
THE TITULAR HEAD OF INDIA UNDER THE LIGHT OF THE DOCTRINE OF CHECKS AND BALANCES- NOMINAL BUT VITAL AUTHORITY

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ABSTRACT

With a lot of pride, India holds the title of the finest constitution of the world which is successfully binding together the constitution of the largest democracy for so many years. But the reason behind the Indian Constitution being concrete is the doctrine of Constitutionalism and A.V. Dicey's concept of Rule of law. The doctrine of constitutionalism,¹ states that every government authority should function within the ambit of the law or the constitution, and on the same hand, the concept of rule of law established the fact that law is supreme.² The article purposes to showcase that even the prestigious authority, like that of a President is no exception to the rule of constitutionalism and functions under the cape of law. It is of elementary importance to understand the origin of the office of President in India and what position does he hold. The article in a detailed manner highlights, how a President is elected, what's his term, and qualifications. The article further elaborates on the various powers of the President of India. Further, a critical analysis-based conclusion is drawn pointing out the concept of checks and balances imparted in the Constitution of India.

The expected outcomes of this paper are-

1. Accentuating that the Constitution of India works on a principle of checks and balances.
2. Underlining the restricted powers of the President of India.

Keyword: Constitution of India, President, Rule of Law, Doctrine of Constitutionalism, Doctrine of Checks and Balances.

¹ Constitutionalism, *available at:* <https://www.britannica.com/topic/constitutionalism> (Visited on- January 18, 2022)

² What is the Rule of Law? *available at:* <https://worldjusticeproject.org/about-us/overview/what-rule-law> (Visited on- January 18, 2022)

1.1 Introduction

Parliamentary form of Government is established under the Indian constitution where the majority party in the Lok Sabha forms government. The Prime Minister is the face of the government and the government is led by the combined efforts of the Prime Minister and his Council of Ministers. The Council of Ministers or the cabinet exercises the executive power and is responsible to the concerned legislature. The system of Parliamentary form of government is borrowed from the British Constitution.³ In the context of India, Prime Minister is the *de-facto head* of the state where he exercises the major executory powers and President is termed as the *de-jure* head of the state where he is often referred to as a nominal head unlike the Presidential system of government.⁴

The term President means ‘the front-runner of a republic’.⁵ In India, the President is called the first citizen of India based on the status of seniority he holds. The bureau of President was created when India became a republic and its constitution came into force that is on 26 January 1950.⁶ He is a significant part of the executive. President is mentioned under *Article 52 Chapter I of Part V of the Indian Constitution* which states that there shall be a President of India, the ‘shall’ signifies that having a President’s chair occupied is mandatory in India.⁷ The office of president can never be vacant, this spotlights the importance of having the chair occupied and functioning. Even if the president dies, Vice-President will be occupying the chair of the President for the time being, and if not Vice-President, the Chief Justice of India, and if not CJI then the senior-most judge of the Supreme Court will take over.

Being the nominal or ceremonial head does not diminish the status of the President. He holds a vital status in the country as he is graced with some significant powers. The office of President

³ Constitution of India, *available at:* http://www.mati.gov.in/docs/Constitution_of_India.pdf (Visited on- January 18, 2022)

⁴ Who is referred to as the De Jure Head of the Indian State? *available at:* <https://www.toppr.com/ask/question/who-is-referred-to-as-the-de-jure-head-of-the-indian-state/> (Visited on- January 18, 2022)

⁵ Oxford Dictionary, *available at:* <https://www.oxfordlearnersdictionaries.com/definition/english/precedent#:~:text=%2F%CB%88pres%C9%AA d%C9%99nt%2F,in%20a%20similar%20situation%20later> (Visited on- January 18, 2022)

⁶ Krishna Priya Pallavi, Jan 26, 2022, Republic Day 2022: History, significance, why the day is celebrated and all you need to know, *available at:* <https://www.hindustantimes.com/lifestyle/festivals/republic-day-2022-history-significance-why-the-day-is-celebrated-and-all-you-need-to-know-101643084773269.html> (Visited on- January 19, 2022)

⁷ Article 52- The President of India, *available at:* https://www.constitutionofindia.net/constitution_of_india/the_union/articles/Article%2052 (Visited on- January 19, 2022)

has great prestige attached to it as rightly stated by *Mr. Jawahar Lal Nehru* that he is neither a real executive nor an absolute figurehead but a "great figurehead" as he holds a position of authority, respect, and dignity.⁸

1.2 Origin

India attained independence from British rule on 15 August 1947. Till 1947, India was treated as a territory within the Commonwealth of Nations. George VI was the king and two individuals, Mountbatten and C. Rajagopalachari represented the country as the Governor-General of India from 1947 to 1950.⁹ With independence came the constituent assembly of India under the leadership of B.R. Ambedkar, which undertook the responsibility to draft a new constitution for India, eventually, the constitution was enacted on 26 November 1949.¹⁰ After the formulation of the constitution, the office of President was created for the very first time, when India became a republic and its constitution came into force on 26 January 1950. The office of monarch and governor-general were substituted by the new office of president of India, with Rajendra Prasad as its first occupier.¹¹

The primary duty and responsibility that the Constitution of India vests in the president is to preserve, protect and defend the constitution and the law of India, the same can be seen under *Article 60 of the Indian Constitution* which deals with the oath of the president.¹² President in India is a vital signatory authority as any and every action taken by the executive or legislature entities of the constitution shall become a law only after the president's assent onto the related bill. President holds a position and chair of respect and thus he acts as a friend, philosopher, and guide to the parliament. He has a major responsibility to guard the basic structure of the country that is the Constitution. The President is bound not to accept any unconstitutional

⁸ Kalinjar Publications, 2015, Indian Polity, *available at:* [https://duhslibrary.ac.in/The%20Gist%20of%20NCERT%20-%20Indian%20Polity\(1\).pdf](https://duhslibrary.ac.in/The%20Gist%20of%20NCERT%20-%20Indian%20Polity(1).pdf) (Visited on- January 19, 2022)

⁹ The Governor General of Canada, The Viscount Alexander, *available at:* <https://www.gg.ca/en/governor-general/former-governors-general/viscount-alexander> (Visited on- January 19, 2022)

¹⁰ Outlook Web Desk, 26 Nov 2021, India Celebrates 72nd Constitution Day Today: All You Need to Know, *available at:* <https://www.outlookindia.com/website/story/constitution-day-of-india-2021-all-you-need-to-know/402596> (Visited on- January 19, 2022)

¹¹ Dr. C.D. Sreenivasa Murthy, 25 Jan 2022, The First President of India Dr. Rajendra Prasad, *available at:* <https://starofmysore.com/the-first-president-of-india-dr-rajendra-prasad/> (Visited on- January 19, 2022)

¹² Article 60-Oath or affirmation by the President, *available at:* https://www.constitutionofindia.net/constitution_of_india/the_union/articles/Article%2060 (Visited on- January 19, 2022)

action of the executive or legislature. The President has pro-active and pre-emptive authority for ensuring constitutionality in the actions of the executive or legislature.¹³

1.3 Position of the president

Dr. Ambedkar while explaining the position of the President said that in accordance with the drafted constitution the position of the President is that of the head of the state but not of an executive head. He added that his position is just as same as the king under the English Constitution, he symbolizes the nation and his seal stands important to draft laws in the nation. He pointed out that the President cannot function without the aid and advice of the Council of Ministers.¹⁴

Article 53 clause 1 of the Indian Constitution, vests the executive power of the union in the president, which he shall exercise directly or through officers subordinate to him, as per basic structure of the country. *Article 74* of the Indian Constitution points out the nominal nature of the president, as it establishes that the president 'shall' function on the aid and advice of the Prime Minister and his Council of Ministers. This 'shall' was added by the *42nd amendment act, 1976* under the Indira Gandhi government to bound the president by aid and advice. After the *42nd amendment act*, the existence of the Council of Ministers was made obligatory for the existence of the President. In *Ram Jawaya Kapur vs. State of Punjab*,¹⁵ it was seen that under Article 53 clause 1 the executive power of the union is vested on the president but under Article 74 there is written that there is to be a Council of Ministers with the PM to aid and advise the President. Therefore, it was stated that the President is the formal head of the executive but the real powers are vested with the Council of Ministers or the Cabinet.¹⁶ In the case of *U.N. Rao vs. Indira Gandhi*,¹⁷ it was held by the Supreme Court that the President shall exercise the executive powers under the aid and advice of the Council of Ministers and therefore Article 74(1) stands mandatory. The court further stated that if the President exercise his executive

¹³ Sanjay Gupta, 2007, The Bush Doctrine of Pre-Emptive Strike and its employment in Iraq war: Status under International Law and Implications for India, *available at*: <https://www.jstor.org/stable/41858829> (Visited on- January 19, 2022)

¹⁴ Mohd Aqib Aslam, Constitutional Position of The President and Governor (Relation With The Council Of Ministers), *available at*: <https://www.legalserviceindia.com/legal/article-2732-constitutional-position-of-the-president-and-governor-relation-with-the-council-of-ministers-.html> (Visited on- January 20, 2022)

¹⁵ *Ram Jawaya Kapur v. State of Punjab*, AIR 1955 SC 549

¹⁶ Taru Agarwal & Anurag Pandey, 2 Dec 2016, *Ram Jawaya Kapur vs. State of Punjab Giving touchstone for a Federal Constitution via Separation of Powers*, *available at*: <https://legalvoiceblog.wordpress.com/2016/12/02/ram-jawayya-kapur-vs-state-of-punjab-giving-touchstone-for-a-federal-constitution-via-separation-of-powers/> (Visited on- January 20, 2022)

¹⁷ *U.N. Rao v. Indira Gandhi*, AIR 1971 SC 1002

power outside the aid and advice of the Council of Ministers, it will be termed as unconstitutional by the virtue of Article 75(1).¹⁸ In *Shamsher Singh vs. State of Punjab*,¹⁹ it was held by the Supreme Court that the President and the Governors are only “formal heads” and therefore they shall exercise their powers under the aid and advice of the Council of Ministers.²⁰

But, the 44th amendment act, 1978 was brought to improve the changes brought by the 42nd amendment act and a proviso was added to Article 74 clause 1 of the Indian Constitution which gave the power to the President to one’s return the advice for reconsideration, and it was said that if the advice returns, the President would be bound to act on such advice. As a whole, the President functions under the shadow of the Prime Minister and the Council of Ministers, that is why sometimes he is referred to as a ‘rubber stamp’.

1.4 Election of the President of India

Article 53 of the Indian Constitution describes how a President is elected. It states that the president is indirectly elected by an electoral college comprising of the elected members of both houses of the Parliament of India and the legislative assemblies of each of India's states and territories, who themselves are all directly elected by the citizens of India.²¹

Article 55 of the Indian Constitution describes how Presidential elections take place. In India, there is an indirect way of electing the President and there stands a reason for the same. In 1848, Louis Nepolian was directly elected by the people of the French Republic and he through the virtue of the same exercised arbitrary power and overthrew the system of the republic and established monarchy, to avoid such situations in India, the President is elected by a system of the single transferable vote through a secret ballot.²² MLAs and MPs, as people’s representatives play their crucial part in the election of the President.

¹⁸ Constitutional Law of India, Dr. JP. Pandey

¹⁹ *Shamsher Singh v. State of Punjab*, AIR 1974 SC 2192

²⁰ Akshat Mehta, 28 Jul 2020, Re-Visiting the powers of Governors in the light of Rajasthan Assembly crisis, available at: <https://www.barandbench.com/apprentice-lawyer/re-visiting-the-powers-of-governors-in-the-light-of-rajasthan-assembly-crisis> (Visited on- January 20, 2022)

²¹ Article 53- Executive power of the Union, available at: https://www.constitutionofindia.net/constitution_of_india/the_union/articles/Article%2053 (Visited on- January 20, 2022)

²² Article 55- Manner of election of President, available at: https://www.constitutionofindia.net/constitution_of_india/the_union/articles/Article%2055 (Visited on- January 20, 2022)

1.5 Term of office of President

As per *Article 56 clause 1 of the Indian Constitution*, the President shall hold the office for 5 years. There are 3 exceptional conditions with respect to the article- (a) if he hands over his written resignation letter to the Vice-President, just the way the governor gives resignation to his reporting authority that is the President under Article 156 of the constitution;²³ (b) by the procedure mentioned under Article 61²⁴ of the constitution, a President can be impeached for the violation of the constitution which stands to be the basic structure of the country; (c) notwithstanding his expiration of term, he can continue to hold the office until his successor holds the chair. Article 56(1)(c) goes hand in hand with Article 52 of the Indian Constitution as it reflects upon the fact that the chair of the President shall never be vacant, this is also known as the non-obstante clause.²⁵

Article 56 clause 2 states that the resignation shall forthwith be communicated by the President to the speaker of the House of the People or Lok Sabha.²⁶ It is so because Article 79 highlights that the President is an integral part of the parliament as no bill can be transformed into law without his assent and stamp.

1.6 Qualification of the President of India

Article 58 demarcates that there are 4 essential qualifications for the election as the President. The person standing up for the elections should be a citizen of India, he shall have completed the age of 35 years, he shall be eligible to be elected as a member of Lok Sabha, and he shall not hold any office of profit.²⁷ The 'shall' here signifies that all the four conditions are

²³ National Commission to review the working of the Constitution, The Institution of Governor under the Constitution, *available at*: <https://legalaffairs.gov.in/sites/default/files/The%20Institution%20of%20Governor%20under%20the%20Constitution.pdf> (Visited on- January 20, 2022)

²⁴ Article 61- Procedure for impeachment of the President, *available at*: https://www.constitutionofindia.net/constitution_of_india/the_union/articles/Article%2061 (Visited on- January 20, 2022)

²⁵ Article 56-Term of office of President, *available at*: [https://indianconstitution.guru/constitution-of-india/part-5/article-56/#:~:text=\(1c\)%20the%20President%20shall%2C,successor%20enters%20upon%20his%20office.&text=\(2\)%20Any%20resignation%20addressed%20to,the%20House%20of%20the%20People.](https://indianconstitution.guru/constitution-of-india/part-5/article-56/#:~:text=(1c)%20the%20President%20shall%2C,successor%20enters%20upon%20his%20office.&text=(2)%20Any%20resignation%20addressed%20to,the%20House%20of%20the%20People.) (Visited on- January 20, 2022)

²⁶ Article 56- Term of office of President, *available at*: https://www.constitutionofindia.net/constitution_of_india/the_union/articles/Article%2056 (Visited on- January 20, 2022)

²⁷ Article 58- Qualifications for election as President, *available at*: https://www.constitutionofindia.net/constitution_of_india/the_union/articles/Article%2058 (Visited on- January 20, 2022)

mandatory. Office of President, Vice-President, Governor, and Minister of State or Union Government are not covered under the ambit of office of profit as stated under Article 58 clause 2.²⁸ In the 1992 case of *Satrucharla Chandrashekar Raju vs. Vyricherla Pradeep Kumar*,²⁹ it was said that ‘office of profit’ here primarily means any office where some sort of monetary or pecuniary benefits are given to the holder of that office and government has pervasive control over the office. Also, it was stated that if the holding of such office affects the person’s impartial conduct while holding the office of the President of India, the office will be falling under the umbrella of ‘office of profit’.³⁰ In the case of *Shibu Soren vs. Dayanand Sahay*,³¹ it was held that a person getting perks and pecuniary gains by holding the chairmanship of Jharkhand Area Autonomous Council under the Jharkhand Area Autonomous Council Act of 1994, will be counted under the sphere of office of profit.

1.7 Powers of the President

Despite being a nominal head, the President holds vital executive powers, military authorities, diplomatic powers, legislative powers, pardoning powers, and emergency powers.

1.7.1 Executive Powers

Extensive executive powers are vested in the President. *Article 77 of the Indian Constitution*, confers executive power of the union in the President.³² Clause 1 of the article, states that the executive powers are exercised in the name of the president. But as a whole, his executive powers should be within the constitutional boundaries that is, as per the aid and advice of the Council of Ministers and the Prime Minister.

By the virtue of *Article 75(1)*, the President has the power to appoint the Prime Minister. Under *Article 124(2) and Article 217(1)* of the Constitution, he is empowered to appoint the Judges

²⁸ Article 58-Qualifications for election as President, *available at*: [https://www.latestlaws.com/bare-acts/central-acts-rules/coi-article-58-qualifications-for-election-as-president/#:~:text=\(2\)%20A%20person%20shall%20not,any%20of%20the%20said%20Governments.&text=1](https://www.latestlaws.com/bare-acts/central-acts-rules/coi-article-58-qualifications-for-election-as-president/#:~:text=(2)%20A%20person%20shall%20not,any%20of%20the%20said%20Governments.&text=1). (Visited on- January 20, 2022)

²⁹ *Satrucharla Chandrashekar Raju v. Vyricherla Pradeep Kumar*, AIR 1992 SC 1959

³⁰ Sachin Sachdeva, Office of Profit: Is Parliament Empowered to Exempt Retrospectively? *available at*: <https://www.legalserviceindia.com/article/1465-Office-Of-Profit.html> (Visited on- January 21, 2022)

³¹ *Shibu Soren v. Dayanand Sahay*, AIR 2001 SC 2583

³² Article 77-Conduct of business of the Government of India, *available at*: [https://www.latestlaws.com/bare-acts/central-acts-rules/coi-article-77-conduct-of-business-of-the-government-of-india/#:~:text=Government%20of%20India-,Article%2077%20Constitution%20of%20India%3A%20Conduct%20of,of%20the%20Government%20of%20India&text=\(1\)%20All%20executive%20action%20of,the%20name%20of%20the%20President](https://www.latestlaws.com/bare-acts/central-acts-rules/coi-article-77-conduct-of-business-of-the-government-of-india/#:~:text=Government%20of%20India-,Article%2077%20Constitution%20of%20India%3A%20Conduct%20of,of%20the%20Government%20of%20India&text=(1)%20All%20executive%20action%20of,the%20name%20of%20the%20President). (Visited on- January 21, 2022)

of Supreme Court and High Courts.³³ Under *Article 155, 76(1), 148(1), 316(1), 280(1), 321(2), 338(3), and 350(3)*, he is authorized to appoint the Governors of the States, the Attorney-General, the Comptroller, Auditor General, the Chairman and Members of the Public Servant Commission, the Members of the Financial Commission, Official Commissioners, Chief Election Commissioners and other Election Commissioners, Special Officer for SC and ST, Special Officers for linguistic minorities.³⁴ Based on the constitutional principle which prevails in India, the President has the power to remove all the mentioned officials from their offices, these officers hold their offices during the “pleasure of the President”. But the doctrine of pleasure is not absolutely applicable in India.

Article 53 of the Constitution states the executive power of the union. *Article 53 clause 1*, tells that the executive power of the union is vested in the President.³⁵ In the 1954 case of *Emperor vs. Sibnath Banerjee*,³⁶ it was held that the executive power of the union, should be vested in the president and it shall be exercised by him as per the constitution, either directly or through officers subordinate to him.

1.7.2 Diplomatic Powers

Being the head of the state, the President has the authority to send and receive ambassadors and other diplomatic representations. Subjected to the confirmation by the Parliament especially the Minister of External Affairs, all treaties and intercontinental agreements are determined in the title of the President.³⁷

1.7.3 Military Powers

Article 53 clause 2, tells that the president is the supreme commander of the defense forces of the union but the exercise/conduct should be regulated within the ambit of the law. *Article 53*

³³ Constitution of India, Universal

³⁴ Constitution of India, Universal

³⁵ *Article 53-Executive power of the Union*, available at: [https://www.latestlaws.com/bare-acts/central-acts-rules/coi-article-53-executive-power-of-the-union#:~:text=\(1\)%20The%20executive%20power%20of,in%20accordance%20with%20this%20Constitution.](https://www.latestlaws.com/bare-acts/central-acts-rules/coi-article-53-executive-power-of-the-union#:~:text=(1)%20The%20executive%20power%20of,in%20accordance%20with%20this%20Constitution.) (Visited on- January 21, 2022)

³⁶ *Emperor v. Sibnath Banerjee*, AIR 1945 PC 156

³⁷ *Military, Diplomatic and Emergency Powers of President of India*, 10 March 2013, available at: <https://www.gktoday.in/topic/military-diplomatic-and-emergency-powers-of-president-of-india/> (Visited on- January 21, 2022)

clause 3, talks about the nominal status of the president and emphasize the ‘basic structure doctrine’.³⁸

1.7.4 Legislative Powers

Article 79 of the Indian Constitution states that a Parliament for the Union shall consist of the President, Rajya Sabha, and Lok Sabha.³⁹ Here it can be noted that President is not a member of Parliament but yet ‘Parliament’s functioning is impossible without President’. Starting of the Parliament that is the session and the ending of the Parliament that is the recess, is in the hands of the President. Notice of prorogation by the President, on Adjournment Sine Die, is important for the recess, and summon issued by the President is vital to start the session.

Moreover, the passage of any bill requires his assent, he is the main signatory authority. Even money and financial bills type A and B need the prior recommendation of the president. Under *Article 111*, the president has 3 kinds of veto power- Absolute veto, Suspensive veto, and Pocket veto. Veto acts as a ‘mechanism of delay’.⁴⁰ He in a way acts as a friend, philosopher, and guide to the parliament. In a way, he also holds legislative power.

Article 108 grants the right to the president to call a joint session through the speaker to break the deadlocks by creating a discussion forum for both Lok Sabha and Rajya Sabha.⁴¹

Article 123 of the Indian Constitution empowers the President with one of his most important powers, which is the ordinance-making power.⁴² The question regarding ordinance-making power was raised by 1st Viceroy Lord Canning when Council’s Act 1861 prevailed. He stated that it is correct that legislature formulates laws, but there might be a scenario where the legislative body is not present and the country needs a law, therefore to avoid hassled situations in such times, the executive must be allowed to make laws. The same we have borrowed under *Article 123* of the Indian Constitution. When the parliament is in the recess period, Presidential

³⁸ Alex Andrews George, 3 Feb 2020, The President of India (Articles 52-62), *available at*: <https://www.clearias.com/president-of-india/> (Visited on- January 21, 2022)

³⁹ Constitution of India, *available at*: [https://www.india.gov.in/my-government/constitution-india#:~:text=The%20constitutional%20head%20of%20the,the%20People%20\(Lok%20Sabha\)](https://www.india.gov.in/my-government/constitution-india#:~:text=The%20constitutional%20head%20of%20the,the%20People%20(Lok%20Sabha).). (Visited on- January 21, 2022)

⁴⁰ Bringing a Law into Force, 25 Jan 2021, *available at*: <https://www.drishtias.com/daily-updates/daily-news-analysis/bringing-a-law-into-force> (Visited on- January 21, 2022)

⁴¹ Parliament (Part-II), 10 Nov 2021, *available at*: <https://www.drishtias.com/to-the-points/Paper2/parliament-part-ii> (Visited on- January 21, 2022)

⁴² Article 123- Power of President to promulgate Ordinances during recess of Parliament, *available at*: https://www.constitutionofindia.net/constitution_of_india/the_union/articles/Article%20123 (Visited on- January 21, 2022)

laws can be made applicable for 6 months and as soon as the Parliament is back, it will be given 6 weeks to approve or reject the ordinance. If the Parliament approved the ordinance, the law will prevail as a Parliamentary law and if it rejects it, then the ordinance will lapse.

President can also check the majority level of the government through the test of strength while vote of thanks.

1.7.5 Pardoning Power

Article 72 of the Indian Constitution states that the president has the power to grant pardons, reprieves, respites, or remissions of punishments or to suspend, remit, or commute the sentence of any person convicted of the offenses where punishment is of court-martial or in cases where punishment/sentence to which the executive power of the union extends or in the cases where the sentence is of death is given.⁴³ The article grants constitutional power to the President. In the case of *Kehar Singh vs. Union of India 1989*,⁴⁴ the scope of the President's pardoning power was examined under the light of Article 72. It was held by the supreme court that the pardoning power is of 'widest amplitude', it is a part of the constitutional scheme but it must consider the matter as per the law.⁴⁵ In *Mohinder Singh vs. State of Punjab 2013*,⁴⁶ it was held that the sentence of a fixed term of imprisonment awarded by the court should be subjected to any order passed by the president or the governor.⁴⁷

1.7.6 Emergency Powers

Articles 352 to 360 grants emergency powers to the president under Part XVIII of the Indian Constitution.⁴⁸ The President may proclaim emergency in 3 conditions- (a) under Article 352(1), if he is satisfied that India's security is threatened by war, foreign attack, or rebellion;

⁴³ Article 72- Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases, available at: https://www.constitutionofindia.net/constitution_of_india/the_union/articles/Article%2072 (Visited on- January 21, 2022)

⁴⁴ *Kehar Singh v. Union of India*, AIR 1989 SC 653

⁴⁵ Madabhushi Sridhar, 23 Nov 1012, An act of constitutional impropriety, available at: <https://www.thehindu.com/opinion/lead/an-act-of-constitutional-impropriety/article4123905.ece#:~:text=In%20Kehar%20Singh%20v%20Union,the%20basic%20structure%20of%20the> (Visited on- January 22, 2022)

⁴⁶ *Mohinder Singh vs. State of Punjab*, AIR 2013 SC 3622

⁴⁷ *Mohinder Singh vs. State of Punjab 2013*, available at: <https://www.casemine.com/search/in/Mohinder%20Singh%20Vs%20state%20of%20Punjab> (Visited on- January 22, 2022)

⁴⁸ Position of Fundamental Rights during Emergency, available at: <http://www.legalservicesindia.com/article/589/Position-of-Fundamental-Rights-during-Emergency.html> (Visited on- January 22, 2022)

(b) under Article 356(2), if he is satisfied that the situation of the country is such wherein the Government will not be able to carry its functions as per the Constitution; (c) under Article 360(1), if he is satisfied that the financial stability of the country is threatened.

1.8 Conclusion

Indian Constitution is based extensively on the principle of *checks and balances* and it proves the proverb, “absolute supremacy degrades absolutely”. To avoid the concentration of power in one hand Lord Montesquieu’s *theory of separation of power* was brought into the frame. It was quoted by him in one of his famous works ‘The Spirit of the Laws’, that “when the legislative and executive powers are amalgamated in the same person, there remains no liberty. This situation of no liberty can lead to the end of everything, the whole system”.⁴⁹ Montesquieu highlighted ‘liberty’ as a key form proper functioning of the administration. Jean Bodin also spotlighted the importance of separating the executive and judicial powers.⁵⁰ With this theory of separation of power came alongside the system of checks and balances. Montesquieu and William Blackstone described the system of checks and balances as an essential tool to regulate the arbitrary and draconian powers of the administrators. They said that the system of checks and balances, fortifies liberty under the Constitution.⁵¹

The President of India is no exception as he does not hold absolute powers. He has to work in accordance with the aid and advice of the Prime Minister and the Council of Ministers. This very statement reflects that no authority inclusive of the President is bestowed with noninterventionist powers. It is also stated within the constitution that the President can be impeached if he violates the basic structure of the country. These bars on his powers, prove the fact that the system of checks and balances is imparted in the roots of the Indian Constitution and the basic structure in all circumstances remains to be the Constitution of India.

⁴⁹ Abhishek Kumar, 6 April 2015, President: A Titular Head? *available at:* <https://www.lawctopus.com/academike/president-titular-head/> (Visited on- January 22, 2022)

⁵⁰ Jean Bodin, 1 Jan 2022, *available at:* <https://www.britannica.com/biography/Jean-Bodin> (Visited on- January 22, 2022)

⁵¹ Checks and balances, *available at:* <https://www.britannica.com/topic/checks-and-balances> (Visited on- January 22, 2022)