Legislative Powers of the President of India

By

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Aim of the Lesson
- A concise yet comprehensive overview of the legislative powers of the President of India.
- Discussion about an important legislative power - Promulgation of Ordinance by the Executive.

Expected Outcome
- A greater understanding of the legislative powers of the President.
- Knowledge about the articles of the Constitution of India that confer the respective legislative power.
- Considerable understanding of the types of Presidential Vetoes.
- Knowledge about the vetoes that the President of India can exercise in accordance with the Constitutional Provisions.
- Knowledge about the circumstances in which the Indian President can promulgate the ordinance.
- Knowledge about why ordinance is a “mixed blessing”.

Features of the Legislative Powers of the Indian President
- Under the Parliamentary form of the government that India has, the President is an integral part of the legislature.
Legislative Power- I

Summoning, Prorogation and Dissolution

- Article 85

- The President has the power to summon the Houses of the Parliament i.e. order the Houses of the Parliament to be present.

- The President has the power to prorogue the Houses of the Parliament i.e. discontinue the session of the Parliament without dissolving it.

- The President also has the power to dissolve the Lok Sabha i.e. the Lok Sabha is disintegrated before its complete term. The dissolution calls for holding of fresh general elections.

**Summoning, Prorogation and Dissolution.**

Another related term.....

*Adjournment sine die* means "without assigning a day for a further meeting or hearing".

To *adjourn* an assembly *sine die* is to *adjourn* it for an indefinite period. A legislative body *adjourns sine die* when it *adjourns* without appointing a day on which to appear or assemble again.

It is the chair of the House which adjourns the house sine die.

Joint Sitting of the two houses of the Parliament

- Article 108

- Under certain specific circumstances, the President has the power to summon a joint sitting of both Lok Sabha and Rajya Sabha. The joint sitting is presided over by the Lok Sabha Speaker.

- The joint sitting is meant to resolve any deadlock between the two houses that arises over passing of a bill.
Legislative Power- II

The Opening Address

Special Opening Address of the President

• Article 87

• This specifies the special opening address of the President to both the Houses of the Parliament assembled during:

• (I) The first session after each general election to the House of the People.

• (II) Commencement of the first session of each year where both Houses of Parliament are assembled together. The President needs to inform Parliament of the causes of its summons.

In the case of the first session after each general election to Lok Sabha, the President addresses both Houses of Parliament assembled together after the Members have made and subscribed the oath or affirmation and the Speaker has been elected.

In the case of the first session of each year, the President addresses both Houses of Parliament at the time and date notified for the commencement of the session of both the Houses of Parliament.

In this session, the government outlines its programmes and policies through the President’s address and highlights the steps taken by the government from the previous years.

Following the president’s address, a motion of thanks is moved by the ruling party in the two houses of Parliament. Members debate, support or move amendments to the motion in the houses.

Amendments: Motion Of Thanks

Procedure to Amend:

➢ There are many instance of such an amendment to the Motion of Thanks.

➢ Prime Minister replies to the issues raised during the debate on the motion of thanks and then it is put to vote.

➢ Voting on the motion of thanks is significant in the context that if a government loses the vote on the motion of thanks, it may collapse. Losing motion of thanks is equivalent to losing confidence in the Parliament.
Varous Amendments:

➢ Before 2015, there were just three occasions on which the President’s Address was amended in the Rajya Sabha.
➢ The first instance of such an amendment to the Motion of Thanks came in 1980 on the issue of engineering defections.
➢ The second was in 1989, when six amendments including on the Ram Janmabhoomi-Babri Masjid dispute and the India-Sri Lanka accord were approved.
➢ The third occasion was in 2001, when the House adopted an amendment on the sale of a public sector undertaking, Balco, to a private company.

More:

➢ There are many Opposition-sponsored amendment in a row to amend Motion of Thanks on the President's Address and has been adopted by the Rajya Sabha.
➢ Previously, the Motion of Thanks was amended on the issue of black money.
➢ Similarly, the amendment focused on legislation passed by Bharatiya Janata Party governments in Rajasthan and Haryana limiting the rights of citizens to contest panchayat elections.
➢ However, there are many instance where opposition use it as a tool to embarrass the ruling government like, In 2017 Opposition moves 651 changes to motion of thanks to embarrass Government which Include demonetization etc.

Legislative Power- III
The Right to Address & The Right to Send Messages

The Right to Address

• Article 86(1)
  • This article confers the Right to the President for addressing either of the Houses of the Parliament or the Joint sitting of both the houses at any time.

• When the President is exercising this right, the attendance of the Members of the Parliament is required for the purpose.

• This Right to Address is separate from the special opening address specified in Article 87.

• The special opening address is customarily and mandatorily done at the first session after the general elections or the first session of every year, while Right to address can be exercised at any time of the year.
The Right to Send Messages

- **Article 86(2)**
- This article confers the Right to the President for sending messages to either House of the Parliament.
- The message sent is related to:
  - A pending bill
  - Other Matters

**Is The Right To Send Messages Superfluous?**

- The Right to send messages by the President regarding legislative matters and other matters may seem superfluous given that in the Indian Parliamentary System, the President is represented by the Council of Ministers and acts upon its advise (Article 74(1)).
- Sending of a message that is in contrast with or negates the policy envisaged by the council of ministers gives way to a friction between the Cabinet, which exercises the actual powers and influence on the legislative matters of the country, and the President who is a nominal head of the country.

**Legislative Power- IV**

**Nominating Members to Both Rajya Sabha and Lok Sabha**

Nominating members to the Houses of the Parliament

- **Article 80(1)**
  - The President has the power to nominate 12 members to the Rajya Sabha.
  - These members are person with substantial and special knowledge or practical experience in the fields of Literature, Science, Art and Social Service.

- **Article 331**
  - If the President is of the view that the Anglo-Indian community is not adequately represented in the Lok Sabha (House of the People), he can nominate NOT more than 2 members belonging to the Anglo-Indian community to the House.
Legislative Power- V
Laying Reports before the Parliament

Laying Reports before the Parliament

The President in his power and duty, causes the laying of the following reports in the Parliament:

1. The Annual Financial Statement (colloquially called Budget) and supplementary statement (if present).
2. Reports of Auditor-General relating to the accounts of the Indian Government.
3. Annual report of Union Public Service Commission. Explanation is provided for the reasons for any case where the advice of UPSC was not accepted.
5. Reports of Special officers of Scheduled Castes (SC) & Scheduled tribes (ST).

Legislative Power- VI

Previous Sanction of President on Certain Legislation Matters

Previous Sanction of the President in Some Legislation Matters

- There are certain bills on specified legislation matters that require the previous sanction or the recommendation of the President before these bills are introduced in the Parliament.
- The matters on which Presidential sanction is required are:

1. Bill relating to matters listed in Article 3- Formation of new states, alteration of boundaries of existing states etc. The objective of requiring Presidential recommendation is that the views of the states that will be affected by the legislation are considered before the bill is introduced.

2. A bill for any of the matters specified in Article 31A (1).
3. **Article 117** i.e. a Money Bill.

4. A Bill which, if enacted and brought into operation, would involve expenditure from the consolidated Fund of India. (**Article 117(3)**).

The matters on which Presidential sanction is required continued:

5. A Bill or an amendment that concerns **Article 274(1)**. This includes a bill or an amendment that affects:

   Imposition on or variation in any tax or duty in which States are interested, OR

   Which varies the meaning of the expression "agricultural income" as defined for the purposes of the laws relating to Indian income-tax, OR

   Which affects the principles on which moneys are or may be distributable to States, OR

   Which imposes any such surcharge for the purposes of the Union as mentioned in the preceding provisions of the Chapter I of Part XII.

The matters on which Presidential sanction is required continued:

6. The state bills on matters listed in **Article 304** in which reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State that may be required in the public interest are present.

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**Legislative Power - VII**

**Presidential Assent to Legislation.**

**Presidential Assent to a Bill**

- When a Bill is passed by both Houses, the Secretariat of the House which is last in possession of the Bill obtains the assent of the President.

- In the case of a Money Bill or a Bill passed at a joint sitting of the Houses, the Lok Sabha Secretariat obtains assent of the President.

- The Bill becomes an Act only after the President has given his assent to it.

- **Article 111** entitles the President to take the following actions when a bill is presented for his/her assent:

  1. Give his/her assent so that the bill becomes an Act.
2. Declare that he is withholding his/her assent to the Bill.

3. In case of any bill other than Money Bill, he/she may return the Bill for the Houses to reconsider. He/She cannot return a Money Bill for reconsideration. He may either give assent or withhold the assent, but cannot send it back.

In almost all instances, the President does give assent to Money Bills in India.

- If the Houses pass the Bill again with or without amendments, the President cannot withhold his assent to the Bill.
- The President, however, is bound to give his assent to a Constitution Amendment Bill passed by the Houses of Parliament by the requisite special majority and if necessary, ratified by the states.

**Legislative Power- VIII**

**Making Regulations for the Union Territories**

**Powers of the President for making regulations for the Union Territories**

- The President has the powers to make regulations for the peace, progress and good government of the Union territories of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Puducherry (former Pondicherry) in special circumstances.
- In the case of Pondicherry, the President can make rules for peace, progress and good government only when the assembly is dissolved and suspended.

**Legislative Power- IX**

**Veto Power of the President**

**Veto Power- An Overview**

- The veto power is the power of the President to withhold his/her assent to the bill. The Article 111 gives this power.
- The existence of the veto power ensures that there is no hasty or ill-considered enactment of a legislation.
- However, the power of the Veto is lessened in the case of Parliamentary system like the one found in India.
- Here, the President is a part of the Executive, which initiates and conducts legislation. Furthermore, the President of India acts on the advice of the Council of Ministers, who are responsible for conducting the legislation matters.
• Also, when the President sends the bill apart from a money bill to the Houses for reconsideration, he/she has to give assent when the bill again(with or without amendments) is sent to him/her for the assent. Also, note that in case of money Bill, he cannot send it back for reconsideration and is bound to give assent to constitutional amendment bills that have been passed by the required special majority.

The executive vetoes are classified into:

1. Absolute Veto
2. Qualified Veto
3. Suspensive Veto
4. Pocket Veto

**ABSOLUTE VETO**

Under this, the President can withhold his assent altogether i.e. he/she can refuse to give assent.

Result: In such a case, the bill ends and cannot become an Act.

**QUALIFIED VETO**

Under this, the executive veto can be overridden by an extraordinary or special majority.

Qualified Veto is seen in Constitution of the USA. Once a bill is passed by the Congress it is sent to the President for his assent. If he decides to withhold it or does not give his assent, he may send it back to the Congress within 10 days of the bill being presented to him.

If the same bill is passed with 2/3rd (extraordinary majority) he has to give his assent.

In case the bill fails to gather the extraordinary majority, it does not become the law.

Qualified veto is a powerful instrument in the case of constitutions where separation of powers is clear and distinct, as in the case of the USA. The executive does not have a control over legislature as seen in Indian Parliamentary system as their individual powers are distinct and well-defined, therefore qualified veto serves as a mechanism where the President can exercise some influence on the Congress.

**SUSPENSIVE VETO**

In this kind of veto, the executive veto can be overridden by a simple majority. This can be found in case of the French President.

Once the President sends the bill back for reconsideration and during the re-passage of the bill, it is passed in the Parliament with a simple majority, the President has to give his assent.
POCKET VETO

In this case, when the bill is presented to the President he/she may neither give the assent nor send it back for reconsideration.

It is almost like keeping the bill inside the pocket without any indication of bringing it out for accepting or sending it back.

This can be best understood in case of the US.

The Bill has a 10 day window period after its passage through the Congress for getting either the Presidential assent or being sent back for reconsideration.

The President may decide not to give assent or send it back. It lies on his table till the 10-day period expires. The bill becomes a Law without the signature of the President of the USA.

However, if Congress adjourns during the 10-day period, the bill does not become law.

Thus, for the US President, pocket veto can be another useful instrument to be exercised during the last few days of the Congress session where he can prevent the bill from becoming a law.

Veto Powers of the Indian President

The Indian President can use the following veto powers:

1. Absolute Veto
2. Suspensive Veto
3. Pocket Veto

There is no provision in the Indian Constitution where the President can use qualified veto.
The President can use Absolute veto in two instances:

1. **In case of a private member’s bill**

2. In case when the Lok Sabha is dissolved after the passage of bills but before the President can give his assent and the newly elected cabinet advises the President against giving assent to the bill.

   In 1954, President Dr. Rajendra Prasad used absolute veto in case of PEPSU Appropriation Bill.

   Another example is when in 1991, erstwhile President R. Venkataraman in case of Salary, Amendments and Pension of Members of Parliament (Amendment) Bill exercised absolute veto.

   The Suspensive Veto can be used when the President does not give his assent and **sends the bill back** to the Parliament for reconsideration.

   When the bill, with or without amendment is sent back to the President for his/her assent, it becomes obligatory for the President to give assent.

   **The Presidential veto** is therefore overridden by a **simple majority** and not by the extraordinary majority as seen during a qualified veto.

   A money bill **cannot** be sent back by the President for reconsideration.

   The President can either withhold his assent or declare the assent.

   However, Money Bills are not introduced without prior recommendation of the President and therefore the money bills normally get President's assent.
The **Pocket Veto** can be used when the President neither gives his assent nor sends the bill back to the Parliament for reconsideration.

The President may keep the bill pending for an **indefinite time period**.

Note that in case of pocket veto of the US President, a 10 day period after bill is given to the President for his assent is present, however, the Indian Constitution does not prescribe any time limit within which the President should give assent or give it back for reconsideration.

**This absence of a time period may seem as the pocket veto power which can be used by the Indian President.**

The **Article 111** of the Constitution only states that if the President needs to send back the bill for reconsideration, he needs to do that "as soon as possible" once the bill is presented to him.

Thus, the pocket of the Indian President in terms of veto is **more than** that of the US President.

Examples of use of pocket veto in the past:

Giani Zail Singh (President of India from 1982-1987) used pocket veto power to prevent the Indian Post Office (Amendment) Bill from becoming a law.

**Veto Powers of the Indian President over State Legislation [Federalism in Legislative Arena]**

Q. According to **Article 200**, when a Bill passed by the Legislature of a State is presented to the Governor, he has four options:

(a) He assents to the Bill

(b) He withholds the assent

(c) He reserves the Bill for the consideration of the President

(d) He returns the Bill to the Legislature for reconsideration.

In the case of a bill that derogates the powers of the High Court or undermines them, the reservation of the bill by the governor for President becomes compulsory. This is envisaged in 2nd proviso of the Article 200.

When the bill that has been reserved by the governor for the President is presented to the President for assent, President may exercise one of the **three options**: [Art. 201]

1. The President can withhold his assent or declare his assent.

2. In case of a money bill, he/she can declare the assent or **withhold it but cannot return the money Bill**
3. In case of bills other than money bills, apart from withholding or declaring assent, he may return the bill to the State legislature for reconsideration.

The State Legislature shall then reconsider the Bill within 6 months of its receipt and, if it is again passed, it shall be presented again to the President for his consideration.

In contrast with the power of the Governor regarding a reconsidered Bill, it is NOT obligatory for the President to give his assent to a reconsidered Bill.

Thus, it is form of a "cold storage" power that the President has in relation to control over state legislation.

There is no time-period prescribed in the Constitution in which the President needs to declare his assent or withhold it.

Thus, the President can keep the Bill on his desk for an indefinite time period without expressing his opinion on it.

Till the President gives his assent, the Bill cannot become a law.

**Bills which must be reserved for President's consideration**

These bills are the ones:

(i) Which depart from the powers of the High Court so as to endanger the position of the Court in a manner contrary to that the Constitution has designed for these courts.(Second Proviso to Article 200).

(ii) Which relate to imposition of taxes on water or electricity in certain cases, and attract the provisions of Clause (2) of Article 288.

(iii) Which fall within clause(4) (a) (ii) of Article 360, during a Financial Emergency.

(i) To secure immunity from operation of Articles 14 and 19. These are Bills for-

(a) acquisition of estates etc. [First Proviso to Article 31A(I)]

(b) giving effect to Directive Principles of State Policy (Proviso to Article 31C)

(ii) A Bill relating to a subject enumerated in the Concurrent List, to ensure operation of its provisions despite their repugnancy to a Union law or an existing law, by securing President's assent in terms of Article 254(2).
(iii) Legislation imposing restrictions on trade and commerce requiring Presidential sanction under the Proviso to Article 304(b) read with Article 255

**Points to Remember**

The veto power of the President over State Bills is a feature that supports the **Control of the Union** over the State in the type of federation that India has adopted.

In a strict federation like that of the USA, there is no means by which the President exercises control over the laws of the states in the US; every state in the US has different and independent laws.

The Constitution of India does not provide for a direct disallowance of the state legislation by the President.

However, the Constitutional provisions allow the Governor to reserve the bills for Presidential consideration or a review.

The President may give his assent or withhold a State bill reserved by the Governor or in cases other than Money bills, can send it back to State Legislature for reconsideration.

Even after the bill is again sent to the President, it is not obligatory for the President to give his assent.

This means that direct allowance is apparently available to the President, however this is through the means of the Governor of the concerned state.

The Sarkaria Commission while examining the Articles 200 and 201, gave the following comments in its report:

Sarkaria Commission was of the opinion that the scheme of the Constitution and the various Articles, providing for reservation of State legislations for the consideration and assent of the President are intended to subserve the broad purpose of co-operative federalism in the realm of Union-State legislative relations. They are designed to make our system strong, viable, effective and responsive to the challenges of a changing social order. They are necessary means and tools for evolving cohesive, integrated policies on basic issues of national significance. Even from the federal stand point, the reservation of State Bills, if made sparingly in proper cases, e.g. where the Bill relates to a matter falling clearly within the Union List, serves a useful purpose. But, as aptly cautioned by D.D.Basu, “its use cannot be extended to such an extent as to install the Union Executive over the head of the State Legislature in matters legislative”.

Thus, the power of the President over the state legislation means the power of the Union Executive on the State Executive.
This is the feature that has been adopted in the co-operative federalism that the Constitution of India envisages.

It can also be noted that the power of the President to review the Bills reserved for him by the governor supports the fact India is State with a unitary bias that tilts more towards the Union rather than the states.

Nonetheless, it may serve as a mechanism that can ensure that arbitrary legislations are not produced by the State Legislature.

**Legislative Power- X**

**Promulgation of Ordinance**

CONSTITUTIONAL AMENDMENT BILLS cannot be brought about as an ordinance. Money Bills can be brought about as an Ordinance. Decisions taken during the time when an ordinance is in force will be valid even after an ordinance lapses.

**What is an ordinance?**

An ordinance is an authoritative order or decree or an ephemeral (existing for a short duration of time) law that is promulgated by the President of India on the recommendation of the Union Cabinet.

Article 123 of the Indian Constitution empowers the President to promulgate an ordinance when the Parliament is in recess.

It is a very important legislative power of the President of India.

**When is an ordinance promulgated?**

An ordinance can only be promulgated when:

1. When both the Houses of the Parliament are not in session or even when one of the houses is not in session or is prorogued. This is because the bill needs to pass through both the houses before it can be presented for Presidential assent.
2. The President can promulgate an ordinance only when he is satisfied that the circumstances that exist call for an immediate action in form of an ordinance. This "satisfaction" of the President is justiciable i.e. it is open for judicial review on the grounds of *malafide* i.e. when it appears that the President has deliberately prorogued a House of the Parliament in order to create conditions for promulgating an ordinance.

**Ordinance is co-extensive with Parliamentary Legislative Powers**
Co-extensive means that the ordinance can be promulgated only on the matters on which the Parliament can legislate. Thus, the ordinance cannot infringe upon or compromise the Fundamental Rights like the Laws cannot be made such that they are derogatory to any of the Fundamental Rights.

Also, the ordinance may be retrospective like any Parliamentary Act.

The ordinance may amend or repeal any law of Act of the Parliament, but this is for a short duration as the ordinance itself needs to be of a short duration.

Also, the powers of the President to promulgate the ordinance is NOT a parallel power of legislation available when the Houses are in session.

**Parliamentary Approval During Session**

Ordinances must be approved by Parliament within six weeks of reassembling or they shall cease to operate.

They will also cease to operate in case resolutions disapproving the Ordinance are passed by both the Houses.

If the Houses are reassembled on different dates, the period of 6 weeks is calculated from the later of the two dates. This implies that the maximum duration of an ordinance can be 6 months plus 6 weeks, since 6 months can be the maximum gap between two sessions of the Parliament.

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**The Important Debates on Ordinance Promulgation Power of the President**
<table>
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<tr>
<th>Case Study</th>
<th>Description</th>
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<tr>
<td><strong>RC Cooper vs. Union of India</strong>&lt;br&gt;Year 1970</td>
<td>The Supreme Court was examining the constitutionality of the Banking Companies (Acquisition of Undertakings) Ordinance, 1969 which sought to nationalise 14 of India’s largest commercial banks. The Supreme Court held that the President’s decision could be challenged on the grounds of <em>malafide</em> i.e. where a President has prorogued the House of the Parliament so that the discussions in the house are by-passed and the ordinance comes into force, thus undermining the Legislature.</td>
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<tr>
<td><strong>38th Constitutional Amendment Act</strong>&lt;br&gt;Year 1975</td>
<td>A new clause (4) in Article 123 was inserted stating that the President’s satisfaction while promulgating an Ordinance was final and could not be questioned in any court on any ground.</td>
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<tr>
<td><strong>44th Constitutional Amendment Act</strong>&lt;br&gt;Year 1978</td>
<td>The clause (4) in Article 123 inserted by the 38th Constitutional Amendment Act was deleted and therefore reopened the possibility for the judicial review of the President’s decision to promulgate an Ordinance.</td>
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AK Roy vs. Union of India
Year 1980

Judicial review could be exercised on the president's decision but on substantial grounds and not at "every casual and passing challenge". But the judiciary did not take a clear stance on the grounds on which the decision can be challenged.

T Venkata Reddy vs. State of Andhra Pradesh
Year 1985

While discussing the promulgation of the Andhra Pradesh Abolition of Posts of Part-time Village Officers Ordinance, 1984 which abolished certain village level posts, the Supreme Court reiterated that the Ordinance making power of the President and the Governor was a legislative power, comparable to the legislative power of the Parliament and state legislatures respectively.

DC Wadhwa vs. State of Bihar
Year 1987

The court was examining a case where Bihar state government (under the authority of the Governor) continued to re-promulgate ordinances, that is, it repeatedly issued new Ordinances to replace the old ones, instead of laying them before the state legislature. A total of 259 Ordinances were re-promulgated, some of them for as long as 14 years.

The Supreme Court argued that if Ordinance making was made a usual practice, creating an ‘Ordinance raj’ the courts could strike down re-promulgated Ordinances.
Some Questions Asked in UPSC Prelims

Q. Deadlock between the LokSabha and the RajyaSabha calls for a joint sitting of the Parliament during the passage of *(Year 2012)*
   1. Ordinary Legislation
   2. Money Bill
   3. Constitution Amendment Bill
   Select the correct answer using the codes given below:
   (a) 1 only
   (b) 2 and 3 only
   (c) 1 and 3 only
   (d) 1, 2 and 3

Q. According to the Constitution of India, it is the duty of the President of India to cause to be laid before the Parliament which of the following? *(Year 2012)*
   1. The Recommendations of the Union Finance Commission
   2. The Report of the Public Accounts Committee
   3. The Report of the Comptroller and Auditor General
   4. The Report of the National Commission for Scheduled Castes
   Select the correct answer using the codes given below:
   (a) 1 only
   (b) 2 and 4 only
   (c) 1, 3 and 4 only
   (d) 1, 2, 3 and 4
Q. Consider the following statements:
1. The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.
2. All executive actions of the Government of India shall be expressed to be taken in the name of the Prime Minister.

Which of the statements given above is / are correct?
(a) 1 only
(b) 2 only
(c) Both 1 and 2
(d) Neither 1 nor 2

Financial Powers of the President of India

The financial powers of the President are, at places, overlapping with Legislative powers:

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

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

(iii) No demand for a Financial grant can be made except on his recommendation [Art. 110].

(iv) He can make advances out of the contingency fund of India to meet any unforeseen expenditure. It is actually the PM who does this

(v) He constitutes a finance commission after every five years to recommend the distribution of revenues between the Centre and the states. However, the Terms of Reference of Finance Commission are decided by Council of Ministers.

Judicial Powers of the President

The judicial powers and functions of the President are:
(a) He appoints the Chief Justice and the judges of Supreme Court and high courts (Article 124).

(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.
Pardoning Power of the President

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:

[A] Punishment or sentence is for an offence against a Union Law;

[B] Punishment or sentence is by a court martial (military court); and

[C] Sentence is a sentence of death.

- Pardoning Power is an executive power. The pardoning power of the President is independent of the Judiciary.

- President while exercising this power, does not sit as a court of appeal. The rationale of bestowing this power on the President is two-fold:
  1. to keep the door open for correcting any judicial errors in the operation of law; and,
  2. to afford relief from a sentence, which the President regards as unduly harsh (taking into account, the Life circumstances of the convict).

Please note that this exercise of Pardoning power is not a Quasi-Judicial process

The pardoning power of the President comprises any of the following:

- **Pardon**: It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.

- **Commutation**: It means the substitution of one type 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.

- **Remission**: It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for 7 years may be remitted to rigorous imprisonment for 3 years. The nature of punishment remains the same.

- **Respite**: It means 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. For eg. Sentence plus fine.

- **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.
Comparison of Governor’s Pardoning power with that of President’s

**Article 161** of the Constitution also empowers the governor of a state with 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.

- However, the pardoning power of the governor differs from that of the President in following two ways:

  [i] The President can pardon sentences inflicted by court martial (military courts) while the governor cannot.

  [ii] The President can pardon death sentence while governor cannot. Even if a person has been awarded the Death sentence as per the state law, the power to grant pardon in case of Death Sentence lies with the President and not the governor.

However, the governor can suspend, remit or commute a death sentence.

**Conclusion** → Both the governor and the President have concurrent power in respect of suspension, remission and commutation of death sentence.

**Supreme Court identified the broad contours of Powers of President in the following manner:**

1. **No Right to Personal hearing:** The petitioner for mercy has no right to an oral hearing by the President.

2. **President’s right to dissent from S.C.’s view:** The President can examine the evidence afresh and take a view different from the view taken by the court.

3. **Aid of Council of Ministers:** The power is to be exercised by the President on the advice of the union cabinet.

4. The President can grant relief not only from a sentence that he regards as unduly harsh but also from an evident mistake.

5. The President is not bound to give reasons for his order.

6. **No Judicial Review in ordinary circumstances:** The exercise of power by the President is not subject to judicial review except where the presidential decision is patently arbitrary.

7. Where the earlier petition for mercy has been rejected by the President, stay cannot be obtained by filing another petition.

Granting of clemency by the President or Governor can be challenged on the following grounds:

- The order has been passed without application of mind.
• The order is mala fide.
• The order has been passed on extraneous or wholly irrelevant considerations.
• Relevant material has been kept out of consideration.
• The order suffers from arbitrariness.

In Swaran Singh v State of U.P., Governor had granted remission of life sentence awarded to the Minister of the State Legislature of Assembly convicted for the offence of murder.

In this case Supreme Court stated that it is true that it has no power to touch the order passed by the Governor under Article 161, but if such power has been exercised arbitrarily, mala fide or in absolute disregard of the “finer cannons of constitutionalism”, such order cannot get approval of law

**Presidential Discretion: Constitutional OR Situational?**

The President can act in his discretion only under certain situations:

a) 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.
b) Dismissal of the council of ministers when it cannot prove the confidence of the Lok Sabha.
c) Dissolution of the Lok Sabha if the council of ministers has lost its majority.

Thus, the President has no constitutional discretion, he has some **situational discretion**.