



# Part V

## The UNION

# President

## Legislative Powers of the President

### Article 85: Sessions of Parliament, prorogation and dissolution

The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

The President may from time to time—

- (a) prorogue the Houses or either House;
- (b) dissolve the House of the People.

Summon: when the session of a Parliament begins, Parliamentarians have to be called officially or 'summoned'.

# President

**Article 86: Right of President to address and send messages to Houses**

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# President

## Article 87: Special address by the President

On two occasions:

1. First session of every year
2. First session after the general election

In the special address, the President mentions the agenda of the house in that particular session/year. It happens in the central hall of the Parliament.  
This is followed by a vote of thanks

# President

## Nomination Powers: under Article 80

- President can nominate 12 persons to RS (earlier, u/A 331, he also had the power to nominate two members to LS from the Anglo-Indian community- now this provision has expired)

## Laying of reports in Parliament

- President "causes reports to be laid" in case of Finance Commission, UPSC, CAG, etc in Parliament.

## Previous assent of President to a legislation

- Examples: Certain bills [reorganization of states bill, money bill, the financial bill (A), any bill putting a restriction on trade etc.] can be introduced in the parliament only on the recommendation of the Parliament

# President

## Article 111: Assent to Bills

A bill passed by parliament can't become Act without the assent of the President

## Veto Powers of the President

Absolute Veto, Suspensive Veto, Pocket Veto, Qualified Veto The overall objective of veto power is to stall a bill from becoming law.

## Suspensive veto: to delay a legislation

The Parliament (Prevention of Disqualification) Bill, 2006 : President Kalam sent a bill back for the reconsideration of the Parliament.

In 1991, then president R Venkataraman refused assent to a Bill passed unanimously by both Houses of Parliament to increase pension of former members of parliament (MPs). Given the public outcry against what was seen as a self-serving effort by MPs

# President

Kalam returned the controversial Parliament (Prevention of Disqualification) Amendment Bill 2006 seeking to exempt 56 posts including that of Chairperson of National Advisory Council, a post held by Congress President Sonia Gandhi, by exercising his powers under Article 111, never invoked since inception of the Constitution.

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# President

## Pocket veto

Giani Zail Singh used his pocket veto on the Indian Post Office(Amendment) Bill 1986.



Gianizail Singh

- Refused to sign the controversial Indian Post Office (Amendment) Bill.
- Wanted to know why the Government did not have a clear policy on judges' appointments.
- Questioned the television coverage policy.
- Summoned the chief election commissioner to explain the delay in Haryana elections.
- Despatched an angry letter to Andhra Pradesh Governor Kumudben Joshi asking her not to get involved in state politics.
- Demanded to know why his broadcast to the nation had been censored.
- Expressed his disapproval at the way the Mizoram accord had been arrived at.



# President

## Qualified Veto

Not available in case of India (applicable in the USA)

## Note:

In the case of a money bill, President does not have a suspensive veto.  
In the case of CAA, President has to compulsorily accept it.

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# President

Type of Bill	Suspensive	Pocket	Absolute
Ordinary Bill(OB)	Yes	Yes	Available regardless of the Bill but it's not a discretionary power. Usually exercised in the following cases a) Private Members' Bills b) Government Bills when the Cabinet resigns (after the passage of the Bills but before the assent by the President) and the new Cabinet advises the President not to give his assent to such Bills
Money Bill	No	Yes	
Financial Bill	Yes	Yes	
Constitutional Amendment Bill	No	No	

# President

## Ordinance making power of the president

Article 123: Power of President to promulgate Ordinances

It is not a discretionary power of the President i.e aid and advice of CoM is needed  
The ordinance cannot be used for a constitutional amendment.

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# President

It weakens the concept of 'Separation of Powers' under the Indian constitution. President can promulgate an ordinance on the subjects upon which Parliament is competent to make laws i.e. Union list and concurrent list. (but not on State subjects)

What are the checks and balances on the ordinance making power u/A 123:

1. Such ordinance promulgated shall be approved by the parliament with 6 weeks of reassembly u/A 123(2). Also, the Parliament can pass a resolution disapproving the ordinance
2. President may withdraw the ordinance at any time
3. As per a Parliamentary convention, the Executive while placing the bill in front of the Parliament has to provide a Statement of reason justifying the cause behind the ordinance.

# President

## 4. The power of judicial review:

R C Cooper Vs UoI Case: Ordinance making power of the president is also subject to judicial review

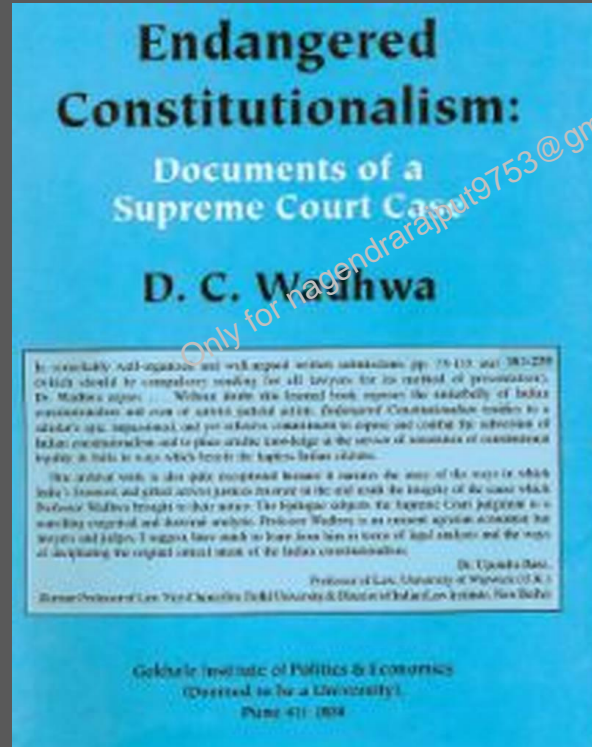
### A k Roy Vs UoI 1980 Case:

- The ordinance promulgated is subject to Judicial Review
- Satisfaction is Not the personal satisfaction of the president
- The court can't question advice that was given by CoM
- But there should not be a malafide intention behind the ordinance. In the case of malafide intention, the ordinance can be struck down by the court.

# President

## DC Wadhwa Vs state of Bihar Case

Repeated Repromulgation of the ordinance is a fraud on the constitution



# President

## DC Wadhwa Vs state of Bihar Case

The book revealed that the Governor of Bihar promulgated 256 ordinances between 1967 and 1981 and all these were kept alive for periods ranging between one and 14 years by re-promulgation from time to time. Out of these, 69 were re-promulgated several times and kept alive with the prior permission of the President of India

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# President

After Independence, the power to promulgate Ordinances, which was criticized by Nehru was used by the incumbent Government ninety-nine times in just 3 years. While he was in prison, he was of the view that "ordinances were incompatible with democratic ideals. Nehru had no liking for ordinances. Their use to him, was despotism by a different name."

This was also discussed in the Constituent Assembly, where the existence of Ordinances was not deliberated upon, but its scope was. Professor KT Shah was one of the most vehement voices against Ordinances who called it 'a negation of the rule of law.'



# President

## Re-promulgation of ordinances

The Constitution of India in Article 123 and Article 213 are silent on repromulgations which could have two implications, first that the silence is permissive and second that the silence is prohibitive.

While the authors would prefer the latter, it is often interpreted to be the former. An example of repromulgation of ordinances is the Land Acquisition Ordinance passed by the central government in 2014. Even though it lapsed after the six-week period in the Parliament and ceased to exist, it was repromulgated, and then repromulgated again nearly 3 times until it was passed. The Government was aware that they lacked support in the Upper House for it to pass there, and hence kept repromulgating the ordinance multiple times as the Constitution is silent on it, hence misusing their power.

# President

Do you find anything problematic with this observation made by the Supreme Court ?

"The law-making function is entrusted by the Constitution to the Legislature consisting of the representatives of the people and if the Executive were permitted to continue the provisions of an Ordinance in force by adopting the methodology of repromulgation without submitting to the voice of the Legislature, it would be nothing short of usurpation by the Executive of the law-making function of the Legislature... Of course, there may be a situation where it may not be possible for the Government to introduce and push through in the Legislature a Bill containing the same provisions as in the Ordinance, because the Legislature may have too much legislative business in a particular Session or the time at the disposal of the Legislature in a particular Session may be short, and in that event, the Governor may legitimately find that it is necessary to repromulgate the Ordinance. Where such is the case, re-promulgation of the Ordinance may not be open to attack. But otherwise, it would be a colourable exercise of power on the part of the Executive to continue an Ordinance with substantially the same provisions beyond the period limited by the Constitution, by adopting the methodology of repromulgation."

# President

Resorting to ordinances has always raised concern on violation of the spirit of separation of powers doctrine. While noting the rationales justifying the power to promulgate ordinances, analyze whether the decisions of the Supreme Court on the issue have further facilitated resorting to this power. Should the power to promulgate ordinances be repealed?

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# President

## Appointment powers of the President

- The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister
- Appointment of Governor of states, CAG, Judges of the SC and HCs, CEC and ECs, UPSC members, Attorney General, and so on.
- It is not a discretionary power

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# President

## Administrative Powers

- Article 53: Executive power of the Union: The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution
- Article 53(2): Military powers to declare war and peace on behalf of GOI
- Article 77: All executive action of GOI shall be expressed to be taken in the name of the President.
- Article 77(3): Power of President to make rules for the transaction of the business of GOI and for the allocation among Ministers of said business

# President

## Clemency powers of President

- Also called the mercy power/pardoning power of President
- Even the Governor of a state enjoys pardoning power
- Article 72

Note: It is not a judicial power.

## Types of mercy powers

- Pardon: absolves both sentence and conviction
- Commutation: lighter punishment (eg: death-penalty-> life-imprisonment)
- Remission: amount/duration of the sentence ↓ without changing the character
- Respite: lesser punishment in light of a certain fact (eg: pregnancy, old age, etc)
- Reprieve: stay of execution or sentence due to certain extra-ordinary situations

# President

## Judicial review of clemency powers

Epuru Sudhakar case: SC held that the JR of clemency power is allowed, but only in certain special circumstances.

JR should happen only when the order has passed:

- a) without application of mind
  - b) without taking the advice of CoM
  - c) is malafide
  - d) passed on wholly irrelevant considerations
  - e) relevant materials were kept out of considerations
- other principles to be followed:

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# President

## Kehar Singh vs UOI 1988 case

1. No right to an oral hearing for petitions
2. President can take a stance different from the court
3. President has to follow the advice of CoM
4. No need for the court to lay down specific guidelines

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# President

that the Governor had not been advised properly with all the relevant materials. The Court spelt out specifically the considerations that need to be taken account of while exercising the power of pardon, namely, the period of sentence in fact undergone by the said convict as well as his conduct and behavior while he underwent the sentence. The Court held that not being aware of such material facts would tend to make an order of granting pardon arbitrary and irrational. In *Epuru Sudhakar v. Government of Andhra Pradesh*<sup>43</sup>, the Court set aside a remission granted by the Governor of Andhra Pradesh on the ground that irrelevant and extraneous materials had entered into the decision making.<sup>44</sup> The Court observed that, 'the only reason why a pariah becomes a messiah appears to be the change in the ruling pattern. With such pliable bureaucracy, there is need for deeper scrutiny when power of pardon/remission is exercised.'<sup>45</sup> Though the contours of power under Article 72/161 have not been defined, the Supreme Court, in *Narayan Dutt v. State of Punjab* has held that the exercise of power is subject to challenge on the following grounds: a) If the Governor had been found to have exercised the power himself without being advised by the government; b) If the Governor transgressed his jurisdiction in exercising the said power; c) If the Governor had passed the order without applying his mind; d) The order of the Governor was mala fide; or e) The order of the Governor was passed on some extraneous considerations. Thus, in these judgments concerning the Governor's exercise of pardon, the Court seems to have widened the grounds for judicial review by enumerating specific grounds on which the grant of pardon can be considered arbitrary.<sup>47</sup>

# President

## Can delay be a possible reason for a commutation?

- Devendra Singh Bhullar case 2013: Concern regarding the excessive delay with respect to Mercy Petition
- SC stated that if any person has been charged with Terrorism then the excessive delay will not lead to the commutation of the death penalty to lower punishment

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# President

## Shatrughan Chouhan Case 2014- SC overturned the judgment in the case of the Bhullar case.

- Excessive delay in the mercy petition can be ground for commutation of the death penalty to life imprisonment u/A 32 and 21.
- MHA should place a petition with its recommendation as soon as possible in front of the president.
- There should be at least 14 days between execution and rejection of Mercy plea
- Rejection of mercy plea must be communicated to convict and the family members in writing
- Post-mortem report to be given to family members
- Nature of crime no reason for the delay in execution or disposal of mercy plea

# President

Differences between mercy powers of President and Governor

1. Governor has no mercy plea power w.r.t court-martial.
2. Gov can only exercise mercy powers w.r.t state list offenses
3. No pardoning powers in case of death

Some of the considerations to be taken while exercising the pardoning power by President/Governor

1. Seriousness of the offense
2. If there is a doubt over convict's guilt
3. If the health of the prisoner, especially if he/she is suffering from a serious illness.
4. The post-conviction conduct of the prisoner.
5. The effect of carrying out the punishment on the society and the family members of the convict.

# President

## Discretionary powers of the President

- Reconsideration of advice given under Article 74(1)
- Sending back of the bill for reconsideration of the legislature
- Appointment of PM in case of no clear majority
- Choice of PM in case of death of sitting PM
- Dismissal of CoM that has lost the majority in Lok sabha
- When the PM who has lost the majority in LS asks for dissolution of LS
- Article 78: Power of the president to stay informed about the affairs of the State

# President

## Vice President

Article 63: The Vice-President of India

There shall be a Vice-President of India

He is the deputy of the President of India

Article 64

Article 65

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# President

## Election of Vice-President (u/A 66)

He is elected by the members of an electoral college consisting of the members of both Houses of Parliament.

Thus, this electoral college is different from the electoral college for the election of the President in the following two respects:

1. It consists of both elected and nominated members of the Parliament (in the case of the president, only elected members).
2. It does not include the members of the state legislative assemblies (in the case of the President, the elected members of the state legislative assemblies are included).

# President

## Qualification for the office of the Vice-President

To be eligible for election as Vice-President, a person should fulfill the following qualifications:

1. He should be a citizen of India.
2. He should have completed 35 years of age.
3. He should be qualified for election as a member of the Rajya Sabha.
4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority



# PYQ

Does the right to clean environment entail legal regulations on burning crackers during Diwali? Discuss in the light of Article 21 of the Indian Constitution and Judgement(s) of the Apex Court in this regard.

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# PYQ

Which of the following are envisaged by the Right against Exploitation in the Constitution of India?

1. Prohibition of traffic in human beings and forced labour
  2. Abolition of untouchability
  3. Protection of the interests of minorities
  4. Prohibition of employment of children in factories and mines
- Select the correct answer using the code given below.

- (a) 1, 2 and 4 only (b) 2, 3 and 4 only  
(c) 1 and 4 only (d) 1, 2, 3 and 4

# Practice Question

2. Article 30 of the Indian Constitution deals with the :

- (a) Freedom of conscience
- (b) Right to propagate religion
- (c) Cultural and educational rights of the majority community
- (d) None of the above

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# Practice Question

3. Which of the following statements are true with regard to the Fundamental Rights of the minorities in educational matters?

1. The minority has only the right to administer the educational institutions.
2. The minority has the right to establish and administer educational institutions.
3. The right is absolute and not subject to any restriction.
4. Reasonable restrictions may be imposed to promote efficiency and prevent maladministration.

Select the correct answer using the codes given below:

- (a) 1, 2 and 3 (b) 2 and 4  
(c) 2, 3 and 4 (d) 1 and 3

# Practice Question

4. In India, if a religious sect/community is given the status of a national minority, what special advantages it is entitled to?

1. It can establish and administer exclusive educational institutions.
2. The President of India automatically nominates a representative of the community to Lok Sabha.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) 1 and 2 only
- (d) None of the above

# Practice Question

5. Which one of the following pairs is correctly matched?

- (a) Writ of Habeas Corpus : Available against private individuals as well
- (b) Writ of Quo-Warranto : Available against subordinate courts only
- (c) Writ of Certiorari : Available against autonomous bodies only
- (d) Writ of Prohibition : Available against public servants only

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“If it makes you nervous, you’re doing it right.”



# THANKS!

## Any questions?

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