

• Features of Indian Constitutionalism:

Principle of Separation of Power which reflect the nature, function & ~~jurisdi~~ jurisdiction of 3 organs of the Govt. has been adopted in a much more flexible manner under Indian Constitutionalism. Under this Principle of Separation of Power, Executive is associated with the Reason of the state, Legislature is acting as a representative of Popular will & Judiciary performs its function as a custodian of Constitution.


Under Indian Constitutional framework the evolution of Executive takes place from legislature & subsequently, Executive is responsible to legislature. At the same time, our chief Executive ^(Art 53) is also the inherent part of legislature under article 79.

Apart from this Executive is also involved in law formulation function since the definition of Executive Authority is nowhere codified by the Constitution. Article 13(3), makes provisions with regard to different categories of laws. In which majority of the laws are either proclaimed by or promulgated by or formulated by Executive.

- Indian Constitutionalism is neither Revolutionary nor Evolutionary in its substance & implication. Although, it has the attributes of both respective constitutional framework. Basically, Indian Constitutionalism is a product of a legal tender called as —
“Indian Independence Act, 1947”.
- Subsequently, every action in matter of policy & administration has been taken by enacting a law. Indian constitutionalism is having a very rich

tradition to formulate law for public welfare, social upliftment & in different matters of policy. However, the definition of law is not being clarified by the Constitution. Apart from this Indian Constitutional framework also operationalised to paradoxical principles i.e. Parliamentary form of Govt. based upon the Supremacy of Legislature & Federalism based on the principle of Division of Power.

It should be noted that both these paradoxical principles are reconciled by giving some overriding powers to Union over States.



Constitutional Position of President of India

Indian Constitutional framework & parliamentary practices takes some attributes from Revolutionary & Evolutionary Constitutionalism. However, the office of President of India is different in the sense that it is modelled more on the lines of Irish President, than configured on the lines of British Monarch.

British system of ^{precedence} ~~precedence~~ presidents which always remain the source of British Parliamentary Democracy is based on several conventions, traditions, & precedence. Apart from these, the maxim that "the king can ^{never} go wrong" also sustain in the British Parliamentary System. However, Indian President is part of Conatⁿ & governed by the provisions of Indian Constitutionalism. It means that the power, authority & jurisdiction of President of India is

very well codified in the constitutional scheme of Indian Polity.

Art 53 in this regard provides that all the executive powers of the Union shall be incorporated in the office of President of India & President of India is ^{also} the Supreme Commander of Armed forces.

In estimating the scope of Art 53, it is required to read this article with Art 74(1) & 74(2).

Art 74(1) provides that there shall be a Council of Ministers headed by Prime Minister to aid & advise President of India. The aid tendered & the advice rendered by Council of Ministers & Prime Minister to President of India shall be binding over the head of State. At the same time,

Art 74(2) also substantiates that "any or what advice tendered by Govt to President is not the subject of judicial intervention or judicial questioning." It should be noted that the only function performed by respective authorities in our constitutional

framework is to give & take advice from each other. However, the nature & subject matter of advice is not being clarified by Constⁿ but the advice remains constitutionally binding over President of India. (42nd Amendment Act 1976)

In this regard, it is also clear that the military power of President of India under Art. 53. is a subject of its civil power. & the civil power is governed by Art 74(1) & 74(2) & not by Art 53. Subsequently, President is the supreme commander of armed forces but he/she does not directly command the armed forces.

Supreme Court in several of its adjudications clarified the legal position of president of India. In Ram Jawaya Kapoor Case, (1955)

Court held that Indian Constitutional framework is modelled on the lines of British Constitutionalism. Parliamentary practices.

Subsequently, the advice tendered by Govt. would be binding on President of India. Similarly, in U.N. Rao case (1971) court held that it is always required for President to take the advice Govt. in spite of the fact that Govt. is dismissed or Lok Sabha is dissolved. Apart from these, the Shamsher Singh case (1977) court held that the satisfaction incorporated for President & Governor in Constitution is not their personal satisfaction but the satisfaction of respective Govt. Subsequently, Indian Constitutional Framework is attributed by both Head of State & Head of Govt. where President is the nominal De Jure head while the P.M. is the Real De facto head.

In this regard Art 75(2) provides that Ministers shall hold their office during the pleasure of President of India. However, the pleasure power enjoyed by President under Art. 75(2) remains the subject of Art 75(3). It means until the Govt. is ~~not~~ enjoying the majority in Lok Sabha, President is not

authorised to dismiss them. & the only connecting link between Govt. & President is the office of P.M. Subsequently, no minister in its individual capacity & govt. in collective manner can provide any type of advice to president of India. The legal interpretation of this article substantiate this fact that the pleasure power enjoyed by President of India Constitutionally is practically exercised by the office of P.M.

Art 78(1) in this regard provides that it is a duty of P.M. to furnish information to President of India with regard to the decisions taken by Council of Ministers in matters of administration & proposal of legislation. By this provision, it is very clear that the main decision making body in every legislative & administrative matter is Govt. of India & not the office of President.