

# PRESIDENT OF INDIA: AN OVERVIEW

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## **UNION GOVERNMENT**

- Legislature – Makes the Law
- Executive – Executes the Law
- Judiciary – Interpreting the Law

# **EXECUTIVE POWER**

- Three Wings of the Govt – Functioning – Role and Responsibilities – Separation of Powers v. Division of Powers
- Executive Power is vested in the hands of Dual Executive
- Nominal Executive and Real Executive
- Nominal Executive – President of India
- Real Executive - Prime Minister and Council of Ministers
- Dual-Level Executive – Union and States
- Union – vested in the PM & COM
- State – vested in the CM & COM

## **UNION EXECUTIVE**

- Art. 52-78 of the COI – Union Executive
- The Union Executive consists of the
  - a) The President,
  - b) The Vice- President,
  - c) The Prime Minister,
  - d) The Council of Ministers and
  - e) The Attorney General of India.
- Head of the State – Art. 52 – President of India

## **PRESIDENT OF INDIA**

- Head of the State of the Republic of India
- 15<sup>th</sup> President – Draupadi Mormu
- Electoral College of India – Indirect Election
- Term of Office – 5 years – No bar on re-election
- Replaced the King of India who was presented by the Governor General of India – George VI the Head of the Indian State as under Indian Independence Act, 1947 till the adoption of the Constitution
- Position of the President of India – Akin to President of Ireland (Elected President acting on advice of ministers answerable to legislature)

## **PRESIDENT OF INDIA – CONSTITUENT ASSEMBLY DELIBERATIONS**

- Dr B.R. Ambedkar clarified the position of the President in the Constituent Assembly:

*“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.”*

## **PRESIDENT OF INDIA**

- **Art. 52-62 – Deals with the President** – Election, Qualification, Terms and Impeachment
- Art. 52 – Office of the President
- Art. 53 – Executive Power the Union
- Art. 54 – Election of the President
- Art. 55 – Manner of Election of President
- Art. 56 – Term of Office of President
- Art. 57 – Eligibility for Re-election

## **PRESIDENT OF INDIA**

- Art. 58 – Qualification for election as President
- Art. 59 – Conditions of President's Office
- Art. 60 – Oath of Affirmation by the President
- Art. 61 – Procedure for Impeachment of the President
- Art. 62 – Time of holding of election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy



## **PRESIDENT OF INDIA**

- Art. 52 – Office of the President
- *“There shall be a President of India”*
- *Vice President to take over as Acting President – Art. 65*
- *V.P. not available –The President (Discharge of Functions) Act, 1969 – Sec. 3 – Chief Justice or Senior Most Judge of SC to step in – Art. 70*
- *Chief Justice Mohammed Hidayatullah – Only CJI to serve as Acting President*

## **EXECUTIVE POWER OF THE PRESIDENT**

- Art. 53 (1) – Executive Power of the Union
- It vests in the President of India
- It shall be exercised by him directly or through officers subordinate to him
- It provides that such exercise shall be in accordance with the constitution – *Limitation of executive power*
- *Executive Power is not defined under the Constitution of India*
- *Art. 53 r/w Art. 73 clarifies the concept of executive power*
- Art. 73 – Executive power of the Union a) co-extensive with power of the Parliament to make laws  
b)

## **POWERS OF THE PRESIDENT**

The President of India can be broadly classified under the following heads;

- a) Executive Powers
- b) Legislative Powers
- c) Judicial Powers
- d) Military Powers
- e) Diplomatic Powers
- f) Emergency Powers

## **EXECUTIVE POWERS OF THE PRESIDENT**

- **Executive Power** of the Union vested in the hands of the President – to be exercised on the aid and advise of the PM & CoM
- **Power to Appoint** - Appointment of various officials such as PM, Council of Ministers, Attorney General, CAG, Governor of States, Judges of the Supreme Court and High Court, CEC, Other Election Commissioners, various commissions (NCSC, NCST, NCBC), etc.
- **Power to return the advice of the CoM once** – Art. 74(1)

## **LEGISLATIVE POWERS OF THE PRESIDENT**

- **Power to make recommendation for a Bill for Reorganisation of States [Proviso to Art. 3]**
- **Power to nominate a number of members to the Parliament [Art. 80(3)]**
- **Power to summon or prorogue the Houses of the Parliament [Art. 85(1) & Art. 85(2)(a)]**
- **Power to dissolve the Lok Sabha [Art. 85(2)(b)]**
- **Power to send messages to the Parliament (Art. 86)**
- **Power to address the Parliament (Art. 87)**
- **Power to call for joint sitting of the Parliament [Art. 108)**

## **LEGISLATIVE POWERS OF THE PRESIDENT**

- **Power to assent to Bill (including returning it once for reconsideration other than money bill) [Art. 111]**
- **Power to recommend Money Bill for introduction in the Lok Sabha [Art. 117]**
- **Power to make ordinance (Art. 123)**
- **Power to make regulations for peace, progress and good government of Union Territories (Art. 240)**

## **JUDICIAL POWERS OF THE PRESIDENT**

- **Power and Duty to defend, preserve and protect the constitution – Art. 60**
- **Pardoning Power of the President – Art. 72**
- **Power to appoint judges and decide as to seniority – Art. 217(2) and (3) and 124(2)**
- **Power of the President to seek the Advisory Opinion of the Supreme Court (Art. 143)**

## **DIPLOMATIC POWERS OF THE PRESIDENT**

- **The President represents India in international forums and affairs where such a function is chiefly ceremonial.**
- **The President may also send and receive diplomats, i.e. the officers from the Indian Foreign Service. The President is the first citizen of the country.**
- **All international treaties and agreements are negotiated and concluded on behalf of the President.**
- **In practice, such negotiations are usually carried out by the Prime Minister along with his Cabinet (especially the Foreign Minister).**
- **Such treaties are subject to the approval of the Parliament.**



## **MILITARY POWERS OF THE PRESIDENT**

- **The President is the Supreme Commander of the Indian Armed Forces. (Art. 53)**
- **The President can declare war or conclude peace, on the advice of the Union Council of Ministers headed by the Prime Minister.**
- **The President also appoints the chiefs of the service branches of the armed forces.**
- **All important military treaties and contracts are made in the President's name**

## **EMERGENCY POWERS OF THE PRESIDENT**

**Emergency Powers of the President – Power to declare emergencies**

- **National Emergency – Art. 352**
- **State Emergency – Art. 356**
- **Financial Emergency – Art. 360**

## **IMPEACHMENT OF THE PRESIDENT**

- Art. 56 (2) (b) read with Art. 61 of the Constitution of India
- Impeachment – Reasoning for violation of the Constitution – Art. 61(1) – Charge in either house of the Parliament – applies only for President
- Step 1 - Requirement for a Charge >> 14 Days' Notice in writing signed by minimum 1/4<sup>th</sup> Members of that House + Resolution has to be passed by 2/3<sup>rd</sup> Majority of that House
- Step 2 – On basis of charge – Other House to investigate – President shall have right to appear and be represented at such investigation – Investigating House to pass the impeachment resolution by 2/3<sup>rd</sup> Majority – charge sustained – Effect of Removal