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## **INDIA'S PARLIAMENTARY SYSTEM: IS THE LIMITED ROLE OF THE PRESIDENT BENEFICIAL?**

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### **ABSTRACT**

India's mode of governance has been the "parliamentary form of government" since its Independence and its main reason has been the familiarity with such a system. A "parliamentary form of government" was followed by the British which later was adopted by India as it resonated with the ideologies the framers of the Constitution had.

The "parliamentary form of government" dictates separation of power within the government. Due to which, the government of India was divided into the legislature, executive and judiciary. The executive is headed by the President and also comprises of the Prime Minister and the Council of Ministers.

The role of a President is often debatable. There have been several aspects where the extent of powers possessed by the President have been argued upon.

In India, it is often wondered if the President is merely a figure head. The President is also often referred to as a "rubber stamp". These assertions have been made due to the restrictions imposed upon the President because of the prevalent form of governance.

This research paper identifies and explores the limitations upon the role of the President and also understands the rationale behind it. It also intends on understanding whether these limitations conferred upon the President is beneficial for the nation or not.

**Keywords:** President, Limitations, Government

## INTRODUCTION

### 1. “Parliamentary form of government”

“Parliamentary form of government” is a governance model found in the democratic set up, where the party (parties, in case of coalition) with the majority in the parliament, form the government. In such a form of government, the legislature, to whom the executive is accountable, grants the executive the support (or "confidence") necessary for it to function democratically.

It is referred to as the “cabinet government”, “responsible government” and also the “Westminster government”.

The Prime Minister is the leader in the “parliamentary form of government”; nevertheless, he is often the leader of the majority party in Parliament and is not directly chosen by the general populace.

He chooses his own Cabinet, which, once again, ought to be drawn from the Parliament.

The entire Cabinet is answerable to the Parliament, and it is required to retire from office as soon as the Parliament loses confidence in it.

In a parliamentary system, the legislature assumes the role of the executive branch of government.

Since, no government in the parliament is capable of obtaining an absolute majority, in a “parliamentary form of government”, the opposition is crucial in preventing the political executive's arbitrary use of power.

The executive branch is made up of the head of state, also known as the monarch or the President, and the leader of the government, often known as the prime minister. The first is the nominal head, while the second is the actual executive head.

### 2. India as a “parliamentary form of government”

India is a prime example of a “parliamentary form of government”. The constituent assembly debated for a very long time before deciding on the adoption of the

“parliamentary form of government”. The parliamentary system of government was supported by Dr. B.R. Ambedkar, since a “parliamentary form of government” highlights that

- Hereditary rule is not recognized.
- The law makers would be the people chosen by the populace.
- All lawmakers were required to reconnect with the public and win their renewed trust.

India is an epitome of a “parliamentary form of government”. Let’s understand it by comparing the Indian system with the basic features of a “parliamentary form of government”.

- a. The Prime Minister is in command of the government, and the President is in charge of the State. In accordance with Article 74, a council of ministers presided over by the prime minister is constituted to support and advise the President as he discharges his responsibilities.
- b. The President is bound by the recommendations offered in this manner. The latter part of this research paper substantiates this positioning in India as well.
- c. The government is formed by the political party that wins the majority of seats in the Lok Sabha. The President appoints that party's leader as prime minister, and on the prime minister's recommendation, the President appoints other ministries. This practice is widely practiced as there is an election every 5 years where people choose their representative.
- d. The ministers cooperate, swim, and perish as a unit. Both the Lok Sabha and the whole Parliament hold them jointly accountable. According to the concept of collective responsibility, the Lok Sabha has the power to dissolve the government (i.e., the council of ministers headed by the prime minister) by passing a motion of no confidence. The same is outlined in Article 75 of the Indian Constitution.

These basic features are enough to indicate that India follows a “parliamentary form of

government”.

### **3. President**

The role of the President differs, from the government he is a part of. The type of government automatically dictates the autonomy of the President, therefore, even though the roles might be similar, their extent would be different. The above-mentioned points indicate that the President’s role is somewhat restricted in a parliamentary form of the government. This is further substantiated below.

## **THE PRESIDENT OF INDIA – A LIMITED ROLE**

### **1. Legislature**

The Legislature is the law-making body and is conferred with important powers. In the Indian set up, the legislature and the executive do overlap, which leads to the President having a role in the Legislature as well. However, this role is limited.

#### **i. Assent to bills**

After being originated in either house, the ordinary bill, needs to be passed by the other house, and after getting the assent of the President, it becomes an Act. A requirement President’s approval can indicate the President having the ultimate authority, however, that is not the case.

A bill upon being sent to the President to receive his assent leaves with an option to either accept it in absolute, or, can also not assent to it, or even return the bill for reconsideration. However, once a bill is sent for reconsideration, the House has the discretion whether to make changes or not. After reconsideration, irrespective of making any change, the President is obligated to assent to it, giving much more discretion to the legislature.

This role is further limited when it comes to money bills. Though a recommendation of the President is required when it comes to introduction of the money bill, the President cannot send it for reconsideration and is mandated to assent to it. Moreover, he cannot exercise his veto power in case of a money bill.

## ii. Ordinances

Article 123 is a significant power that rests upon the President. This power allows the President to issue ordinances during a parliamentary recess when there is need of urgent legislation where a President is satisfied that immediate action is required.

The power to make ordinances though despite promulgation of an ordinance being a crucial responsibility it does not confer the President the power to completely exercise his discretion,

The ordinance passed is though considered in the same force as that of an actual law, it isn't permanent.

The ordinance passed by the President can be validated only till six months of its issuance. Furthermore, the Ordinance shall be presented to both the Houses within six weeks of their reassembly if not passed by both the houses within six weeks the ordinance expires.

Along with that the necessity of such an ordinance can be subject to judicial review.

This raises a question on the ability of the President to take decisions to deal with urgent matters and act in welfare of the State.

The limitations also extend to the fact that ordinances may not be repromulgated as it is considered an unconstitutional act and is considered a fraud on the Constitution as per the case of *Krishna Kumar Singh v. State of Bihar (2017)*<sup>1</sup> which again limits the scope of such power.

Though the President can make legislations in the absence of the Parliament sessions, it still isn't conferred upon the President to act his own discretion as the scope of this power is limited to a great extent, again making the President just a ceremonial head.

## 2. Executive

### i. Extent of powers

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<sup>1</sup> Krishna Kumar Singh & Anr. v. State of Bihar & Ors, 2017 3 SCC 1

Though the President is the Head of the Union and also serves an integral part of the executive, he cannot fulfil his role in absolute due to the restrictions put upon him. As the Head of State, the President's role is to exercise executive functions, however that itself is curtailed as his power only extends till then Parliament has power to make laws.

The limitation in the executive continues when even though the President is empowered to appoint the Prime Minister, he is obligated to summon the leader who has the absolute majority in the Lok Sabha as the Prime Minister, again curtailing his autonomy.

## ii. Intention of the Constitution framers

The President does discharge his functions but is subject to the aid and advise of the Prime Minister and the Council of Ministers, curtailing him to perform his intended role in efficiency.

The Constitution provides for the fact that the powers of the executive are vested in the President, however the same also imposes a restriction as the President can only discharge the said function as per the Constitution.

Furthermore, we can also infer that since India was meant to be a "parliamentary form of government", the executive role of the President was meant to be limited. We can substantiate it with the rationale of the Constitution makers.

B. R. Ambedkar stated, "*In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The letter of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the form of Government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government. What the Draft Constitution proposes is the Parliamentary system. The two are fundamentally different.*"<sup>2</sup>

## iii. Aid and advise

A "parliamentary form of government" compels the President to function on the aid and

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<sup>2</sup> Constituent Assembly Debates, Vol. VII

advise of the council of ministers. Understanding “aid and advise” gives further insights on understanding the limitation of the executive role of the President. “Aid and advise” under the British Parliament was used with the intention of making the cabinet the real head of the executive.

The Draft of the Constitution originally entailed that the President was ought to act on ministerial advice.<sup>3</sup> Even though this was removed, it was only done so after Dr. Ambedkar affirmed that non acceptance of the advice of the ministry would be violative of the constitution and could be impeached for the same.

Moreover, the limitation is to such an extent that if the aid and advise of the council of ministers is not adhered to, it vests the cabinet with the power to impeach him, under Article 61.

The binding nature of the “aid and advise” can be further inferred from this statement which reads "Although there is no specific provision in the Constitution itself making it binding on the President to accept the advice of his Ministers, it is hoped that the convention under which in England the King always acted on the advice of his Ministers would be established in this country also and the President would become a constitutional President in all matters."<sup>4</sup>

He also stated that "*His (President's) position is that of a constitution Then we come to the Ministers. They are of course to the legislature and tender advice to the President to act according to that advice.*"<sup>5</sup>

Moreover, Dr. Ambedkar remarked that "*the President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do anything without their advice.*"<sup>6</sup>

In the case of *Shamsher Singh v. State of Punjab*<sup>7</sup> (1974), the observation that was made

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<sup>3</sup> rau, op. cit., p. 3

<sup>4</sup> indian law institute, a plea for the study of powers of the President of india, july-september 1970  
<https://www.jstor.org/stable/43950083>

<sup>5</sup> 4 Ibid ., Vol. X, p. 988. Also see the similar views of Sardar Sir Alladi Krishnaswamy Aiyar, Ibid., Vol. VII, p. 986 ; K. S p. 965

<sup>6</sup> 9 Constituent Assembly Debates , Vol. VII,

<sup>7</sup> Shamsher Singh v. State of Punjab, 1974 AIR 2192

was “*For the foregoing reasons we hold that the President or the Governor acts on the aid and advice of the Council of Ministers with the Prime Minister at the head in the case of the Union and the Chief Minister at the head in the case of State in all matters which vests in the executive whether those functions are executive or legislative in character. Neither the President nor the Governor is to exercise the executive functions personally*”.<sup>8</sup>

The Constitution provides for the President being the Head and the Prime Minister and the Council of Ministers advising the President, however, in practice, it seems to be the reverse.

The statement given by Mr. Amin further substantiates the same. It reads that “*if the highest executive authority was to have the right to reject the advice of the Ministers, an exception was expressly created to the rule of ministerial advice.*”<sup>9</sup>

A contrary contention to this could be raised saying that the Constitution entails a provision which provides that the ministers’ tenure is at the “pleasure of the President”, however what needs to be ascertained is if it really is at the pleasure of the President or at the pleasure of the legislature.

The Indian Constitution has adopted the British Constitution's approach. Additionally, the clause stating that the Ministers must serve for the pleasure of the President comes before the clause addressing the Cabinet's shared accountability to the legislature. In this case, the principles of interpretation lay down that “*if the sections are repugnant, the known rule is that the last must prevail.*”<sup>10</sup> Thus, concluding the same.

#### **iv. Appointment**

The President is vested with the power to appoint the Prime Minister; however, his hands are tied in this as well. This is because, the President is obligated to appoint the leader of the political party that has received the absolute majority, in the Lok Sabha. It would be inconsistent for the President to indulge in any political rivalry, however, non-acceptance of the advice of the Prime Minister could amount to that.

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<sup>8</sup> Shamsheer Singh v. State of Punjab, 1974 AIR 2192

<sup>9</sup> See the opinion of Mr. Amin, former Advocate General of Bombay State, Link, (Weekly), New Delhi, Jan. 29, 1961.

<sup>10</sup> Ibid-, p. 162



Moreover, the provision stating that the Prime Minister ought to communicate all the decisions taken by the cabinet to the President, goes on to prove that the cabinet is the one taking the decision, and the President is only vested with the right to be informed.

This leads us to believe that in such the “parliamentary form of government”, even though the President is the “Head”, he is merely a figure head. The President’s roles have been confined and are being limited to merely giving assent. Inspired from the British, the title of the constitutional head given to the Monarch, was given to the President.

Prime Minister Nehru, while discussing on the Report on the Principles of Union Constitution made it amply clear that it was not intended to confer to the President with “real power”.

Through this we can infer that despite being the Head of the Executive, the role of the President was merely to be a “*cog in the mechanism*”.

#### **v. Diplomatic powers**

The President's diplomatic authority, is too, curtailed, due to the aid and advise of the Prime Minister and the Council of Minister comes into this as well. Furthermore, the legislature must also approve any treaties, rendering the President's position purely ceremonial.

#### **vi. Military powers**

Military Powers are also subjected to the same “aid and advise” as before declaring a war, the President ought to adhere to the advice given by the Prime Minister and Council of Ministers.

The fact that the executive is answerable to the legislative is the fundamental characteristic of a parliamentary system of government. The Indian Constitution also holds the council of ministers jointly responsible to the legislature. So long as the ministry has the support of the legislature, the President is helpless and lacks the authority to remove the minister, even when it is needed.

### **3. Judiciary**

#### **i. Appointment**

Within the judiciary, the President is vested with the responsibility of appointing the Chief Justice of India, however that too is ought to be done on the advice of the Prime Minister, along with the Union Law Minister. The procedure involves a recommendation done by the Union Law Minister to the Prime Minister, and then the Prime Minister advises the President.

The President appoints the Judges of the Supreme Court, however the same is done on the advise of the collegium. The collegium of the Supreme Court consists of 5 senior most judges, including the Chief Justice of India. The process of appointment is as follows, for judges of the SC, the proposal is initiated by the CJI.

The CJI consults the rest of the Collegium members, as well as the senior-most judge of the court hailing from the High Court to which the recommended person belongs.

The consultees must record their opinions in writing and it should form part of the file.

The Collegium sends the recommendation to the Law Minister, who forwards it to the Prime Minister to advise the President.

Indicating the President is again restricted when it comes to using his discretion.

The mandate on the advice of the collegium was elaborated in the case of *Supreme Court Advocates-on-Record Association and another v Union of India*, where it was held that “consultation” actually meant “concurrence”.<sup>11</sup>

This can further indicate that the President’s role, actually is merely restricted to administering oath to the judges, a symbolic responsibility.

In order to settle the age of the Judges of the High Court as well, the President ought to consult the Chief Justice of India first.

## CONCLUSION

*Is the said restriction beneficial or harmful?*

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<sup>11</sup> Supreme Court Advocates-on-Record Association and another v Union of India AIR 1994 SC 268

### **i. Democratic set up**

India is a union of states, a union of people, coming from different cultures, backgrounds, ethnicities, areas, caste, etc. Keeping that in mind, India has opted for a “parliamentary form of government” and has kept a democratic set up.

The government is of the people, by the people and for the people, indicating that the person carrying out functions, ought to be a representative chosen by them.

Moreover, in a country like India, conferring an authority with as much power and autonomy would hinder in the essence of democracy which it intends on following.

### **ii. Separation of powers**

Another aspect to this is separation of powers. In India, “separation of powers” indicates that the government is divided into the legislature, executive and the judiciary and these 3 organs are expected to function separately.

Therefore, a limitation in power with respect to assenting to bills and promulgation of ordinances is apt and needed as the Legislature is the law-making body and keeping separation of power in mind, the legislature is meant to have more discretion as compared to the President.

In countries where such separation of power is followed in rigidity, conferring the President with more powers and autonomy does make sense. However, India does not follow it in rigidity. This can be inferred from the case of *Indira Nehru Gandhi v Raj Narain*<sup>12</sup>, where it was stated that “*The rigid separation of powers as under the American Constitution or under the Australian Constitution does not apply to our country.*”

India does not follow it in rigidity as it focuses more on the principle of “checks and balances”. In a system of checks and balances, there is interdependence amongst the branches of the government. This system also ensures accountability and appropriate use of power.

### **iii. Checks and balances**

Therefore, making the executive responsible to the legislature and ensuring the President works

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<sup>12</sup> *Indira Nehru Gandhi v Raj Narain* 1975 AIR 2299

on the aid and advise of the Prime Minister and Council of Ministers is apt and beneficial for India as it ensures that the President, though the head of the state, still adheres to a system of checks and balances.

The system of aid and advise does affect the autonomy of the President, however, the entire purpose is to safeguard the democratic aspect of this country. The power is vested in the council of ministers, a group of individuals, rather than a sole authority. Moreover, anything decided by the cabinet goes through the Prime Minister, to the President, whose assent is required. This ensures that there is no misuse of power.

The purpose of this system can be understood by the remarks made by Nehru. He said, *“We prize the “parliamentary form of government” because it is a peaceful method of dealing with problems. It is a method of argument, discussion and decision, and of accepting that decision, even though one may not agree with it”*.<sup>13</sup>

These words alone dictate that limiting the role of the President by adopting a “parliamentary form of government” was intended, and the intention was a smooth functioning system that would benefit the country. This system also helped instill more responsibility upon the executive, which was one of the intentions of the framers of the Constitution.

#### **iv. Author’s opinions**

What we have understood through this research is that the entire purpose behind this mechanism is to prevent concentration of power in one individual itself. This set up provides for a more harmonious governance. This is simply because of the involvement of multiple people in execution and decision making. Restricting the role of the President is aimed at smooth functioning of the entire government. However, this does not imply that the President has no significant role.

The President is the referee of the parliament and when needed he can ask ministers to reconsider actions, offer them private advice and convey warnings. He also has the right to information as per *Article 78*<sup>14</sup> of the Constitution. This just goes on to say that the President

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<sup>13</sup> Ibid.

<sup>14</sup> The Constitution of India, Art 78

does have a role, an important one, it is just the level of discretionary powers that makes his responsibility limited.

Moreover, restriction does not mean complete abandonment of powers. The said restriction is imposed with a view that it will benefit this nation.