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President of India: Part 3 (in Hindi)

LESSON 3 OF 6



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ELECTION

➢ ELECTED MEMBERS

➢ elected not directly by the people but by members of

electoral college consisting of:

1. the elected members of both the Houses of Parliament;
2. the elected members of the legislative assemblies of the states; and
3. the elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry

By GYAN

ELECTION

➢ NOMINATED MEMBERS- NO ROLE

- **Where an assembly is dissolved, the members cease to be qualified to vote in presidential election, even if fresh elections to the dissolved assembly are not held before the presidential election.**

By GYAN

ELECTION

- The Constitution provides that there shall be uniformity in the scale of representation of different states as well as parity between the states as a whole and the Union at the election of the President.

- To achieve this, the number of votes which each elected member of the legislative assembly of each state and the Parliament is entitled to cast at such election shall be determined in the following manner:

By GYAN

ELECTION

Value of the vote of an MLA

$$= \frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{1000}$$

Value of the vote of an MP =

$$\frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of Parliament}}$$

By GYAN

ELECTION

- The President's election is held in accordance with the system of **proportional representation by means of the single transferable vote and the voting is by secret ballot**.
- This system ensures that the **successful candidate is returned by the absolute majority of votes**.
- A candidate, in order to be declared elected to the office of President, **must secure a fixed quota of votes.**
- The quota of votes is determined by dividing the total number of valid votes polled by the number of candidates to be elected (here only one candidate is to be elected as President) plus one and adding one to the quotient. The formula can be expressed as:

$$\text{Electoral quota} = \frac{\text{Total number of valid votes polled}}{1+1=(2)} + 1$$

By GYAN

ELECTION

- Each member of the electoral college **is given only one ballot paper**. The voter, while casting his vote, is required to indicate his preferences by marking 1, 2, 3, 4, etc. against the names of candidates.
- This means that the voter can indicate as many preferences as there are candidates in the fray.
- In the first phase, the first preference votes are counted. In case a candidate secures the required quota in this phase, he is declared elected. Otherwise, the process of transfer of votes is set in motion. The ballots of the candidate securing the least number of first preference votes are cancelled and his second preference votes are transferred to the first preference votes of other candidates. This process continues till a candidate secures the required quota.

By GYAN

ELECTION

- All doubts and disputes in connection with election of the President are inquired into and decided by the Supreme Court whose decision is final.

- The election of a person as President cannot be challenged on the ground that the electoral college was incomplete (ie, existence of any vacancy among the members of electoral college).

- If the election of a person as President is declared void by the Supreme Court, acts done by him before the date of such declaration of the Supreme Court are not invalidated and continue to remain in force

By GYAN

WHY CRITICISM FOR INDIRECT PROCESS

- Some says its undemocratic and proposed direct elections – but Constitution makers chose the indirect election due to the following reasons –

1. **indirect election of the President** is in harmony with the parliamentary system of government envisaged in the Constitution.
   Under this system, the President is only a nominal executive and the real powers are vested in the council of ministers headed by the prime minister
2. The **direct election of the President would have been very costly and time- and energy-consuming** due to the vast size of the electorate.

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WHY CRITICISM FOR INDIRECT PROCESS

- Some members of the Constituent Assembly suggested that the **President should be elected by the members of the two Houses of Parliament alone**.

- The makers of the Constitution did not prefer this **as the Parliament, dominated by one political party, would have invariably chosen a candidate from that party** and such a President could not represent the states of the Indian Union.

- The present system makes the President a representative of the Union and the states equally

By GYAN

Qualifications for Election as President

- A person to be eligible for election as President should fulfil 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 Lok 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.

A **sitting President or Vice-President of the Union, the Governor of any state and a minister of the Union or any state** is not deemed to hold any office of profit and hence qualified as a presidential candidate.

By GYAN

Elections of the Presidents (1952-2012)

- **Rajendra prasad – 2 times**
- **Neelam sanjeeva reddy - unopposed (only president) – 1977**

➢ the **nomination** of a candidate for election to the office of President must be subscribed by at least 50 electors as proposers and 50 electors as seconders.

Every candidate has to make a security deposit of Rs 15,000 in the RBI. The security deposit is liable to be forefeited in case the candidate **fails to secure one-sixth of the votes** polled.

Before 1997, number of proposers and seconders was ten each and the amount of security deposit was Rs 2,500. In 1997, they were increased to discourage the non-serious candidates

By GYAN

Oath or Affirmation by the President

- Before entering upon his office, the President has to make and subscribe to an oath or affirmation.

In his oath, the President swears:

1. to faithfully execute the office;
2. to **preserve, protect and defend the Constitution and the law**; and
3. to devote himself to the service and well-being of the people of India.

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Oath or Affirmation by the President

- The oath of office to the President is administered by the Chief Justice of India and in his absence, the seniormost judge of the Supreme Court available.

- Any other person acting as President or discharging the functions of the President **also undertakes the similar oath or affirmation.**

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Conditions of President's Office

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1. No MP/MLA allowed - If any such person is elected as President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

2. He should not hold any other office of profit.

3. He is entitled, without payment of rent, to the use of his official residence (the Rastrapathi Bhavan).

4. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.

5. His emoluments and allowances cannot be diminished during his term of office.

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Privileges / immunities

- The President is **entitled to a number of privileges and immunities.**
- He enjoys **personal immunity** from legal liability for his official acts. During his term of office,

- he is **immune from any criminal proceedings**, even in respect of his personal acts. He cannot be arrested or imprisoned.

- However, **after giving two months' notice, civil proceedings can be instituted** against him during his term of office in respect of his personal acts.

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TERM , IMPEACHMENT AND VACANCY

- The President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the Vice-President.
- Further, he can also be removed from the office before completion of his term by the process of impeachment.
- The President can hold office beyond his term of five years until his successor assumes charge. He is also eligible for re-election to that office.
- He may be elected for any number of terms. However, in USA, a person cannot be elected to the office of the President more than twice.

By GYAN

Impeachment of President

- The President can be removed from office by a process of impeachment for **'violation of the Constitution'.** However, the Constitution **does not define** the meaning of the phrase 'violation of the Constitution'.
- The impeachment charges **can be initiated by either House of Parliament**.
- These charges **should be signed by one-fourth members** of the House (that framed the charges), and a **14 days' notice** should be given to the President.
- After the impeachment **resolution is passed by a majority of two-thirds of the total membership** of that House, it is sent to the other House, **which should investigate** the charges.
- The President has **the right to appear** and to be represented at such investigation. If the **other House also sustains the charges** and passes the impeachment resolution by a majority of two-thirds of the total membership, then the President **stands removed from his office from the date on which the resolution is so passed.**

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Impeachment of President

- Thus, an impeachment is a **quasi-judicial procedure** in the Parliament.
- In this context, two things should be noted:

(a) the nominated members of either House of Parliament can participate in the impeachment of the President though they do not participate in his election;

(b) the elected members of the legislative assemblies of states and the Union Territories of Delhi and Puducherry do not participate in the impeachment of the President though they participate in his election.

- No President has so far been impeached.

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Vacancy in the President's Office

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- A vacancy in the President's office can occur in any of the following ways:

1. On the **expiry of his tenure of five years.**
2. By his resignation.
3. On his removal by the process of impeachment.
4. By his death.
5. Otherwise, for example, when he becomes disqualified to hold office

   or

when his election is declared void.

By GYAN

Vacancy in the President's Office

- When the vacancy is going to be caused by the expiration of the term of the sitting President, an election to fill the vacancy must be held before the expiration of the term.
- In case of any delay in conducting the election of new President by any reason, the **outgoing President continues to hold office (beyond his term of five years) until his successor assumes charge**.
- This is provided by the Constitution in order to prevent an 'interregnum'.
- In this situation, **the Vice-President does not get the opportunity** to act as President or to discharge the functions of the President.

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Vacancy in the President's Office

- If the **office falls vacant by resignation, removal, death or otherwise**, then election to fill the vacancy **should be held within six months from the date of the occurrence of such a vacancy.**
- The **newly-elected President remains in office** for a full term of five years from the date he assumes charge of his office.
- When a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise, the Vice-President acts as the President **until a new President is elected**. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.
- In case the office of Vice-President is vacant, the Chief Justice of India (or if his office is also vacant, the seniormost judge of the Supreme Court available) acts as the President or discharges the functions of the President

By GYAN

Vacancy in the President's Office

- When any person, ie, Vice-President, chief justice of India, or the seniormost judge of the Supreme Court is acting as the President or discharging the functions of the President, he **enjoys all the powers and immunities of the President and is entitled to such emoluments, allowances and privileges** as are determined by the Parliament

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POWERS AND FUNCTIONS OF THE PRESIDENT

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The powers enjoyed and the functions performed by the President can be studied under the following heads.

1. Executive powers
2. Legislative powers
3. Financial powers
4. Judicial powers
5. Diplomatic powers
6. Military powers
7. Emergency powers

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executive powers

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The executive powers and functions of the President are:

(a) **All executive actions** of the Government of India are formally taken in his name.

(b) He **can make rules** specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated.

(c) He can **make rules for more convenient transaction** of business of the Union government, and for allocation of the said business among the ministers.

(d) He **appoints the prime minister and the other ministers**. They hold office during his pleasure.

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executive powers

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(e) He appoints the **attorney general of India** and determines his remuneration. The attorney general holds office during the pleasure of the President.

(f) He appoints the **CAG, CEC** and other election commissioners, the chairman and members of the **UPSC**, **governors** of states, the chairman and members of **finance commission,** and so on.

(g) He can **seek any information relating to the administration** of affairs of the Union, and proposals for legislation from the prime minister.

(h) He can **require the Prime Minister to submit**, for consideration of the council of ministers, anymatter on which a decision has been taken by a minister but, which has not been considered by the council.

By GYAN

executive powers

(i) He can **appoint a commission** to investigate into the conditions of SCs, STs and other backward classes.

(j) He can **appoint an inter-state council** to promote Centre–state and inter- state cooperation.

(k) He **directly administers the union territories** through administrators appointed by him.

(l) He can **declare any area as scheduled area** and has powers with respect to the administration of scheduled areas and tribal areas.

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Legislative Powers

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The President is **an integral part of the Parliament** of India, and enjoys the following legislative powers.

(a) He can **summon or prorogue the Parliament and dissolve** the Lok Sabha. He can also **summon a joint sitting** of both the Houses of Parliament, which is **presided over by the Speaker** of the Lok Sabha.

(b) He can **address the Parliament at the commencement** of the first session **after each general election** and the first session of each year.

(c) He can **send messages to the Houses of Parliament**, whether with respect to a bill pending in the Parliament or otherwise.

(d) He can **appoint any member of the Lok Sabha to preside over its proceedings** when the offices of both the Speaker and the Deputy Speaker fall **vacant**. Similarly, he can also appoint any member of the **Rajya Sabha** to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant or dissolved.

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Legislative Powers

(e) He **nominates** 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in **literature, science, art and social service**.

(f) He can nominate two members to the Lok Sabha from the Anglo-Indian Community.

(g) He **decides on questions as to disqualifications** of members of the Parliament, in consultation with the Election Commission.

(h) His **prior recommendation or permission** is needed to introduce certain types of bills in the Parliament. For example, a bill involving **expenditure** from the Consolidated Fund of India, or a bill for the **alteration of boundaries** of states or **creation of a new state**.

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Legislative Powers

(i) **When a bill is sent to the President** after it has been passed by the Parliament, he can:

(i) give his assent to the bill, or

(ii) withhold his assent to the bill, or

(iii) **return the bill (if it is not a money bill**) for reconsideration of the Parliament.

However, if the bill is passed again by the Parliament, with or without amendments, the **President has to give his assent to the bill.**

(j) When a bill passed by a state legislature is reserved by the governor for consideration of the President, the President can:

(i) give his assent to the bill, or

(ii) withhold his assent to the bill, or

(iii) direct the **governor to return the bill (if it is not a money bill)** for reconsideration of the state legislature. It should be noted here that it is **not obligatory for the President to give his assent** even if the bill is again passed by the state legislature and sent again to him for his consideration.

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Legislative Powers

(k) He **can promulgate ordinances** when the Parliament is not in session. These ordinances **must be approved by the Parliament within six weeks from its reassembly**. He **can also withdraw an ordinance at any time**.

(l) He **lays the reports of the CAG, UPSC , Finance Commission**, and others, before the Parliament.

(m) He can **make regulations for the peace, progress and good government** of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu. **In the case of Puducherry also**, the President can legislate by making regulations but **only when the assembly is suspended**

By GYAN

Financial Powers

The financial powers and functions of the President are:

(a) Money bills can be introduced in the Parliament **only with his prior recommendation.**

(b) He **causes to be laid before the Parliament** the annual financial statement (ie, the Union **Budget**).

(c) No demand for a grant can be made except on his recommendation.

(d) He can make advances out of the **contingency fund** of India to meet any unforeseen expenditure.

(e) He **constitutes a finance commission after every five years** to recommend the distribution of revenues between the Centre and the states.

By GYAN

Judicial Powers

The judicial powers and functions of the President are:

(a) He **appoints the Chief Justice and the judges** of Supreme Court and high courts.

(b) He can **seek advice from the Supreme Court** on any question of law or fact. However, the **advice** tendered by the Supreme Court **is not binding on the President.**

(c) He **can grant pardon, reprieve, respite and remission** of punishment, or suspend, remit or commute the sentence of **any person convicted of any offence**:

(i) In all cases where the punishment or sentence is by a **court martial**;

(ii) In all cases where the punishment or sentence is for an offence against a **Union law**; and

(iii) In all cases where the sentence is a **sentence of death**

By GYAN

Diplomatic Powers

- The international treaties and agreements are negotiated and **concluded on behalf of the President.**

However, they are **subject to the approval of the Parliament**.

- He **represents India** in international forums and affairs and **<u>sends and receives</u>** diplomats like ambassadors, high commissioners, and so on.

By GYAN

Military Powers

- He is the **supreme commander** of the defence forces of India.
- In that capacity, he **appoints** the chiefs of the Army, the Navy and the Air Force.
- He **can declare war or conclude peace**, **subject to the approval of the Parliament.**

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Emergency Powers

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- In addition to the normal powers mentioned above, the Constitution confers **extraordinary powers** on the President to deal with the following three types of emergencies:

(a) National Emergency (Article 352);
(b) President's Rule (Article 356 & 365); and
(c) Financial Emergency (Article 360)

By GYAN

VETO POWER OF PRESIDENT

A bill passed by the Parliament **can become an act only** if it receives the assent of the President. When such a bill is presented to the President for his assent, he has three alternatives (under Article 111 of the Constitution):

1. He may give his assent to the bill, or
2. He may withhold his assent to the bill, or
3. He may return the bill (if it is not a Money bill) for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, the President must give his assent to the bill.

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VETO POWER OF PRESIDENT

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Thus, the President has the **veto power over the bills passed by the Parliament**, that is, he can withhold his assent to the bills.

Main Aim of conferring this power on the President is two-fold—

(a) **to prevent hasty and ill-considered** legislation by the Parliament;

(b) to prevent a legislation which may be **unconstitutional**.

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VETO POWER OF PRESIDENT

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The veto power enjoyed by the executive in modern states can be classified into the following four types:

1. Absolute veto, that is, withholding of assent to the bill passed by the legislature.
2. Qualified veto, which can be overridden by the legislature with a higher majority.
3. Suspensive veto, which can be over ridden by the legislature with an ordinary majority.
4. Pocket veto, that is, taking no action on the bill passed by the legislature.

Of the above four, the President of India is vested with **three—absolute veto, suspensive veto and pocket veto. There is no qualified veto** in the case of Indian President; **it is possessed by the American President**

By GYAN

Absolute Veto

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It refers to the power of the President to withhold his assent to a bill passed by the Parliament. The **bill then ends and does not become an act**. Usually, this veto is exercised in the following two cases:

(a) With respect to **private members' bills** (ie, bills introduced by any member of Parliament who is not a minister); and

(b) With respect to the **government bills when the cabinet resigns** (after the passage of the bills but before the assent by the President) and the newcabinet advises the President not to give his assent to such bills.

In 1954, President **Dr Rajendra Prasad withheld his assent to the PEPSU** Appropriation Bill. The bill was passed by the Parliament when the President's Rule was in operation in the state of PEPSU. But, when the bill was presented to the President for his assent, the President's Rule was revoked.

Again in **1991, President R Venkataraman withheld** his assent to the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill. The bill was passed by the Parliament (on the last day before dissolution of Lok Sabha) without obtaining the previous recommendation of the President.

By GYAN

Suspensive Veto

- The President exercises this veto when **he returns a bill for reconsideration of the Parliament**. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President**, it is obligatory for the President to give his assent** to the bill.

- This means that the **presidential veto is overridden by a re-passage of the bill** by the same ordinary majority (and not a higher majority as required in USA).

- As mentioned earlier, the **President does not possess this veto in the case of money bills**. The President can either give his assent to a money bill or withhold his assent to a money bill but cannot return it for the reconsideration of the Parliament. **Normally, the President gives his assent to money bill as it is introduced in the Parliament with his previous permission**.

By GYAN

Pocket Veto

- In this case, the **President neither ratifies nor rejects nor returns** the bill, but **simply keeps the bill pending for an indefinite period**.
- This power of the President not to take any action (either positive or negative) on the bill is known as the pocket veto.
- The President can exercise this veto power as the **Constitution does not prescribe any time-limit** within which he has to take the decision with respect to a bill presented to him for his assent. In USA, on the other hand, the **President has to return the bill for reconsideration within 10days**. Hence, it is remarked that the **pocket of the Indian President is bigger than that of the American President.**

By GYAN

Pocket Veto

- In **1986, President Zail Singh** exercised the pocket veto with respect to the Indian Post Office (Amendment) Bill. The bill, passed by the Rajiv Gandhi Government, **imposed restrictions on the freedom of press** and hence, was widely criticised.

- After three years, **in 1989, the next President R Venkataraman** sent the bill back for reconsideration, but the new National Front Government decided to drop the bill.

- It should be noted here that the **President has no veto power in respect of a constitutional amendment bill.** The 24th Constitutional Amendment Act of 1971 made it obligatory for the President to give his assent to a constitutional amendment bill.

By GYAN

Presidential Veto over State Legislation

The President has **veto power with respect to state legislation also**. A bill passed by a state legislature can become an act **only if it receives the assent of the governor or the President (in case the bill is reserved for the consideration of the President).**

When a bill, passed by a state legislature, is presented to the governor for his assent, he has four alternatives (under Article 200 of the Constitution):

1. He may give his assent to the bill, or
2. He may withhold his assent to the bill, or
3. He may return the bill (if it is not a money bill) for reconsideration of the state legislature, or
4. He may reserve the bill for the consideration of the President.

By GYAN

Presidential Veto over State Legislation

When a bill is reserved by the governor for the consideration of the President, the President has three alternatives (Under Article 201 of the Constitution):

1. He may give his assent to the bill, or
2. He may withhold his assent to the bill, or
3. He may direct the governor to return the bill (if it is not a money bill) for the reconsideration of the state legislature. If the bill is passed again by the state legislature with or without amendments and presented again to the President for his assent, the **President is not bound to give his assent** to the bill.

This means that **the state legislature cannot override the veto power of the President**. Further, the Constitution **has not prescribed any time limit within which the President has to take decision** with regard to a bill reserved by the governor for his consideration. Hence, **the President can exercise pocket veto in respect of state legislation also.**

By GYAN

ORDINANCE - MAKING POWER OF THE PRESIDENT

- **Article 123** of the Constitution empowers the President to promulgate ordinances **during the recess** of Parliament.
- These ordinances have **the same force and effect** as an act of Parliament, but are in the nature of temporary laws.
- The ordinance-making power is the **most important legislative power** of the President. It has been **vested in him to deal with unforeseen or urgent matters.**
- But, the exercises of this power is subject to the following four limitations:

1. He can promulgate an **ordinance only when both the Houses of Parliament are not in session or when either of the two Houses** of Parliament is not in session.

An ordinance can also be issued when only one House is in session because a law can be passed by both the Houses and not by one House alone. An ordinance made when both the Houses are in session is void. Thus, the power of the President to legislate by ordinance is not a parallel power of legislation.

By GYAN

ORDINANCE - MAKING POWER OF THE PRESIDENT

2. He can make an ordinance **only when he is satisfied that the circumstances exist that render it necessary for him to take immediate** action.

In Cooper case (1970), the Supreme Court held that the **President's satisfaction can be questioned** in a court on the ground of malafide. This means that the decision of the President to issue an ordinance can be questioned in a court on the ground that the President has prorogued one House or both Houses of Parliament **deliberately** with a view to promulgate an ordinance on a controversial subject, so as **to bypass the parliamentary decision** and thereby circumventing the authority of the Parliament. The **38th Constitutional Amendment Act of 1975 made the President's satisfaction final and conclusive and beyond judicial review**. But, this provision was deleted by the 44th Constitutional Amendment Act of 1978. Thus, **the President's satisfaction is justiciable on the ground of malafide.**

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ORDINANCE - MAKING POWER OF THE PRESIDENT

3. His **ordinance-making power is coextensive as regards all matters** except duration, with the law-making powers of the Parliament. This has two implications:

(a) An ordinance can be issued **only on those subjects on which the Parliament can make laws.**

(b) An **ordinance is subject to the same constitutional limitation** as an act of Parliament. Hence, an **ordinance cannot abridge or take away any of the fundamental rights.**

4. Every ordinance issued by the President during the recess of parliament **must be laid before both the Houses of Parliament when it reassembles**. If the ordinance is approved by both the Houses, it **becomes an act.** If Parliament takes no action at all, the ordinance ceases to operate on the expiry of six weeks from the reassembly of Parliament.

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ORDINANCE - MAKING POWER OF THE PRESIDENT

The ordinance may also cease to operate even earlier than the prescribed six weeks, if both the Houses of Parliament pass resolutions disapproving it.

If the Houses of Parliament are summoned to reassemble on different dates, the **period of six weeks is calculated from the later of those dates**.

This means that the **maximum life of an ordinance can be six months and six weeks**, in case of non-approval by the Parliament (six months being the maximum gap between the two sessions of Parliament).

If an **ordinance is allowed to lapse** without being placed before Parliament, then the **acts done and completed** under it, before it ceases to operate, **remain fully valid and effective.**

By GYAN

ORDINANCE - MAKING POWER OF THE PRESIDENT

The President **can also withdraw an ordinance at any time**. However, his power of ordinance-making is **not a discretionary power**, and he **can promulgate or withdraw an ordinance only on the advice of the council of ministers** headed by the prime minister.

An ordinance like any other legislation, **can be retrospective**, that is, it may come into force from a back date. It may **modify or repeal any act of Parliament or another ordinance.** It can **alter or amend a tax law also.** However, it **cannot be issued to amend the Constitution**.

The ordinance-making power of the President in India is rather unusual and **not found in most of the democratic Constitutions of the world** including that of USA, and UK.

By GYAN

ORDINANCE - MAKING POWER OF THE PRESIDENT

In justification of the ordinance-making power of the President, Dr BR Ambedkar said in the Constituent Assembly that the mechanism of issuing an ordinance has been devised in **order to enable the Executive to deal with a situation that may suddenly and immediately arise when the Parliament is not in session**. It must be clarified here that the ordinance-making power of the President has **no necessary connection with the national emergency** envisaged in Article 352. The President **can issue an ordinance even when there is no war** or external aggression or armed rebellion.

The rules of Lok Sabha require that whenever a bill seeking to replace an ordinance is introduced in the House, **a statement explaining the circumstances that had necessitated immediate legislation** by ordinance should also be placed before the House.

By GYAN

ORDINANCE - MAKING POWER OF THE PRESIDENT

So far, no case has gone to the Supreme Court regarding repromulgation of ordinance by the President.

But, the judgement of the Supreme Court in the D C Wadhwa case (1987) is highly relevant here. In that case, the court pointed out that between 1967–1981 the **Governor of Bihar promulgated 256 ordinances and all these were kept in force for periods ranging from one to fourteen years** by repromulgation from time to time. The court ruled that successive repromulgation of ordinances with the same text **without any attempt to get the bills passed by the assembly would amount to violation of the Constitution and the ordinance so repromulgated is liable to be struck down**. It held that the exceptional power of law-making through ordinance **cannot be used as a substitute for the legislative power of the state legislature.**

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PARDONING POWER OF THE PRESIDENT

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Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases where the:

1. Punishment or sentence is for an offence against a **Union Law**;
2. Punishment or sentence is by a **court martial (military court);** and
3. Sentence is a **sentence of death.**

The pardoning power of the President is **independent of the Judiciary; it is an executive power.** But, the President while exercising this power, **does not sit as a court of appeal**. The object of conferring this power on the President is two-fold: (a) **to keep the door open for correcting** any judicial errors in the operation of law; and, (b**) to afford relief from a sentence**, which the President regards as unduly harsh.

By GYAN

PARDONING POWER OF THE PRESIDENT

1. **Pardon** - It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.
2. **Commutation -** It denotes the **substitution** of one form of punishment for **a lighter** form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.
3. **Remission-** It implies **reducing the period** of sentence **without changing its character.** For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.
4. **Respite** - It denotes **awarding a lesser sentence in place of one originally awarded due to some special fact,** such as the physical disability of a convict or the pregnancy of a woman offender.
5. **Reprieve-** It implies a **stay of the execution of a sentence** (especially that of death) for a **temporary period**. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

By GYAN

PARDONING POWER OF THE PRESIDENT

Under **Article 161** of the Constitution, the **governor of a state also possesses the pardoning power**. Hence, the **governor can also** grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against a state law.

But, the pardoning power of **the governor differs from that of the President** in following two respects:

1. The **President can pardon sentences inflicted by court martial** (military courts) while the governor cannot.
2. The President **can pardon death sentence while governor cannot**. Even if a state law prescribes death sentence, the power to grant pardon lies with the President and not the governor. However, the **governor can suspend, remit or commute a death sentence**. In other words, both the governor and the President have concurrent power in respect of **suspension, remission and commutation of death sentence.**

By GYAN

CONSTITUTIONAL POSITION OF THE PRESIDENT

The Constitution of India has provided fora parliamentary form of government. Consequently, the President has been made only a nominal executive; the real executive being the council of ministers headed by the prime minister.

In other words, the President has to exercise his powers and functions with the aid and advise of the council of ministers headed by the prime minister.

By GYAN

CONSTITUTIONAL POSITION OF THE PRESIDENT

Dr B R Ambedkar summed up the true position of the President in the following way:

"In the Indian Constitution, there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of the functionary reminds 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 adopted under the Indian Constitution.

The American form of government is called the **presidential system** of government and what the Indian Constitution adopted is the **Parliamentary system**.

By GYAN

CONSTITUTIONAL POSITION OF THE PRESIDENT

Under the presidential system of America, the **President is the Chief head of the executive and administration is vested in him**.

Under the Indian 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 administration is that of a ceremonial device or a seal by which the nation's decisions are made known.

He is **generally bound by the advice of his ministers**. He **can do nothing contrary to their advice nor can he do anything without their advice**. The **President of the United States can dismiss** any secretary at any time. The President of the Indian Union has no power to do so, so long as his ministers command a majority in Parliament".

By GYAN

CONSTITUTIONAL POSITION OF THE PRESIDENT

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In estimating the constitutional position of the President, **particular reference has to be made to the provisions of Articles 53, 74 and 75**. These are:

1. The **executive power of the Union shall be vested in President and shall be exercised by him either directly** or through officers subordinate to him in accordance with this Constitution (Article 53).
2. There **shall be a council of ministers with the Prime Minister at the head to aid and advise the President who 'shall',** in the exercise of his functions, act in accordance with such advice (Article 74).
3. The **council of ministers shall be collectively responsible to the Lok Sabha** (Article 75). This provision is the foundation of the parliamentary system of government.

By GYAN

CONSTITUTIONAL POSITION OF THE PRESIDENT

The 42nd Constitutional Amendment Act of 1976 (enacted by the Indira Gandhi Government) **made the President bound by the advice of the council of ministers headed by the prime minister**. The 44th Constitutional Amendment Act of 1978 (enacted by the Janata Party Government headed by Morarji Desai) **authorised the President to require the council of ministers to reconsider such advice either generally or otherwise**. However, he 'shall' act in accordance with the advice tendered after such reconsideration.

In other words, the President may return a matter once for reconsideration of his ministers, but the reconsidered advice shall be binding.

In October 1997, the cabinet recommended President K R Narayanan to impose President's Rule (under Article 356) in Uttar Pradesh. The President returned the matter for the reconsideration of the cabinet, which then decided not to move ahead in the matter. Hence, the BJP-led government under Kalyan Singh was saved.

By GYAN

CONSTITUTIONAL POSITION OF THE PRESIDENT

Again in September 1998, the President KR Narayanan returned a recommendation of the cabinet that sought the imposition of the President's Rule in Bihar. After a couple of months, the **cabinet re-advised the same**. It was only then that the President's Rule was imposed in Bihar, in February 1999.

Though the **President has no constitutional discretion, he has some situational discretion**. In other words, the President can act on his discretion

(that is, without the advice of the ministers) under the following situations:

(i) **Appointment of Prime Minister -when no party has a clear majority** in the Lok Sabha or when the Prime Minister in office dies suddenly and there is no obvious successor.

(ii) Dismissal of the council of ministers when it cannot prove the confidence of the Lok Sabha.

(iii) Dissolution of the Lok Sabha if the council of ministers has lost its majority.

By GYAN

ARTICLES

52. The President of India
53 Executive power of the Union
54. Election of President
55. Manner of election of President
56. Term of office of President
57. Eligibility for re-election
58. Qualifications for election as President
59. Conditions of President's office
60. Oath or affirmation by the President
61. Procedure for impeachment of the President
62. Time of holding election to fill vacancy in the office of President
65. Vice-President to act as President or to discharge his functions
71. Matters relating to the election of President
72. Power of President to grant pardons etc., and to suspend, remit or commute sentences in certain cases
74. Council of ministers to aid and advise the President
75.Other provisions as to ministers like appointment, term, salaries, etc.
76. Attorney-General of India
77. Conduct of business of the Government of India
78. Duties of Prime Minister in respect to furnishing of information to the President, etc.
85. Sessions of Parliament, prorogation and dissolution
111. Assent to bills passed by the Parliament
112. Union Budget (annual financial statement)
123. Power of President to promulagate ordinances
143. Power of President to consult Supreme Court

By GYAN

QUESTION -1

1.Choose correct

1. When an assembly is dissolved, then also members can vote in presidential election
2. nominated members of both of Houses of Parliament can participate in election of president .

Choose correct

A. 1 only
B. 2 only
C. Both
D. none

By GYAN

QUESTION -2

While calculating the value of vote of MLA and MP in president elections – which of the following are considered ?

1. **Elected MP**
2. **Elected MLA**
3. **Nominated MP**
4. **Independent MLA**

A. **12**
B. **234**
C. **124**
D. **none**

By GYAN

QUESTION -2

President of india can use veto power in which of the following bills ?

1. Constitutional amendment bills
2. Ordinary bills of parliament
3. Money bills of state legislatures

Choose incorrect

A. 13
B. 23
C. 123
D. none

By GYAN