election"¹⁰⁷⁰.

Immunity to the President from Judicial Scrutiny

¹⁰⁶⁷ The Constitution of India, Art. 71

¹⁰⁶⁸ Dr. N. B. Khare vs Election Commission Of India, 1958 AIR 139

¹⁰⁶⁹ M.P. Jain, Indian Constitutional Law 124 (Lexis Nexis, New Delhi, 7th edn.)

¹⁰⁷⁰ Lokendra Malik, The Power of the Raisina Hill: The Constitutional Position, Functions and Powers of the President of India 51 (Lexis Nexis, New Delhi)

Art. 361¹⁰⁷¹ Contains that no criminal proceeding can be instituted in a court against the President during the term of his Office, and while in office President is not responsible to any court for the execution of their powers. It also gives immunity from an arrest warrant. However, civil proceedings done by him in his personal capacity can only be carried out with the prior notice of 2 months.

"The office of the President is the highest Constitutional office in the country, and the Constitution has conferred a special immunity upon him under the aforementioned Article. The scope of this provision is very wide. No Court of Law can compel the President to exercise or not to exercise any power, or to perform or not to perform any duty, nor can a Court issue any writ in respect of the President's official acts or omissions. He is not amenable to any mandate, writ or order from any Court while performing his official acts. No Court can issue a notice or summon against him or compel him to defend himself in the Court. In official acts, he holds a complete immunity from the judicial proceedings."¹⁰⁷²

"It is pertinent to State that this immunity is conferred on the President because he exercises his powers and functions under the Constitution on the aid and advice of the Council of Ministers, and if something goes wrong in that process, only the Council of Ministers would be responsible and not the President"¹⁰⁷³. "So, the aggrieved person can initiate legal proceedings against the Government of India, but not against the President"¹⁰⁷⁴.

"The immunity also extends to acts or omissions which may be incidental to, as well as to any act purporting to be done by the President in the exercise and performance of the powers and duties of his office. The words 'purporting to be one by done' are of very wide scope. Even though the act is in contravention of the

Constitution, the President of India is protected so long as the act is professed to be done in pursuance of the Constitution."¹⁰⁷⁵

However, it is crucial to note that this immunity does not permit the President to act arbitrarily. The validity of the President's Act is surely subject to judicial scrutiny. He is not above the Constitution because it entirely created his post. Our governance operates under the rule of law, requiring all authorities, including the President, to operate under the Constitution; no authority, including the President, can violate the mandate of the Constitution. The President is also bound to honour the constitutional mandate. If he violates, he can be impeached by the parliament under Article 61¹⁰⁷⁶. The President must not behave like an 'unruly horse'. In *Madhava Rao Scindia... vs. Union of India* Chief Justice M. Hidayatullah observed that "The President cannot claim a total immunity for his acts from the scrutiny of the Court. Further, Justice Shah went on to say that "the powers of the President arise from and are defined by the Constitution. Validity of the exercise of those powers is always amenable to the jurisdiction of the Courts, unless the jurisdiction is by precise enactment excluded. Power of this Court under Article 32¹⁰⁷⁷, or of the High Courts under Article 226¹⁰⁷⁸, cannot be bypassed under a claim that the President has exercised political power."

But if the President want to file an affidavit against the charges of malafide, he can do so. The restriction has been imposed only upon the court of law, and not on the president. If he wants to file, he can do so. In the case of *Rameshwar Prasad v. Union of India*¹⁰⁷⁹ The Supreme Court observed that "Article 361 does not bar the filing of an affidavit if one wants to file on their own. The bar is only against the power of the court to issue notice or make the President or Governor answerable."

¹⁰⁷¹ The Constitution of India, Art. 361

¹⁰⁷² M.P. Jain, *Indian Constitutional Law* (Lexis Nexis, New Delhi, 7th edn.)

¹⁰⁷³ S.R. Bommai vs Union Of India, 1994 AIR 1918

¹⁰⁷⁴ Shamsher Singh v. State of Punjab, (1975) 1 S.C.R 814

¹⁰⁷⁵ Biman Chandra Bose vs Dr. H.C. Mukherjee, Governor And Ors. AIR 1952 CAL 799

¹⁰⁷⁶ The Constitution of India, Art. 61

¹⁰⁷⁷ The Constitution of India, Art. 32

¹⁰⁷⁸ The Constitution of India, Art. 226

¹⁰⁷⁹ Rameshwar Prasad & Ors vs Union Of India & Anr W. P. (C) 257 of 2005

Impeachment of the President

“Article 61 of the Constitution of India contains the procedure for the impeachment of the President. Article 61 states that the President can be impeached for the ‘Violation of the Constitution’. However, what acts of the President constitute ‘violation of the Constitution’ is not defined in the Constitution itself. It would all depend upon the view taken by the House, which investigates the charges against the President, and it would be unprofitable to speculate as to what view the House would take.”¹⁰⁸⁰

No President has been impeached in the country up till now, the Parliament had no occasion to delineate the implications of the term ‘violation’. “But, when the President is alleged to have violated the Constitutional conventions or unwritten provisions, as such conventions are not incorporated into the Constitution, it becomes difficult to understand the matter. Do conventions form part of the Constitution? Firstly, are there conventions firmly established in our parliamentary democracy, or can the conventions of the British Parliamentary system be engrafted onto our Constitution? Conventions are usages or practices that grew in Britain, which do not have a written Constitution in the popular meaning of the term. If there is a written Constitution like ours, can British parliamentary conventions be read into the text of the Constitution, or can they be regarded as supplementing the written text? The answer to such questions seems to be affirmative”¹⁰⁸¹.

Conventions serve as mechanisms for facilitating constitutional development without necessitating formal legal amendments. K. C. Wheare defines the ‘conventions’ as follows: “The definition of ‘conventions’ may thus be amplified, saying that their purpose is to define the use of Constitutional discretion. To put this in slightly different words, it may be said that

conventions are non-legal rules regulating how legal rules shall be applied.”

In summary, we can say that the constitutional provisions relating to the office of the President indicate that the office of the President of India is not a replica of the British Monarch, but a grand mixture of different concepts. There is no doubt that the name of the institution of the President of India has been imported from the United States of America, but the essence of this position seems to have been borrowed from the unwritten Constitution of Britain. The method and manner of election of the President in India prove it beyond reasonable doubt that the founding fathers have not made him the ruler of the country but only a formal Head of the Union Government with some minor reservations. And now it is also well-settled that the President of India is not merely a cypher or a rubber stamp but a responsible constitutional functionary who has to preserve, protect and defend the Constitution and the law as per the mandate of his oath taken under Article 60 of the Constitution. He represents the collective dignity of the nation.

As stated earlier, the President may be impeached by the Parliament if he violates the Constitution. It shows that he has some responsibility to discharge on his discretion, though personal immunity has been granted to him under Article 361¹⁰⁸² of the Constitution. But as discussed above, this immunity does not give the President any license to violate or override the constitutional provisions. He has to act as per the Constitutional provisions, and now it is well-established through judicial interpretation that even in the physical absence of the President, the courts are competent to adjudicate on the validity of Presidential actions, and his actions may be declared unconstitutional if found violative of the Constitutional provisions.

The provision of oath is very important in the constitutional scheme, and it is submitted that if the President of India violates his oath or if he

¹⁰⁸⁰ H. M. Seervai, Constitutional Law of India 2025 (Universal Law Publishing Pvt. Ltd. New Delhi, 5th edn, 1996)

¹⁰⁸¹ Lokendra Malik, The Power of the Raisina Hill: The Constitutional Position, Functions and Powers of the President of India 57 (Lexis Nexis, New Delhi)

¹⁰⁸² The Constitution of India, Art. 361

fails to protect the Constitution and the law, he may be impeached by the Parliament for that omission under Article 61¹⁰⁸³ Of the Constitution. Here, it is also noteworthy that the term 'violation of the Constitution' seems to be a justiciable issue to the author and the courts, particularly the writ courts are empowered to adjudicate as to whether there has been an actual violation of the Constitution or not because the impeachment proceedings are quasi-judicial which demands the compliance of principles of natural justice and only a judicial authority can decide such issue properly.

"The President is a creature of the Constitution, and he derives all his powers and functions from the Constitution itself. He has to act within the four corners of the Constitution and his role is to see that the Government is carried on per the Constitutional provisions by the Prime Minister and his Cabinet colleagues. The Constitution does not leave any space for the President to act unruly, and if he travels beyond the constitutional boundaries, provisions are there in the Constitution to check his movement. Let us delve deep into the constitutional text and law to understand the issue properly in the forthcoming chapters."¹⁰⁸⁴

The President of India and its relationship with the Council of Ministers

The Indian Constitution establishes a parliamentary system of governance where the President of India serves as the nominal executive head, and the real executive power rests with the Council of Ministers led by the Prime Minister. This nuanced relationship between the President and the Council of Ministers is a pivotal aspect of the constitutional framework of India, which is shaped by the Constituent Assembly debates, judicial interpretations, and constitutional conventions. In this subtopic, we will examine the President's role, the nature of his relationship with the

Council of Ministers, and relevant judicial precedents.

B.R Ambedkar articulated that "The President of the Indian Union will be generally bound by the advice of his Ministers... He can do nothing contrary to their advice, nor can he do anything without their advice."¹⁰⁸⁵

This foundational stance was codified into Art. 74(1)¹⁰⁸⁶, which mandates that the President must act on the aid and advice of the Council of Ministers, headed by the Prime Minister.

Some members, notably, K.T. Shah¹⁰⁸⁷, advocated for the conferral of discretionary powers upon the President, akin to those held by the Governor-General under the Government of India Act, 1935. However, this proposal was rejected to prevent authoritarian tendencies. Instead, the Constitution delineates limited situational discretion for the President, particularly in appointing the Prime Minister in hung assemblies.

The Indian Constitution delineates the President's Position and his dependence on the aid and advice of the Council of Ministers, led by the Prime Minister, through several Constitutional Provisions:

Art. 74¹⁰⁸⁸ (Aid and Advice of the Council of Ministers)

Article 74(1) states that the President shall exercise his functions as per the aid and advice of the Council of Ministers. The words 'act in accordance with such advice' used in Clause (1) mean that the function of the Council of Ministers is not just to give advice but to take decisions which shall be binding on the President. Article 74(2) states that the court shall not enquire into any question on such advice tendered by Ministers to the President. The 42nd Amendment Act, 1976, made it necessary for the President to act on the aid and advice of the Council of Ministers, led by the Prime Minister. However, the 44th Constitutional

¹⁰⁸³ The Constitution of India, Art. 61

¹⁰⁸⁴ R. Venkataraman, My Presidential Years 617 (Harper Collins Publishers India, New Delhi, 1994)

¹⁰⁸⁵ VII, Constituent Assembly Debates, 32

¹⁰⁸⁶ The Constitution of India, Art. 74(1)

¹⁰⁸⁷ IV, Constituent Assembly Debates, 734

¹⁰⁸⁸ The Constitution of India, Art. 74

Amendment, 1978 permitted the President to return the advice once for reconsideration, but he must accept it if the Council of Ministers reiterates it.

In *U.N. Rao vs. Smt. Indira Gandhi*¹⁰⁸⁹ The Supreme Court observed that the real executive is the Council of Ministers, and the President is a nominal head. In *Samsher Singh vs. State of Punjab*¹⁰⁹⁰, Supreme Court reiterated that the President or Governor is the formal or nominal head and has to act on the aid and advice of the Council of Ministers. And this view of the Supreme Court has been incorporated in clause (1) of Article 74 by the 42nd Constitutional Amendment Act, 1976.

Art. 75¹⁰⁹¹(Appointment and Responsibilities of Ministers)

The Prime Minister is appointed by the President, and the other ministers are appointed by the President on the advice of the Prime Minister.

Art. 78¹⁰⁹²(Duties of the Prime Minister)

It is the Duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation, and provide any information the President may demand.

Thus, the Indian President's relationship with the Council of Ministers is one of constitutional subordination, ensuring democratic accountability while maintaining the dignity of the office.

Discretionary power of the President

Indian President occupies a pivotal role within the framework of the Indian Constitution, which extends beyond mere ceremonial functions, as is the case with the British Monarch. He has some discretionary powers which is not expressly mentioned in the Constitution, however, a careful examination of the Constitutional texts reveals several contexts in which these powers can be invoked. It is

pertinent to mention that the decisions of Paramount importance are made in the name of the President, guided by the binding advice of the Council of Ministers, headed by the Prime Minister. Using discretionary powers, the President takes his real responsibilities as the Head of State. The President's discretionary powers provide him with the capacity to check the executive's arbitrariness and exert significant influence over them by preserving the interests of the country's large majority and fulfilling the role of a real leader.

However, there are some instances where the President may exercise discretionary power, which includes but is not limited to the following:

Veto Powers Exercised by the President

Until the President of India gives his assent (permission), a bill cannot become an act. The President's power in this regard includes the ability to give his assent, withhold his assent, or return the bill to the House of Representatives for reconsideration (except in the case of a money bill).

Because there is no time restriction under the Constitution for the President to make a judgment on a bill that has been brought to him for assent, the President's inactivity effectively prevents the bill from becoming an Act.

Appointment of the Prime Minister

When a Prime Minister dies unexpectedly, and there is no one to take his position, the President is responsible for selecting and appointing the new Prime Minister. For example, when Jawaharlal Nehru and Lal Bahadur Shastri died during their tenure, the then-President appointed Mr Gulzarilal Nanda as caretaker Prime Minister both times, illustrating this discretionary power.

Seek Information From the Prime Minister

Under Article 78 of the Indian Constitution, the President holds the authority to request information from the Prime Minister regarding the administration of the Union's business. According to an established convention, the President, while exercising his discretionary powers, can also encourage the Council of Ministers to perform a certain act.

¹⁰⁸⁹ *U.N. Rao vs. Smt. Indira Gandhi*, AIR 1971 SC 1002

¹⁰⁹⁰ *Samsher Singh vs. State of Punjab*, AIR 1974 SC 2192

¹⁰⁹¹ The Constitution of India, Art. 75

¹⁰⁹² The Constitution of India, Art. 78

Power to Summon Both Houses of Parliament

As articulated in Article 85 of the Constitution, the President has the authority to summon and prorogue a session of both Houses as he deems necessary, ensuring an adequate interval of six months between legislative sessions.

Acting in the absence of a Majority

In scenarios when no political party or coalition of parties has a majority in the Lok Sabha, the President may invite the leader of the party or coalition who, in his view, is capable of forming a stable government to assume leadership.

Dissolution of the Lok Sabha

Following a loss of majority in the Council of Ministers, the President has the authority to decide whether to dissolve the Lok Sabha. Although the dissolution is done on the Council of Ministers' suggestion, it is only binding if the government is a majority government. In case of no Majority government, it is upon the President to decide about dissolution.

Power of the Caretaker Government

The operational actions of a caretaker government, which lacks the confidence of the Lok Sabha, are only supposed to make day-to-day administrative choices rather than big decisions. The President is in charge of making day-to-day decisions.

Discretionary power of the President under the purview of Art. 74

While it is acknowledged that the President is generally expected to act on and advise the Council of Ministers, this does not imply a passive adherence that undermines constitutional mandate. The President serves as the guardian of the Constitution, tasked to protect the Constitution in accordance with their oath of office. He is not a rubber stamp; he must see that the advice given by the Council of Ministers must be reasonable and Constitutional. The President cannot be a silent spectator; he has constitutional power to ask the government to act in a Constitutional manner.

The relationship between the President and the Council of Ministers is defined by the Constitutional provisions. The current

relationship, which makes it obligatory for the President to act on the aid and advice of the Council of Ministers, headed by the Prime Minister, is added through the 42nd and 44th amendment acts. However, it is essential to acknowledge that the Founding Fathers did not intend to make the President merely a rubber stamp.

In a landmark Judgement of Shamsher Singh¹⁰⁹³ The Hon'ble Apex Court articulated the framework surrounding the discretionary powers of the President. M.C. Setalvad opined that the President has some discretionary powers which he need not exercise with the aid and advice of the President of India. "Specially, in a situation in which there is no council of Ministers to aid and advise him, he has to act in the interest of the nation. In these circumstances, he is permitted to exercise discretionary power. But that can be done in certain circumstances.

Justice K. K. Mathew¹⁰⁹⁴ Stated that: Article 74 of the Constitution stipulates that the President is bound to act on and advise the Council of Ministers, headed by the Prime Minister, yet there exists a 'grey area' in which he can use his mind. Article 60 further underscores this discretionary power, keeping the view the obligation of the President to protect the Constitution. And supported this view that the President is not bound to act on the advice of the Council of Ministers, which involves doing an act in violation of the Constitution.

Professor M. P. Jain¹⁰⁹⁵ elucidates that "the influence of the president, however, depends on his personality. A man of character and ability can exert a potent impact on the affairs of the Government with his advice. Help and persuasion, by using his knowledge, experience and disinterestedness to arrive at sound decisions on matters affecting the well-being of the people and not by dictating any particular course of action to his Ministers. In the ultimate

¹⁰⁹³ Shamsher Singh vs State Of Punjab And Others (1975) 1 S.C.R. 814

¹⁰⁹⁴ Justice K. K. Mathew, "The Dilemma of the President and Justiciability of a Verdict on Impeachment" 1 SCC(Journal) 5 (1978)

¹⁰⁹⁵ M P Jain ,I, Indian Constitutional Law 238(LexisNexis ,New Delhi. 6th edn. 2010)

analysis. It is the Council of Ministers which will prevail and not the President. His role is as best advisor; he may act as the guide, philosopher and Friend of the Ministers, but cannot assume to himself the role of their master—a role which is assigned to the Prime Minister. The Constitution intends that the President should be a centre from which a beneficent influence should radiate over the whole administration, and not that he should be the focus or centre of any power”.

In summary, the President of India also has influential power, but the parliamentary system restricts his capacity to act independently. As an elected constitutional authority, the President retains popular support and sympathy, yet his role is predominantly one of guidance rather than compulsion.

PRESIDENT VS. BRITISH MONARCH: ANALYSIS

In India, whenever someone asks any question regarding the Constitutional position of the President, generally the answer that he or she gets is that the President is only a titular Head like the British Monarch and has no say in the affairs of the Government. He is always bound to act on the advice of the Council of Ministers, and has no independent powers of his own. As discussed earlier, the best of the Constituent Assembly and judicial verdicts of the Supreme Court confirm this popular perception, but with a different tone. The discussion indicates that the President is a Constitutional Head of the Union Government who is generally obligated to act on the aid and advice of the Council of Ministers, Headed by the Prime Minister in the exercise of his powers and functions conferred upon him by the Constitution as mandated under Article 74(1) of the Indian Constitution. But it is an equally established proposition that even being the Constitutional Head, the President is not a rubber stamp or a cypher and no Government or Prime Minister can take him for granted.

The 42nd Constitution Amendment Act, 1976, made it for the President to act on the advice of the Council of Ministers, headed by the Prime

Minister. However, by the 44th Constitutional Amendment Act, 1978, a limited option has been provided to the President to return such advice for reconsideration once, but thereafter he is bound to act on the reconsidered advice of the Council of Ministers. Although the Constitution does not provide any prescribed period within which the President has to act, it allows for the possibility that the President may put the Ministerial decision on hold for an indefinite period.

On 4 November 1948, Dr. B. R. Ambedkar¹⁰⁹⁶ Articulated the Constitutional role of the President during the Constituent Assembly debates. “In the Draft Constitution, there is placed at the Head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond the identity of names, there is nothing in common between the form of Government prevalent in America and the form of Government proposed under the Draft Constitution. 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 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 decisions are made.”

K.M.Munshi¹⁰⁹⁷ Opined that “ On the other hand, some jurists have contradicted this notion that the position of the President of India is not analogous to the British Monarch, as there is a big difference between the two institutions.

Dr. Rajendra Prasad also endorsed the view of B.R. Ambedkar during his concluding Speech of the Constituent Assembly.¹⁰⁹⁸, on 26 November 1949. “ We had to reconcile the position of an elected President with an elected legislature, and, in doing so, we have adopted more or less

¹⁰⁹⁶ VII, Constituent Assembly Debates, 32

¹⁰⁹⁷ Dr. K. M. Munshi, The President under the Indian Constitution (Bharatiya Vidya Bhavan: New Delhi, 1963)

¹⁰⁹⁸ XI, Constituent Assembly Debates, 988

the position of the British monarch for the president.

But it is surprising to note that soon after occupying the highest constitutional office of the country, Dr. Rajendra Prasad changed his view about power and position and asserted his position seeking more power for his office which consequently made him in conflict with powers for his office which consequently put him in Prime Minister Pandit Jawaharlal Nehru, who was not ready to not any power with him. It appears to be the result of the practical experience of Dr. Rajendra Prasad as President of the country.

While there are notable similarities between the role of the Indian President and the British Monarch, The institution of the British Monarch is highly relevant in terms of powers and position of the President of India, it cannot be argued that our President is a replica of the British Monarch.

BRITISH MONARCH

The British Government operates as a Cabinet Government, responsible to both the Parliament and the Monarch. The Monarch, whether a King or a Queen, serves as a titular head who acts on the advice of his Ministers, with minimal autonomy in decision-making.

In the United Kingdom, the government is referred to as "His Majesty's Government," with the Prime Minister serving as the principal advisor to the Monarch. As per the principle of Parliamentary sovereignty, the Prime Minister acts as de facto Head of the Government, and whatever decision the Prime Minister takes, the monarch has to accept the same.

- Appointment of Prime Minister

The Monarch appoints the Prime Minister, who is generally the leader of the political party that has the majority in the House of Commons.

- Dissolution of the House of Commons

In Britain, the Prime Minister can decide to call an election at any time within the five-year period specified by the Parliament Act of 1911. However, once the decision is taken, the

Monarch must, according to the convention, dissolve the Parliament on the advice of the Prime Minister. This power to dissolve the Parliament could not be exercised independently of the Prime Minister's initiative.

- Ministerial appointments

In regard to Ministerial appointments at all levels, the Monarch follows the advice of the Prime Minister in approving the selections that he or she makes.

- Appointments and Honours

Although the Monarch is responsible for various official appointments, these choices are nearly always made on the advice of the Prime Minister.

- Assent of the monarch

The assent of the Monarch is required to make a bill into law.

- Commander-in-Chief of the armed forces

The monarch is a nominal Head of each of the armed forces however, it is subject to the consent of parliament.

- Head of State

On the international stage, the Monarch represents the nation, fulfilling a ceremonial role.

In summary, we can say that after examining the vision of the founding fathers of the Constitution, it seems that the post of President is taken from the American Constitution, but the powers, functions, and position seem to be taken from the British Constitution. The Supreme Court pronouncements leave no doubt about the legal position of the President of India. However, the Indian President is not a replica of the British monarch; the power, position and responsibility of the Indian President are higher than the British monarch. The position of President of India has its unique features which are not been imported from the UK or USA. The position of Indian President is created under the Constitution, and there is impeachment against the President under Article 60, but on the other hand, there is no impeachment against the British monarch. The post of British monarch is



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also hereditary; however, the President of India is elected.

