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# Study of the Constitutional Powers Functions and Duties of the President of India

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**ABSTRACT:** The present research study is a doctrinal study. For the purpose of data collection, mostly the secondary sources have been used in the study. The literature available on the topic has been studied, analyzed and evaluated on the basis of cases decided by the Supreme Court of India, High Courts and foreign courts. The opinions of eminent constitutional law experts have also been collected from their published works and analyzed in reaching to the logical conclusions. Ample literature contained in various Law journals, Constituent Assembly debates, Parliamentary debates, and biographies of former Presidents and Prime Ministers, newspapers, magazines and reports available in various law libraries have also been used in this research work. The data thus collected has been interpreted and analyzed and made use of in presenting the research report.

**KEYWORDS:** Constitution, President, Council of ministers.

### I. INTRODUCTION

Under the Constitution of India, the President is the head of the Union who has been vested with a long list of powers and functions which he generally exercises on the aid and advice of the Council of Ministers headed by the Prime Minister as the country has adopted the Parliamentary form of Government on the lines of the Westminster model of Parliamentary Government prevailing in the United Kingdom. There is hardly any Constitution in the world which vests such a wide range of powers and functions in its Head of State.

#### 1.1 Prefatory

The powers of the President of India cover the entire field of activities of the Union Government like executive, legislative and judicial powers and functions. Apart from Article 53 of the Constitution which vests in the President all executive powers of the Union including the supreme command of the defence forces of the Union, there are several other provisions in the Constitution which mention specific powers and functions of the President. For instance, the Constitution of India vests in the President the power to grant pardon and remit punishments. The executive actions of the Union Government are expressed to be taken in the name of the President. All important appointments in the Union Government are made by the President including those of the Prime Minister and other Union Ministers, Governors, Judges of the Supreme Court, and the High Courts. Chairman and Members of the Union Public Service Commission, the Attorney General, the Chief Election Commissioner and other Election Commissioners, and the Comptroller and Auditor General of India. The President also appoints the Finance Commission, National Commission for the Scheduled Castes and Scheduled Tribes and other Commissions which would report on the administration of the scheduled areas and investigate the conditions of socially and educationally backward classes and on official language. Wide powers are given to the President in an Emergency including the power to suspend the enforcement of Fundamental Rights of the people of the country. The legislative power extends to the President issuing of Ordinances during the recess of Parliament. The President can make regulations for the peace, progress and good Government of the Union Territories. Every Bill passed by the Parliament requires President's assent to become a law. The President can also refuse his assent to a Bill or send it back for reconsiderations to the Parliament. The President dissolves the

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Lok Sabha, convenes joint session of both Houses of the Parliament, and addresses or sends messages to either or both of them. No money can be granted unless recommended by the President nor can Money Bills be introduced in the Lok Sabha except on his prior recommendation. Bills passed by the State Legislatures may also be reserved by the Governors of the respective States for President's consideration and a Bill affecting the powers of the High Courts must always be reserved for President's consideration. State laws relating to certain matters are not to be effective unless assented to by the President. President's previous sanction to the introduction of a Bill imposing restrictions on trade and commerce in the State Legislatures is necessary.

## II. HISTORICAL PERSPECTIVE

### II.I Governor-General of India

According to the Government of India Act, 1919, superintendence, direction and control of civil and military Government of the country was vested in the Governor-General in Council, who was required to pay due obedience to all such orders as he might receive from the Secretary of State from time to time. All the decisions of the Council, as before, were to be taken by majority though the Governor-General could overrule the majority, if in his opinion a matter affected "*the safety, tranquility or interests of British India*". No specific provision was made for the inclusion of any Indian in the Council. Similarly, there was no provision that the Executive will be responsible to the Legislature. Basically, the Governor-General of India was a British officer responsible to the Secretary of State for India. He did not represent the responsible Government. He only represented the British monarch on Indian soil and his sole purpose was to strengthen the roots of British regime in our country rather than protecting the interests of the Indian people.

### II.II Executive Powers of the Governor-General

The Governor-General used to exercise vast powers in the field of administration, legislation and finance. He was at the apex of the Government hierarchy and was vested with the superintendence, direction and control of the civil and military administration of the country. Even in cases of appointments made by the Secretary of State, the Governor-General was normally consulted and his recommendations were usually honoured and followed by the British Government.

The position of the Governor-General as British monarch's representative gave him a unique status. He used to exercise the delegated prerogative powers of the monarch. He was directly in charge of India's relations with foreign countries and of the British India with the Indian States. He was the main link between British India and the Indian princes.

The Governor-General was not subject to the jurisdiction of the Courts of Law in India. He was also empowered to exercise the pardoning power which is conferred on the Head of the State. He also used to confer titles and honors on the people. So, in practice he was the Head of the State.

### II.III Legislative Powers of the Governor-General

The Governor-General was also vested with wide legislative powers. He had the power to summon, prorogue and dissolve both Houses of the Central Legislature. He was also empowered to extend the term of the Houses of the Central Legislature in certain circumstances on his own discretion. Before the Montford Reforms, the Governor-General was also the ex-officio President of the Imperial Legislative Council. The Government of India Act, 1919 took away this privilege from him but authorized him to address the members of both the Houses of the Central Legislature.

The prior-sanction of the Governor-General was required for introducing Bills of a large number of categories. He had the power of preventing the consideration at any stage, of a Bill or any part of a Bill in any House of the Legislature, if in his opinion, it "affected the safety or tranquility of British India or any part thereof."

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The Governor-General was also empowered to certify measures in cases where any House refused leave to introduce or failed to pass in a form recommended that the passage of the Bill was “essential for the safety, tranquility or interests of the British India or any part thereof.”

On such Certificate being furnished, a Bill could become an Act of the Indian Legislature notwithstanding the refusal of any House of the Central Legislature. Every Act so passed required the Royal assent of his Majesty, which could not be given until copies thereof had been laid before each House of the British Parliament for not less than eight days on which that House had sat.

The Governor-General was also empowered to issue the Ordinances for the peace and good government of British India or any part thereof. In cases of Emergency, an Ordinance issued by the Governor-General was to have the same legal force as given to an Act passed by the Indian Legislature for a period of not more than six months from the date of its promulgation.

The Governor-General had the power of returning any Bill passed by the two Houses of the Central Legislature for their reconsideration before giving his assent or dissent. Finally, Governor-General's assent was essential for the enactment of a law by the Indian Legislature. He had the power to give his assent to or reserve the Bill for the signification of His Majesty's pleasure on the same.” The British monarch had the power of disallowing any Act made by the Indian Legislature or the Governor-General. The Joint Select Committee had made it clear that the veto power of the Governor-General was real and meant to be exercised. It was actually exercised on many occasions.

## II.IV Financial Powers of the Governor-General

The Governor-General had wide financial powers also. He caused the Annual Financial Statement to be laid before the Legislature. No proposal for the appropriation of any revenue or money for any purpose could be made without Governor-General's recommendation. In case of Emergency, the Governor-General had the power to authorize such expenditure which was necessary, in his opinion, for the safety or tranquility of British India or any part thereof. A large number of heads of expenditure were “protected” from, and “non-votable” by the Legislature, which were not even open for discussion in any House of Legislature, unless the Governor-General otherwise directed.

It is noteworthy that about eighty percent of the Indian Budget was non-votable, meaning, thereby that the Governor-General could order expenditure against items covered by it without getting the approval of the Legislature. Not only this, even with regard to votable items, he had the authority to restore any demand not approved by the Legislature merely by certifying that the expenditure was necessary for the discharge of his responsibility in respect of that particular subject. This power of the Governor-General made him virtually the complete master of Indian Exchequer.

## II.V Governor-General's Executive Council

In the exercise of vast powers as mentioned above, the Governor-General was advised and assisted by his Executive Council which dates from the Regulating Act. Members of the Executive Council were appointed by the British monarch on the advice of the Secretary of State for India. Their tenure of office was fixed at five years subject to reappointment. For the convenient disposal of the Government's business, the Executive Council used to work on the departmental system. The portfolios were distributed among the Executive Councilors by the Governor-General.

## III. JUDICIAL APPROACH

On 26th November 1949, the Founding Fathers gave us a written Constitution with independent Judiciary for protecting the Fundamental Rights of the people and interpreting the Constitution and the laws. In this Constitution, they established the Parliamentary form of Government on the lines of the Westminster system in which the Head of State is a constitutional head of the Government and the real powers are exercised by the Cabinet headed by the Prime Minister. In our Constitution the President is a creation of the Constitution and derives all his powers and functions from the Constitution and is required to act within the four corners of the Constitution as mandated under Article 53 and 74 of the Constitution. The President exercises his powers and functions on the aid and advice of the Council of

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Ministers with the Prime Minister at its head and in practice the decisions taken by the Council of Ministers are binding on the President. The President can just ask the Council of Ministers to reconsider its decisions once but thereafter he is bound to accept the reconsidered decisions of the Council of Ministers.

The Supreme Court of India has clearly observed that the President is always bound to have a Council of Ministers even if the Lok Sabha is dissolved and he cannot exercise his powers and functions without the aid and advice of the Council of Ministers. The logic behind this theory is that the Constitution has envisaged the Parliamentary form of Government in the country and in that system the Council of Ministers headed by the Prime Minister is collectively responsible to the Lok Sabha, the popular chamber of Parliament, and only the Lok Sabha has power to make or unmake the Governments. The Council of Ministers gets a periodical mandate from the people who are sovereign and the President does not receive any such mandate to rule the country. Therefore, the President is not responsible to the Parliament.

The Indian Government is constitutionally controlled and is bound to act as per the constitutional norms and principles as the Constitution is the supreme law of the land in India. The Supreme Court and the High Courts are competent to exercise the power of judicial review for testing the validity of Government's actions. The Constitution accords a dignified and crucial position to the Judiciary. Judicial review in India is based on the assumption that the Constitution is the supreme law of the land, and all governmental organs, which owe their origin to the Constitution and derive their powers from its provisions, must function within the framework of the Constitution, and must not do anything which is inconsistent with the provisions of the Constitution. In the process of judicial review, if the writ courts find that the Government has taken any action in violation of the Constitution, the same can be declared unconstitutional and can be set aside accordingly. Articles 32 and 226 of the Constitution are the important tools for exercising the power of judicial review, which the Supreme Court has held as a part of the basic structure of the Constitution, not to be abrogated even by the Parliament by way of amendment under Article 368 of the Constitution.

Judicial review is in full swing in our country and the Government carries on the administration carefully to avoid any judicial scrutiny. All organs of the Government such as the Executive, the Legislature and the Judiciary are required to act within the four corners of the Constitution and in case any one of them violates the provisions of the Constitution, that act may be declared unconstitutional by the writ courts exercising the power of judicial review under Articles 32 and 226 respectively. Although the President holds immunity from judicial proceedings under Article 361 of the Constitution, the validity of the Presidential actions is subject to judicial scrutiny. The President cannot be made a party to the legal proceedings, but the Government would have to defend the President's action in the court of law. Article 361 of the Constitution does not empower the President to go beyond the Constitution. In fact, if the President violates the Constitution, he may be impeached by the Parliament under Article 61 of the Constitution.

Article 141 of the Constitution provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India while Article 142 is an important tool in the hands of the Supreme Court for doing complete justice between the parties in matters pending before it and Article 142 cannot be diluted even by a legislation. Under Article 141 of the Constitution, the Supreme Court not only declares the law but during the interpretation process of the Constitution and the laws, sometimes it also makes the law which is generally called the judge-made law in the jurisprudential sense. The law declared by the Supreme Court becomes the law of the land and the judgments of the Supreme Court constitute the source of law. However, the Supreme Court is not bound by its own judgment and can overrule its previous judgments as and when required. Some notable examples of the judge-made law are found in our Constitutional Law and the doctrine of basic structure propounded by the Supreme Court in the *Kesavananda Bharathi v. State of Kerala* is one of the finest examples of the judge-made law in our country which has protected the constitutional identity and dignity.

As stated above, the law declared by the Supreme Court is binding on all courts and is to be obeyed by all authorities, civil as well as judicial as per the mandate of Article 144 of the Constitution. Since the commencement of the Constitution, the Supreme Court and different High Courts have delivered a number of judgments relating to the issue

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of constitutional powers, functions and position of the President, and some of them have ultimately become the law of the land such as *Shamsher Singh case*, decided by a Constitution Bench of seven Judges unanimously. Now the *Shamsher Singh judgment* is the best authority on the matter relating to the constitutional position of the President of India and is being followed by the courts of law regularly since its inception. As per Article 141 of the Constitution, this ruling is the most celebrated and accepted ruling on the issue of constitutional position of the President of India.

This is a matter of fact that right or wrong, whatever judgment is pronounced by the Supreme Court, that is binding on all courts and become the law of the land though there is no guarantee that the judgments of the Supreme Court may not be wrong. Whenever a researcher examines and analyzes the judgments of the Supreme Court, a number of discrepancies may be found. The matter pertaining to the constitutional position of the President has also seen many ups and downs in the judicial circle and different kind of interpretations have been received on this issue from time to time.

The present discussion aims to examine and analyze the judicial approach particularly the judgments of the Supreme Court about constitutional position and powers of the President of India critically to assess the issue properly.

*U. N. R. Rao v. Indira Gandhi*, is a landmark judgment of the Supreme Court relating to the concept of the Parliamentary Government system in our country. In this judgment, the Supreme Court clearly observed that in the Indian constitutional scheme the President cannot act without the aid and advice of the Council of Ministers, even if the Lok Sabha is dissolved, and the President is always bound to have the Council of Ministers to aid and advise him in the exercise of his functions as mandated under Article 74(1) of the Constitution.

In this case, the appellant had applied for a writ of quo warranto and for a declaration that the respondent, that is, Mrs. Indira Gandhi, had no constitutional authority to hold the office of and to function as the Prime Minister. The Madras High Court had dismissed the petition and the appeal was filed before the Supreme Court with Certificate. The appellant argued that the moment the Lok Sabha was dissolved by the President under Article 85(2) of the Constitution, the Council of Ministers ceased to hold office. This argument was further sought to be reinforced by Article 75(3) of the Constitution which provides that the Council of Ministers shall be collectively responsible to the Lok Sabha. How the Council of Ministers could be responsible to the Lok Sabha when the latter had been dissolved, the appellant contended strongly. The appellant also contended that the President can run the Government with the help of advisers to maintain the continuity as he is authorized for doing so under Article 53(1) of the Constitution where he can exercise the executive power either directly or through officers subordinate to him.

A five-Judge Constitution Bench of the Supreme Court unanimously held that Articles 74 and 75 of the Constitution establish the Parliamentary form of Government in the country and the President is only a formal or constitutional head of the Union Government who has to act on the aid and advice of the Council of Ministers with the Prime Minister at the head in the exercise of his powers and functions and the President is always bound to have a Council of Ministers even if the Lok Sabha is not in existence, that is, it is dissolved. The Supreme Court clearly stated that the President cannot exercise the executive powers without the advice of the Council of Ministers and if he does so, it will be unconstitutional and will be liable to be set aside by the court of law. Delivering the unanimous judgment of the Supreme Court, Chief Justice Sikri observed:

Article 52 provides that there shall be a President of India and Article 53(1) vests the executive power of the Union in the President and provides that it shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. The last five words are important in as much as they control the President's action under Article 53(1). *Any exercise of the executive power not in accordance with the Constitution will be liable to be set aside*. There is no doubt that the President of India is a person who has to be elected in accordance with the relevant provisions of the Constitution but even so he is bound by the provisions of the Constitution.



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Further, C. J. Sikri went on to add:

It will be noticed that Article 74(1) is mandatory in form. We are unable to agree with the appellant that in the context the word “shall” should be read as “may”. Article 52 is mandatory. In other words ‘there shall be a President of India’. So is Article 74(1). The Constituent Assembly did not choose the Presidential system of Government. If we were to give effect to this contention of the appellant we would be changing the whole concept of the Executive. It would mean that the President need not have a Prime Minister and Ministers to aid and advise in the exercise of his functions. As there would be no ‘Council of Ministers’ nobody would be responsible to the House of the People. With the aid of advisers he would be able to rule the country at least till he is impeached under Article 61.

It seems to us that we must read the word “shall” as meaning “shall” and not “may”. If Article 74(1) is read in this manner the rest of the provisions dealing with the Executive must be read in harmony with it. Indeed they fall into place. Under Article 75(1) the President appoints the Prime Minister and appoints the other Ministers on the advice of the Prime Minister, and under Article 75(2) they hold office during the pleasure of the President. The President has not said that it is his pleasure that the respondent shall not hold office.

## IV. THE PRESIDENT OF INDIA AND THE COUNCIL OF MINISTERS: EXERCISE OF CONSTITUTIONAL POWERS AND FUNCTIONS

### IV.I The President of India: A Constitutional Head

Article 1(1) of the Constitution of India brings into existence a new constitutional entity which is to be a Union of States, later briefly called the Union. The Union of India is the State which is in the nature of a Corporation sole. Part V of the Constitution of India describes the Union and its components such as the Executive, the Legislature and the Judiciary. Except as to the legislative power of promulgating Ordinances during the recesses of Parliament, the President of India is a part of the Union Executive only. He is naturally not a part of the Union Judiciary. He is a part of the Union Parliament only in the sense that he has to give assent to the Bills passed by the Parliament before the Bills become law. Otherwise, the President of India is concerned exclusively with the executive affairs. Probably because the Union of India is a legal entity constituting the State as a whole which may sue or be sued as such under Article 300 of the Constitution, a different entity, namely, the President of India has been created by the Constitution to represent the Union Executive just as Parliament and the Supreme Court represent the Legislature and the Judiciary of the Union.

The President is the head of the state and the executive power of the Union of India is vested in the President which he may exercise either directly or through officers subordinate to him in accordance with the Constitution. The Ministers are officers subordinate to the President. The supreme command of the defence forces of the Union is also vested in him and its exercise is regulated by law. In other words, the military power of the President is exercised by the Defence Minister as per the rules of business of the Union Government framed by the President under Article 77(3) of the Constitution on the advice of the Prime Minister.

The expression “*the Government of India*” is used at times for the State as a whole, e.g., in Article 300, and sometimes for the Union Executive and Parliament but not the Judiciary, e.g., in Article 12 of the Constitution. Moreover, the Government is too impersonal, indeterminate and fluctuating a body to be incorporated. This is why perhaps the institution of the President was devised as another corporation sole to represent the Union Executive. This has obvious advantages. A democratic Government constituted by the Council of Ministers for the time being is always liable to change. One Government may go out of office and another may come in the Centre. There can be no vacuum interregnum at any time when no Government exists in the Centre. To ensure the continuity of the Government, therefore, it was felt necessary to have the Head of the State in the form of the President of India just as they have the Constitutional monarch in England. Existence of the President under Article 52 of the Constitution is mandatory. So, is the existence of the Council of Ministers headed by the Prime Minister and the President cannot exercise his powers and functions without the advice of the Council of Ministers. If the President exercises his powers without ministerial advice, the same can be struck down by the courts of law.

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## IV.II Supreme Court of India's view

The Supreme Court of India has also applied its mind to the controversy pertaining to the constitutional position of the President of India on a number of occasions and it has consistently taken the view that the powers of the President of India are similar to the powers of the Crown under the British Parliamentary Government system. In *Ram Jawaya Kapur v. State of Punjab*, Mukherji, C.J., on behalf of a Constitution Bench of the Supreme Court stated that the Constitution of India has adopted the British Parliamentary system of Government, that the President is only a formal or constitutional head of the Union Government and that real powers are vested in the Ministers or the Cabinet. Mukherji, C.J., further observed:

In India, as in England, the Executive has to act subject to the control of the Legislature; but in what way is this control exercised by the Legislature? Under Article 53(1) of our Constitution, the executive power of the Union is vested in the President but under Article 74 there is to be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The President has thus been made a formal or constitutional head of the Executive and the real executive powers are vested in the Ministers of the Cabinet.

In *U. N. R. Rao v. Indira Gandhi*, the Supreme Court has clearly observed that the conventions prevailing in Britain governing the relationship between the Crown and the Ministers are very pertinent to the Indian Constitution as well, and the formal provisions of the Indian Constitution should be read in the light of those conventions. The Court observed:

The Constituent Assembly did not choose the Presidential system of Government.

In *R. C. Cooper v. Union of India*, the Supreme Court stated that:

Under the Constitution, the President being the constitutional head, normally acts in all matters including the promulgation of an Ordinance on the advice of his Council of Ministers. Whether in a given case the President may decline to be guided by the advice of his Council of Ministers is a matter which need not detain us.

## Individual Responsibility of Ministers

In addition to collective responsibility, every Minister is also responsible individually in certain cases. He must answer all Parliamentary questions on a given subject. The Supreme Court observed that an individual Minister is responsible to the Legislature for every action taken or omitted to be taken in his Ministry. This again is a political responsibility and not a personal responsibility. He is also responsible even if the decision is of the Council of Ministers, but his colleagues choose to fix blame on him.

In England, though the action of Sir Samuel Hoare who concluded the Hoare-Laval Pact in his individual responsibility, but whose action was later approved by the Cabinet, had to resign because he did not agree to disavow his action.

In India, the convention regarding ministerial individual responsibility in the first sense is followed. It is difficult to say whether the second meaning of this convention will be accepted in India. A Minister is responsible for his mistakes and he will have to resign for the same. It is not necessary that the entire Cabinet should resign along with him. Mr. T.T. Krishnamachari who was Finance Minister had resigned, because certain mistakes were committed by his subordinates. Recently Mr. Raja resigned from the UPA Government on the question of irregularities in the allocation of 2 G spectrum and later he was also booked under the Prevention of Corruption Act. However, this is not a hard and fast rule. The Cabinet may support such a Minister. Keeton observed, "faced with the problem of what to do when an individual Minister's actions are likely to be criticized in Parliament, the Cabinet must decide which course will do the greater damage to the Government to accept the full responsibility and let the odium fall on the Government as a whole, or suffer the shock of the amputation of the offending member. What the Cabinet cannot, however, do is to retain the Minister but contend that the responsibility is all his".

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## **Constitutional Powers and Functions of the President of India**

The office of the President has been established under Article 52 of the Constitution of India. Under Article 53 of the Constitution, the executive power of the Union is vested in the President which he can exercise either directly or through officers subordinate to him in accordance with the Constitution. The Ministers are officers subordinate to the President. There is a Council of Ministers with the Prime Minister at its head to aid and advise the President in the exercise of his functions and the President is required to act according to the advice of the Council of Ministers. The Council of Ministers is collectively responsible to the Lok Sabha. The Prime Minister and other Ministers are appointed by the President. The Ministers hold office during the pleasure of the President. Articles 53, 74 and 75 of the Constitution constitute the very core of the governing structure of the country. The Constitution has envisaged the Parliamentary form of Government in the country based on the British Parliamentary system where the head of the State is a constitutional head of the Government and on the same pattern the President of India is also intended to be the constitutional head of the Government who has to act on the aid and advice of the Council of Ministers headed by the Prime Minister in the exercise of his powers and functions. The Constitution has conferred vast powers and functions upon the President which he exercises on the aid and advice of the Council of Ministers as per the mandate of Article 53 of the Constitution.

## **V. CONCLUSIONS**

1. It is well-established that the Constitution of India has envisaged the Parliamentary form of Government in the country based on the British Parliamentary system of Government under which the Monarch is a formal head of the Government and the real powers are exercised by the Cabinet headed by the Prime Minister as per the mandate of the responsible Government theory. Article 75 (3) of the Constitution of India has also incorporated this theory of responsible Government which makes the Council of Ministers collectively responsible to the Lok Sabha and the Council of Ministers headed by the Prime Minister is the real governing body of the Union Government.
2. Based on the British Parliamentary model, a formal head of the Government has also been established under Article 52 of the Constitution in the form of the President of India. The President is intended to be analogous to the British Monarch in terms of powers and position. The Constituent Assembly debates clearly reflect that the President is required to act on the advice of his Council of Ministers in the exercise of his powers and functions. Under Article 74(1) of the Constitution, a Council of Ministers headed by the Prime Minister has been established to aid and advise the President in the exercise of his functions. The President is always bound to have a Council of Ministers even if the Lok Sabha is dissolved and he cannot exercise his powers and functions without the advice of the Council of Ministers. The Constitution does not confer any specific discretionary power upon the President under Article 74(1).
3. Under Article 53(1) of the Constitution, the executive power of the Union is vested in the President who is required to exercise that power either directly or through officers subordinate to him in accordance with the Constitution. Clause (2) of this article also makes the President, the supreme commander of the defence forces of the Union, but like other powers, this military power of the President is also regulated by the law. In other words, the military power of the President is made subject to the general executive power under Article 53(1) of the Constitution. Thus, war power conferred on the Parliament would enable it to give directions to the President as to the exercise of the power of command of the defence forces and the power to carry on a military campaign. The President cannot declare war on his own discretion, without the aid and advice of the Council of Ministers.
4. The President of India is generally compared with the British Monarch but there are certain fundamental differences between the two institutions. In some respects the position of the President of India cannot be compared to that of the British Monarch, because the President of India is an elective, and the Monarch a hereditary office. Nor would it be correct to say that the President embodies the unity of India in the same sense in which the Monarch embodies the unity of the United Kingdom, because holding a hereditary office, the Monarch is, by convention, above and outside political controversy; whereas, election to the office of the President may involve, and has in fact involved, intense and bitter



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party strife since the President stands as the candidate of a political party, or a combination of political parties. Secondly, the important part played by the Monarch in the United Kingdom is due partly to historical causes, partly to the sentiment of loyalty and respect which have grown with the years, and partly to the fact that Governments come and go, but the Monarch, remains a constant figure, so that the accumulated experience of the Monarch enables him to play a part which the President of India cannot play because his office is elective and lacks the continuity and stability of an hereditary office.

## REFERENCES

1. Alexandrowicz, C.H., Constitutional Development in India, Oxford University Press, 1957
2. Amery, L.S., Thoughts on the Constitution, Oxford University Press, London, 1956
3. Anand, C.L., The Government of India Act, 1935, the University Book Agency, Lahore, 1944
4. Anson, The Law and the Custom of the Constitution, 1935
5. Austin, Granville, The Indian Constitution: Cornerstone of a Nation, Oxford University Press, Bombay. 1972
6. --- Working a Democratic Constitution: The Indian Experience, Oxford University Press, New Delhi, 2000
7. Bagehot, W., English Constitution, Oxford University Press, London, 1952
8. Banerjee, A.C., The Making of the Indian Constitution, A. Mukherjee & Co., Calcutta, 1948
9. The Constitution of the Indian Republic, A. Mukherjee & Co., Calcutta, 1950. Barthlemy, J., Government of France, George Allen and Unwin Ltd., London, 1924 Basu, D.D., Commentary on the Constitution of India, LexisNexis Company, 2008 Batra, M.S., Memoirs of Giani Zail Singh, the Seventh President of India, Har Anand Publications, New Delhi, 1996
10. Bogdanor, V., The Monarchy and the Constitution, Oxford University Press, 1995 Brogen, D.W., The American Political System, Hamish Hamilton, London. 1941 - The Government of the People. Hamish Hamilton, London, 1941 Carter, M.G. and Ors., The Government of Great Britain, World Press, Calcutta, 1953
11. Chalmers, Delzell, Outlines of Constitutional Law. Sweet and Maxwell Ltd., London, 1930
12. Chambers and Hood Phillips, Constitutional Laws of Great Britain, Sweet and Maxwell Ltd., London, 1946