

## POSITION OF PRESIDENT IN FEDERAL INDIA BEFORE AND AFTER 42<sup>ND</sup> AND 44<sup>TH</sup> AMENDMENT

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### INTRODUCTION

Governmental policies, judicial judgements, and legislative legislation all have an impact on a nation's development and success. Every nation has a constitution that governs it. Because of its values, the Constitution serves as a supporting framework. This kind of scarcity might easily cause a nation's scale and classification to decline. In a country where there is administrative dominance, its existence and scope are constrained. Most well-liked countries, including India, support an indigenous superiority policy. Any government must adhere to the Constitution in order to function. Second, it creates a more level playing field by distributing power across the many state entities. It lays out public pretences like scholasticism and democratisation junction as its third goal. A person's fundamental moral rights, which are necessary for their existence, are also upheld. As a result, the Constitution leaves no space for interpretation in the event of an extreme circumstance or emergency.

### POSITION OF THE PRESIDENT

In accordance with the provisions of Article 53(1) of the Constitution, the executive power of the union shall be exercised either directly by the President or through persons who are subordinate to him. According to the second sentence of Article 74 of the Constitution, no court is allowed to investigate the matter of whether the President received any advice from the Ministers and, if they did, what kind of advice it was. According to Article 75(1) of the constitution, the President is the one responsible for naming the Prime Minister, and the President is also the one responsible for naming additional Ministers based on the Prime Minister's recommendations.

The President will have complete discretion over the Minister's work for them. Before the Constitution itself was revised in 1976, the 42nd Amendment Act was passed. In the case of *S. P. Gupta v. President of India and others*<sup>1</sup>, also known as the Judges Transfer case, the Supreme Court ruled that while the advice that is given to the President by the Council of

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<sup>1</sup> S P. Gupta v. President of India and others AIR 1982 Sc 149.

Ministers cannot be the subject of judicial investigation, the documents upon which such advice is based are not secret and can be examined by legal authorities. This decision was made in the context of the case that is also known as the Judges Transfer case. If these Articles are construed in a strictly literal and legal manner, it would appear that the President has the ability to force his will on the rest of the country. Article 53 (1) of the Constitution offers the President broad powers, allowing him to become a true ruler rather than merely the ceremonial head of state if he so chooses to exercise this power.

It is true that the President would have the assistance and advice of a Council of Ministers, which will be presided over by the Prime Minister, while he exercises his executive authority; nevertheless, previous to the 42nd Amendment Act of 1976, the Constitution did not expressly specify that the President would be bound by ministerial advice. This is because the Constitution did not explicitly state that the President would be bound by ministerial advice. Allen Gladhill contends that the Constitution may, in certain circumstances, grant dictatorial powers to the President of the United States. It is possible for him to immediately attain full executive powers and suspend the fundamental liberties envisioned in Part III of the Indian Constitution of 1950 if he dissolves parliament and declares a state of emergency. This will allow him to do so. In his function as Supreme Commander of the Armed Forces, the President possesses the authority to employ the use of military force in the fight against evil forces. Even if they don't violate the constitution, ambitious presidents have been known to usurp power and become de facto rulers of their countries.

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The contention made by **Dr. J.N. Pandey** is that a literal interpretation is incompatible with the underlying principles of the Constitution. The level of ambition that Allen Gladhill shows wouldn't be found in a usual presidential candidate. There can be no doubt that the Constitution chose to establish a parliamentary form of government as the basis for the nation's government. The premise that the actual executive work should be carried out by the Council of Ministers, which is accountable to the Lok Sabha, is vital to the parliamentary system of government. It is impossible for the President to carry out his responsibilities in the absence of the support and advice of the Ministerial Council. In other words, a Council of Ministers is required for the situation.

Even in the event that the Lok Sabha is dissolved, the Council of Ministers will continue to provide assistance and advice to the President. When defining the president's duty in the Constituent Assembly, Dr. B.R. Ambedkar asserted that the president under the Draught

Constitution occupies the same position as the monarch under the English Constitution. This was his explanation of the job of the president under the Draught Constitution. However, despite the fact that he does not serve as the head of the executive branch, he is still the president of the republic. Even though he speaks for the nation, he is not the actual head of state. He speaks for the entirety of the nation. In the executive branch, he is responsible for performing the ceremonial role of a component on a seal that communicates the will of the country. In many cases, he will be constrained by the ideas provided by the ministers. He is helpless to take action either against their advice or independently of it.

It is hoped that the convention under which the King of England always acted on the advice of his ministers will be established in this country, and the President will become the constitutional president in all matters, even though the Constitution does not specifically require the President to accept the advice of his ministers. Even while there is no provision in the Constitution that expressly requires the President to follow the advice of his ministers, this would still be the case even if there were such a provision. The role held by the President of India and the Governors under the Indian Constitution is equivalent to that of the British Crown under the parliamentary form of government, according to a number of decisions handed down by the Indian Supreme Court in recent history.

As a result of the court judgment known as *Ram JawayaKapur v. State of Punjab*<sup>2</sup>, the position of the President as the head of the executive branch of the government is now recognized as either constitutional or nominal. However, the true executive authorities are held by the Ministers and Cabinet as a whole.

As a result, the President continues to hold the position of the nominal or constitutional administrative head, while the Ministers or the Cabinet are the ones responsible for carrying out administrative responsibilities. This suggests that the President now also serves as the head of administration, elevating him to his current role. We have the same parliamentary executive structure as they do in England, and the Council of Ministers, which is made up of members of the legislature, acts as a hyphen, or a brace, that connects the legislative element of the State to the executive portion of the State. In other words, the Indian Constitution is quite similar to the English Constitution. To put it another way, the Council of Ministers functions as a belt that binds together the legislative and executive branches of the government. Because the cabinet holds the majority of seats in the legislature, it exerts a

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<sup>2</sup> Ram JawayaKapur v. State of Punjab AIR 1955 Sc 519

significant amount of influence over both the legislative and executive arms of the government.

In the case of *U.N. Rao v. Indira Gandhi*<sup>3</sup>, the Supreme Court of India declared that even if the Lok Sabha is dissolved, the Council of Ministers may continue to serve in their current capacities even if they are not elected. According to the provisions of Article 74(1) of the Constitution, the President is not permitted to use executive authority without first holding a consultation with the Council of Ministers and soliciting their advice. It is a violation of the Constitution for the government to use its authority without receiving such aid and guidance, as stated in the first sentence of Article 75 of the Constitution. The following is a list of the relevant factors in this particular case: After the Lok Sabha was dissolved, Prime Minister Indira Gandhi and her Council of Ministers continued to serve in their positions, despite the fact that there was no longer a legislative body. According to a decision made by the Supreme Court, the provisions of Article 75(3) of the Constitution, which define the idea of ministerial responsibility, need to be construed in connection with the requirements of Articles 74(1) and 75(2) of the Constitution. As a direct consequence of this, the interpretation of Section 75(3) of the Constitution will only be applicable in situations in which the House of Representatives is neither dissolved nor prorogued. If the House of Commons is dissolved, it is impossible to argue that the Prime Minister and other ministers are compelled to resign or face the possibility of being fired by the President. This is because the House of Commons no longer exists.

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In situations in which either the President or the Governor is required to act in accordance with the constitution, the Council of Ministers must also be satisfied. According to the Supreme Court, "Our constitution generally embodies the parliamentary or cabinet system of government on the British model, for both the Union and the States." This applies to both the federal government and the individual states. This is true not only for the individual states but also for the Union. In accordance with a fundamental principle of English constitutional law, ministers are obligated to take personal accountability for every executive act that is carried out in their ministries. The practical norm in England dictates that the monarch is required to seek guidance before accepting responsibility for his actions; this is where the sovereign's power originates. This is because the crown is responsible for the actions of the sovereign, which explains why this is the case. It is imperative that the House of Commons have faith in

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<sup>3</sup> U.N. Rao v. Indira Gandhi, UN Rao v. Indira Gandhi AIR 1971 SC 1002

the individuals providing these advisory services. This restriction, which is found in the English constitution, is likewise incorporated in our constitution for reasons that are comparable to those cited in the English constitution.

In the case of *Sardari Lal v. Union of India*<sup>4</sup>, the judgement was overturned by India's highest court, the Supreme Court. In this judgement, it was declared that "where the President or Governor, as the case may be, if satisfied, makes an order under Article 311(1) proviso (C), the President's or Governor's satisfaction is his personal satisfaction." The decision of the Indian Supreme Court to reject this interpretation was unanimous.

The Council of Ministers is required to account before the Lok Sabha for all of their actions. In the event that the President disobeys the advice of ministers who have the confidence of a parliament, the President can abdicate, which would result in a crisis in the constitutional order of the country. There is never any doubt that the President will convene a gathering of the Council of Ministers. If the same person wins a majority and then goes on to create a ministry, it will be difficult for the President to collaborate with the ministry.

2. Members of a ministry who have been fired by the President and who have the support of a majority of the Lok Sabha have the power to present an impeachment motion against the President. 3. A majority of the Lok Sabha must vote in favor of the impeachment proposal. The capacity to impeach serves as a check on the President's ability to amass genuine power within the government.

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Only with the approval of parliament is it possible to exercise the rights that pertain to taxation, legislation, and the distribution of funds from consolidated funds.

Since the implementation of the Constitution in 1950, it has been established that the President is only a figurehead and that the Council of Ministers is the actual holder of administrative authority. This distinction has been in place ever since.

#### **AFTER THE CONSTITUTION (42ND AMENDMENT) ACT, 1976**

As a direct result of this amendment, the role that the President plays under the Constitution of India has been more explicitly defined. They changed the wording of Article 74 of the Constitution so that the President is now obliged to take into account the recommendations made by the Council of Ministers. It stipulates that "There shall be a Council of Ministers, led

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<sup>4</sup> Sardari Lal v Union of India AIR 1971 SC 1547

by the Prime Minister, to assist and advise the President, who shall act in accordance with such advice in the exercise of his functions." The Prime Minister is the person who is in charge of the Council of Ministers. The Ministerial Council will operate under the Prime Minister's direction. The 42nd Amendment to the Constitution states that the President of the United States may not even act in the capacity of an advisor or guide to any other government official.

### **AFTER THE CONSTITUTION (44TH AMENDMENT) ACT,1978**

In accordance with the 44th Constitutional Amendment Act that was passed in 1978, Clause (1) of Article 74 was altered by the insertion of the following clause: However, the President is bound to accept the advice that is supplied once such reconsideration has occurred, and the President may ask the Council of Ministers to examine such advice, either generally or specifically. Once such reconsideration has occurred, however, the President may make such a request. As a result of this constitutional amendment, the President will no longer be required to proclaim a state of emergency based only on the recommendation of the prime minister serving at the time, without first conferring with her Council of Ministers, as was the case in 1975. Because of the declared emergency, the president was required to sign the proclamation, which led to the situation described in the previous sentence. It has been argued that the founders of the United States had no intention of using the President of the United States as a puppet when they wrote the Constitution. Despite the fact that it was made abundantly apparent that the president would serve as the legal head of the nation, the founders never intended for the president to be a mere spectator in the affairs of the nation.

In light of the constitutional oath that the Prime Minister must take to uphold, safeguard, and defend the Constitution and the law as well as to devote myself to the service and well-being of the people of India, the President of India is required to advise, direct, and exert some level of influence over the decisions that the Prime Minister makes. This requirement is in place to ensure that the President of India fulfills his or her constitutional duties. In point of fact, this is the central concept that underpins the Constitution, and it is hoped that those who are in positions of responsibility will always make an effort to uphold it. The 44th Constitution Amendment Act in 1978 confirmed the constitutional provision of the Indian Constitution that grants the President of India a limited but significant position. This provision was first introduced in 1950. Despite having low levels of public approval, the President of India continues to play an important part in the functioning of the Indian government. In India, the

position of president is revered for its association with national cohesion and harmony. If he were not around, the functioning of the government would be severely impaired. There is a strong possibility that the President has some kind of influence over the decisions made by the Prime Minister. This is due to the fact that the President is objective and does not participate in partisan politics. On the other hand, the impact of the President will be defined by the remarkable character, irresistible appeal, and selfless dedication to the welfare of the country that the President possesses.

R.K. Jain v. Union of India is the name of the case in which the Indian government maintained that it was within its rights to withhold information and records that were relevant to the recommendations that were given to the President of India by the Council of Ministers. The case was heard in a court in New Delhi. The court has decided that in order for documents to be eligible for this protection, they must deal with matters that are relevant to the state, and the publication of those records must be detrimental to the interests of the state, the public interest, or the general public. The court is in a position to examine the evidence and then decide whether or not it would be against the public interest to disclose the information, as well as whether or not the government has the legal right to argue that it is entitled to the privilege of hiding the records. The United States Supreme Court will have the final say in any and all cases.

If the court concludes that disclosure would not be detrimental to the interests of the state or of the general public and orders that disclosure takes place, then the ruling is legally obligatory, and ignoring the order would be deemed a contempt of court.

## **CONCLUSION**

The extraordinary 44th Amendment to the Indian Constitution was able to address the distortions that were generated by the 42nd Amendment in a significant way. Because of this, the modification was remarkable. It made modifications to the emergency provisions of the Constitution in order to prevent their use in the future for purposes that were not appropriate. Before the 42nd Amendment, the Supreme Court and the High Courts had the same amount of jurisdiction and authority as they do now, and this change brought them back into line. It reinstated the Constitution's dedication to democratic and secular principles.