

THE EXECUTIVE : THE PRESIDENT AND THE GOVERNOR

10.1 INTRODUCTION

You have studied in Lesson No. 5 that India has adopted a parliamentary form of government. In a parliamentary system, the executive is of two types : **nominal** and **real**. The nominal executive is one who does not exercise power but in whose name power is exercised. In contrast, the real executive effectively exercises the power in a parliamentary system. In India, the President is nominal or constitutional executive or ceremonial head because all the executive powers of the Union Government are vested in him by the Constitution while the Council of Ministers, headed by the Prime Minister constitutes the real executive because the President exercises all his powers and performs all his functions with the aid and advice of the Council of Ministers.

The parliamentary system also envisages that the ministers who constitute the real executive are not only taken from the legislature but are also responsible to it. In India, the Council of Ministers as the real executive, are the members of the Parliament and is collectively responsible to the Lok Sabha, the lower House of the Parliament.

In the Indian federal system, the executive at the State level generally follows the central pattern. It consists of the Governor as the nominal constitutional head, and the Council of Ministers headed by the Chief Minister as the real head of the state. As at the Union level, the Council of Ministers in the State is collectively responsible to the lower House of the State Legislature.

10.2 OBJECTIVES

After studying this lesson, you will be able to :

- distinguish between the nominal and real executive in a parliamentary democracy.
- describe the methods of election of the President;
- recall the privileges, immunities and method of removal of the President;
- explain the executive, legislative and financial powers of the President and recognise the fact that all his powers are exercised by the Council of Ministers;

- identify the special prerogatives like the power of pardon of the President as the Head of the State;
- assess the necessity of a Constitutional head in a parliamentary system;
- appreciate the importance of the President as the symbol of unity of the State;
- recognize the fact that the President has the right to be consulted, to warn and to encourage the ministers;
- explain the role of the Vice-President in the Indian political system;
- describe the appointment of the Governor, his/her qualifications, tenure, emoluments and privileges;
- identify and explain the executive, legislative, financial and discretionary powers of the Governor.

10.3 QUALIFICATIONS AND ELECTION OF THE PRESIDENT

(i) Qualifications

The President of India is indirectly elected. The qualifications necessary for the office of the President are:

- (i) A person should be a citizen of India;
- (ii) He should have completed the age of 35 years;
- (iii) He should be qualified for election as a member of the Lok Sabha; and
- (iv) He should not hold any office of profit which means that the candidate contesting the post of the President should not be a government servant. However, the office of the President, the Vice-President, the Governor or the minister of the Union or the State is not considered the office of profit for this purpose.

The candidate for the office of President has to have the qualifications necessary for a member of the Lok Sabha; but he cannot remain a Member of Parliament after his election as the President.

(ii) Election Procedure

India is a Republic. This means that the head of the State, i.e. the President is elected by the people. But the election of the President is not direct; it is an indirect election, indirect because he/she is elected by an electoral college. The election is held in accordance with the system of proportional representation by means of the single transferable vote. This system has been explained in details in Lesson No. 17.

The detailed procedure of the Presidential election is explained below: There are two components of electorals which constitute the Presidential electoral college. These are:

- (a) the elected members of the both Houses of Parliament which means elected members of the Lok Sabha and the Rajya Sabha;
- (b) elected members of the Legislative Assemblies of all the States. The nominated members, in any Legislative body, however are not entitled to participate, in the election of the President. Members of the State Legislative Councils are not members of the Electoral College.

The framers of the Constitution had thought, and this is included in the Constitution as well, that

- (1) there should be, as far as possible, uniformity of representation of the different States at the election, and
- (2) there should be parity between the Union, on the one hand, and all the States, on the other, in terms of votes. This explains that the President, through his/her election, would represent the country as a whole. Indeed, every member of the Presidential electoral college casts one vote, but this vote would have the value of several votes.

To obtain parity between the votes of the elected members of the Parliament on the one hand and the elected members of the Legislative Assemblies of all the States on the other, first the number of votes of each member of State Legislative Assembly is determined which is done through a formula given below, and thereafter the number of votes of each member of the Parliament is determined according to the second formula given below. When the same or nearly the same number of votes are given to the members of the Parliament, we are able to maintain parity between the Parliament and the States in terms of votes. By dividing the total number of votes of the Parliament with the number of members of the Parliament, we get the voting value of each member of the Parliament.

At every stage when the remainder is less than half with which is divided, nothing is added to the quotient. But when the remainder is more than half, one more vote is added to the quotient.

We can explain the procedure of the Presidential election in the following manner:

Formula 1

Number of votes of a member of the Assembly

$$= \frac{\text{Population of the State}}{\text{Number of the members of the Assembly of that state}} + 1000$$

Let us suppose that the population of Uttar Pradesh is 8,83,41,444 the total number of members of the Uttar Pradesh Legislative Assembly is 425, the number of votes of one member of U.P. Assembly would be:

$$= \frac{8,83,41,444}{425} + 1000 = 208$$

Thus each member of U.P. Assembly will have 208 as value of his/her vote.

The further division of the quotient by 1000, as stated above, is done so as to reduce the multiplication into a manageable figure.

From the above, it is clear that the votes of one member of the Uttar Pradesh Legislative Assembly are determined at 208 in the Presidential election and the total number of votes to be cast by all the members of the Assembly would be : $208 \times 425 = 88,400$.

It is easy to obtain, through this formula, the votes of one member of the Legislative Assembly and thereafter of total number of votes to be cast by all the MLAs of the other States one by one. When we add up the votes of all the Legislative Assemblies cast in the Presidential election, we know the number of votes to be cast by the States Legislative Assemblies. The total number of votes cast by the members of all the Legislative Assemblies was 5,44,971 during the 1992 Presidential election. What is to be noted is that all the members of the Legislative Assembly of a particular State get the same number of votes in the election of the President. Clearly the votes of two MLAs of different States would

have varying numbers of votes. If, for example, one MLA of the Uttar Pradesh Legislative Assembly has 208 votes, every other MLA of that Legislative Assembly would also have 208 votes in the Presidential election. Likewise, if a member of the Orissa Legislative Assembly has say, 110 votes in the Presidential election, every other MLA of that Assembly will also have 110 votes. It is, thus, the population of a State that decides the strength of votes of one member and also of all the members of the Legislative Assembly of that State. The more the population, the more are the number of votes cast from that State.

In the Presidential election, if one component is the elected members of all the States' Legislative Assemblies, the other component is the elected members of the two Houses of the Parliament. The total number of votes given to the members of the States Legislative Assemblies are given to the elected members of the Parliament. The total number of votes obtained by each member of Parliament would be determined thus;

Formula-II

Total number of Votes of an MP

$$= \frac{\text{Total number of votes (or nearly so) given to the Parliament}}{\text{Total number of elected members of Parliament}}$$

In the 1992 Presidential election, the votes cast by the elected members of the Legislative Assemblies of all the States were 5,44,971. The members of the Parliament got 5,44,971 votes and each elected member (total being 776 then) got votes as under:

$$= \frac{5,44,971}{776}$$

= 702 votes. That was the value of vote of each elected member of Parliament.

The election of the President is held through the **single transferable vote system**. Under this system, an elector is given one vote, but that vote has the value of several votes. As the elector has the right to transfer his vote, he/she can indicate his/her preference on the ballot paper. Such preferences are indicated by the electors in the Presidential election.

Single Transferable Vote system is one in which a voter has only one vote, but he can indicate his order of preferences on the ballot paper by writing 1,2,3, and so on against the names of the candidates of his choice. The vote is transferable in the sense that it is transferred to the next candidate if the first preference candidate does not need that vote because having got fewer votes he/she is eliminated.

(III) Conduct of the Presidential Election

Once the value of votes of the electors in the Presidential election is determined and once the votes are cast, then the quota is determined in order to declare a candidate elected. It is done through the following formula:

$$\text{Quota} = \frac{\text{Total number of Votes polled}}{\text{No. of members to be elected} + 1} + 1$$

If, for example, the total votes polled in the Presidential election are 20,000, then the quota would be determined as under :

$$\begin{aligned} \text{Quota} &= \frac{20,000+1}{1+1} \\ &= \frac{20,000+1}{2} \\ &= 10000+1 = 10,001 \end{aligned}$$

For purposes of understanding the conduct and declaration of the Presidential election, we give the following illustration :

If there are four candidates, A,B,C,D and if 20,000 valid votes are cast in the Presidential election, their first preference votes, for example, show as follows :

- A : 8000
- B : 6000
- C : 4000
- D : 2000

In the first counting, no one gets the required quota, i.e. 10,001. So, the second counting begins with the elimination of 'D' who gets the least number of votes. The second preference of the ballot papers of 'D' are as follows :

- A : 1000
- B : 600
- C : 400

When these are transferred to A, B and C, the latest voting strength appears as under:

- A : 8000 + 1000 = 9000
- B : 6000 + 600 = 6600
- C : 4000 + 400 = 4400

Even now also, no candidate gets the fixed quota. Therefore, the next counting begins with the elimination of 'C' whose votes are transferred as under:

- A : 1600
- B : 2800

Now when added up to A and B, the result is :

- A : 9000 + 1600 = 10600
- B : 6600 + 2800 = 9400

As 'A' gets more than 10,001 votes as required, he is declared elected.

(iii) The Presidents of India

The Chairman of the Constituent Assembly, Dr. Rajendra Prasad was unanimously elected as the President on January 26, 1950 when India was declared as Republic. He was again elected President when the Presidential elections were held in 1952. The following have been elected Presidents of India with their tenure given against each name:

1. Dr. Rajendra Prasad : 26.1.1950 to 13.5.1962
2. Dr. S. Radhakrishnan : 13.5.1962 to 13.5.1967
3. Dr. Zakir Hussain : 13.5.1967 to 3.5.1969 (died)
4. V.V. Giri : 3.5.1969 to 20.7.1969 (Acting)
5. M. Hidayatullah : 20.7.1969 to 24.8.1969 (Acting)
6. V.V. Giri : 24.8.1969 to 24.8.1974
7. F.A. Ahmed : 24.8.1974 to 11.2.1977 (died)

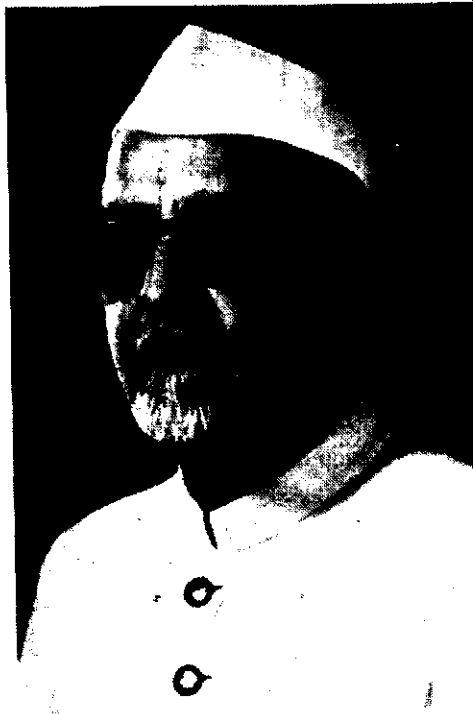
The Presidents of India



Dr. Rajendra Prasad



Dr. S. Radhakrishnan

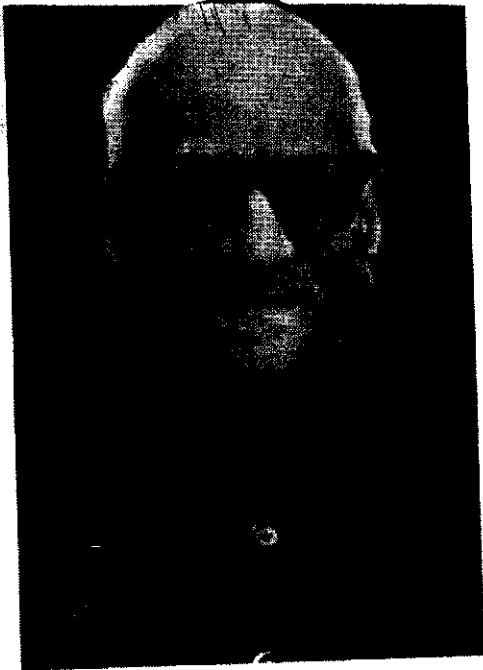


Dr. Zakir Hussain

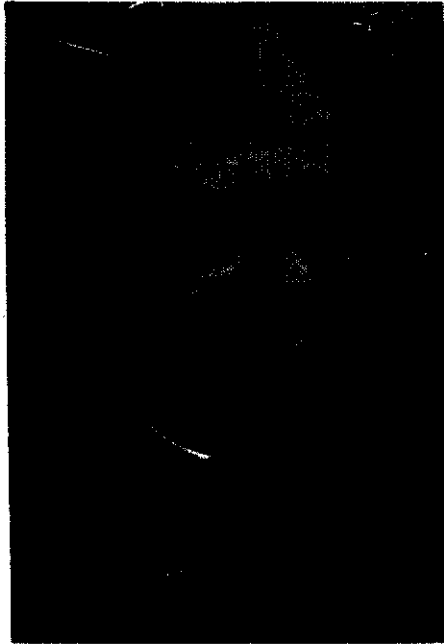


Fakhruddin Ali Ahmed

The Presidents of India



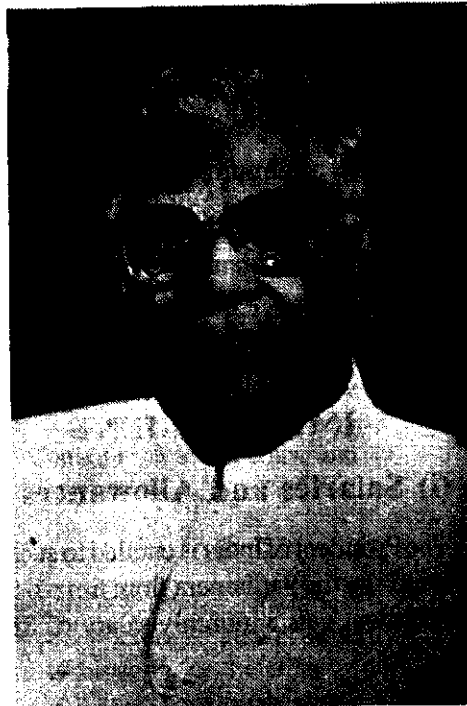
V.V. Giri



N. Sanjeeva Reddy

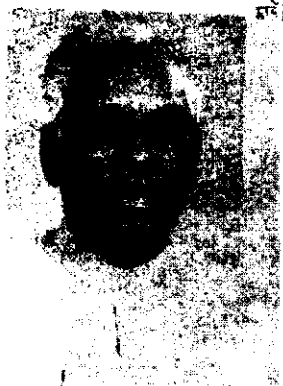


Giani Zail Singh



R. Venkataraman

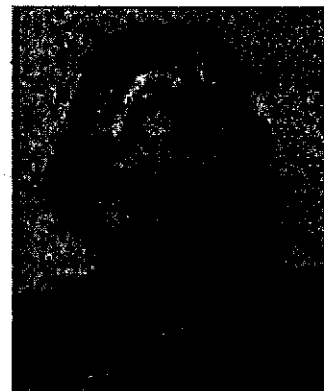
The President of India



K.R. Narayanan



Dr. S.D. Sharma



Dr. A.P.J. Abdul Kalam

8.	B.D. Jatti	:	11.2.1977 to 24.7.1977 (Acting)
9.	N. Sanjiva Reddy	:	25.7.1977 to 24.7.1982
10.	Giani Zail Singh	:	25.7.1982 to 24.7.1987
11.	R. Venkataraman	:	25.7.1987 to 24.7.1992
12.	Dr. S.D. Sharma	:	25.7.1992 to 24.7.1997
13.	K.R. Narayanan	:	25.7.1997 to 24.7.2002
14.	Dr. A.P.J. Abdul Kalam	:	25.7.2002

INTEXT QUESTIONS 10.1

Fill in the blanks.

1. The minimum age necessary for the office of the President has to be _____ years. (25,30,35)
2. The President has to have the qualifications required for a member of the _____ Sabha. (Lok/Rajya/Vidhan)

10.4 THE PRESIDENT : PRIVILEGES, TENURE, IMPEACHMENT

(i) Salaries and Allowances

The President of India is entitled to such emoluments, allowances and privileges as are determined by the Parliament from time to time. In accordance with the Act of 4th Aug, 1998, the President gets a monthly salary of Rs 50,000 and after retirement an annual pension of

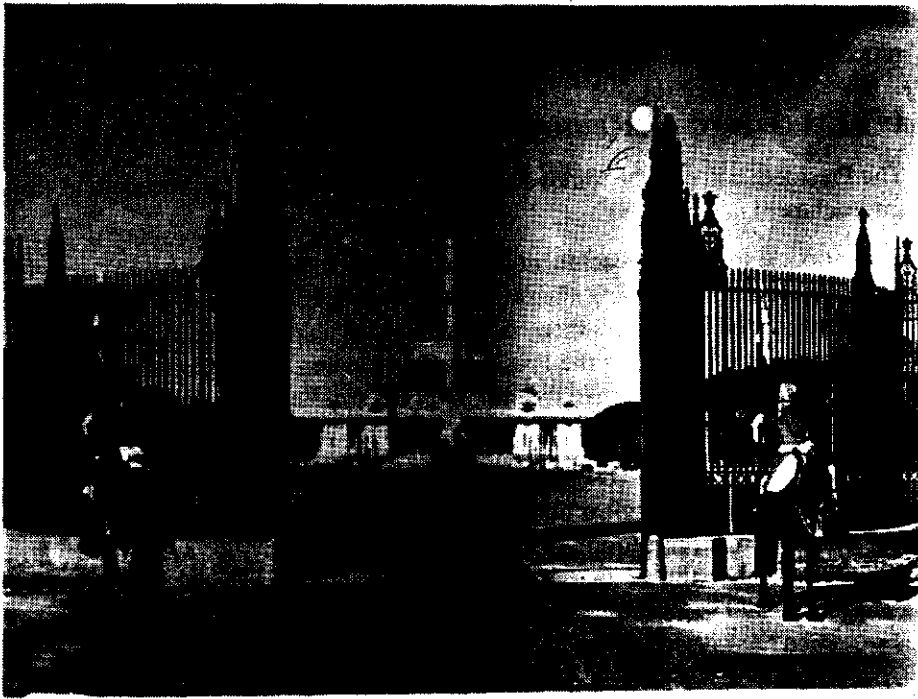


Fig. 10.2 Rashtrapati Bhawan

Rs. 300000/- with all secretarial assistance. He lives in a rent free accommodation which is, as you know, Rashtrapati Bhawan in New Delhi. The retired President is also entitled to free medical services.

(ii) Privileges and Immunities

The President's privileges and immunities include the following:

- He is not answerable to any court of law for the exercise of his functions.
- He cannot be arrested nor can criminal proceedings be initiated against him in any court of law during his tenure in office.
- A prior notice of two months is to be served before instituting any civil case against him.
- He cannot be asked to be present in any court during his tenure.

(iii) The Oath of Office

Before entering upon his office, the President takes the oath of office administered by the Chief Justice of India or in his/her absence, the senior-most judge of the Supreme Court. He/She takes the pledge to preserve, protect and defend the Constitution and the law, and serve the people of India.

(iv) Tenure

The President's term of office is five years from the date on which he enters upto his office. He is eligible for re-election, though a convention has developed wherein no person seeks election for the third term. He may resign before the expiry of his term, or the office of the President may fall, vacant due to his death. In such cases, the Vice-President takes over as the acting President and holds the office of the President for a maximum period of six months during which the election of the new President is held.

The President can only be removed from his office for the violation of constitution by the process of impeachment.

(v) Procedure of Removal of the President

The President can only be removed through impeachment. The procedure of the President's impeachment is as follows.

The proposal for the impeachment can be initiated in any of the two Houses of Parliament. But a resolution, containing the impeachment proposal, is moved after a 14 days' notice in writing signed by not less than one-fourth of the total number of members of that House. Such a resolution charging the President for violation of the Constitution must be passed by a majority of not less than two-thirds of the total membership by that House before it goes to the other House for investigation.

The other House is an investigating House and as such acts as a court. Here the President shall have the right to appear and to be represented at such investigation. If, as a result of the investigation, a resolution, in that House, is passed by not less two-thirds majority of the total membership of that House declaring that the charge has been sustained, the President is said to be removed from office with effect from the date when the resolution is passed in the investigating House.

An impeachment is a quasi-judicial procedure leading to the removal of a high public official, say, the President as in India, on the grounds of the violation of the constitution.

INTEXT QUESTIONS 10.2

Choose the correct answer from the alternatives given below and fill in the blanks.

1. Through an Act of Parliament 4th August, 1998, the President of India gets a monthly salary of
(a) Rs. 30000/- (b) Rs. 40000/-
(c) Rs. 50000/- (d) Rs. 60000/-
2. On retirement, the annual pension of the President, as per the Act of 1998 is
(a) Rs. 1,20,000/- (b) Rs. 1,80,000/-
(c) Rs. 2,40,000/- (d) Rs. 3,00,000/-
3. The term of the office of the President is
(a) Four years (b) Five years
(c) Six years (d) Seven years
4. holds the office of the Acting President when the office of the President falls vacant :
(a) The Prime Minister of India
(b) The Chief Justice of the Supreme Court
(c) The Vice-President
(d) The Speaker of the Lok Sabha
5. The impeachment proposal for the removal of the President is moved in
(a) Lok Sabha (b) The Rajya Sabha
(c) Either House of the Parliament (d) Four Legislative Assemblies

10.5 THE PRESIDENT: POWERS, FUNCTIONS AND POSITION

Powers and Functions

The President of India possesses a vast array of powers and in the process, performs numerous functions. These powers and functions can be categorized as under :

(i) Executive Powers

1. The President appoints the Prime Minister and on his advice, appoints other ministers.
2. He allocates portfolios among the ministers.
3. He appoints the Chief Justice and other judges of the Supreme Court and the High Courts. However, in all judicial appointments, the Chief Justice of India is consulted.
4. He appoints the Attorney-General and the Comptroller and Auditor-General of India.
5. The Governors of the States, as also the Lt. Governors, the Chief Commissioners, and the Administrators of the Union Territories are appointed by the President.
6. The President appoints the Chairman and members of numerous Commissions such as the Finance Commission, the Union Public Service Commission and other. He also appoints the Chief Election Commissioners and other Election Commissioners.
7. As head of the State, the President appoints Ambassadors, High Commissioners and other diplomatic officers and receives Ambassadors, High Commissioners and other diplomatic representatives from other countries. All treaties and agreements are negotiated and concluded in the name of the President.
8. The President of India is the Supreme Commander of the Defence Forces and in this capacity, he appoints the Chief of Army, Navy and Air Force. As the Supreme Commander, he can declare war and conclude peace.

In the discharge of all his functions, the President is aided and advised by the Council of Ministers headed by the Prime Minister. As such, all his powers are powers of the Council of Ministers. He acts as the Constitutional head, whereas the Council of Ministers, acting as the real executive, is collectively responsible to the Lok Sabha.

(ii) Legislative Powers

With regard to the legislative matters, the President of India has the following powers/ functions :

1. The President has the power to summon or prorogue both Houses of Parliament, but not more than a period of six months should lapse between the interval of the two sessions. He can dissolve the Lok Sabha before the expiry of its term.
2. He has the power to summon a joint sitting of both Houses of Parliament in case of deadlock between them, over on ordinary bill.
3. He addresses the two Houses of Parliament at the beginning of the first session in each year, and of the first session after each general election.
4. He can send messages to the Parliament. However, the President has not sent any message to the Parliament nor has addressed the Parliament on occasions other than those specified above during the first 40 years or so of the working of our Constitution.
5. He nominates 12 members of the Rajya Sabha, persons having special knowledge or practical experience in respect of literature, science, art and social service. He is also

empowered to nominate not more than two members to the Lok Sabha from the Anglo-Indian community in case he is satisfied that the said community is not adequately represented in the Lok Sabha.

6. The President has the power to give his assent to the bill or the amendment proposal withhold it or send it back to the originating House with his comments recommendations. If the Parliament passes it for the second time in original or modified form, the President is bound to give his assent.
7. The President is empowered to issue an ordinance when the Parliament is not in session. The ordinance so issued has the force of the law only till the time when the next session of the Parliament is commenced and six weeks thereafter. If the Parliament disapproves the ordinance within that period, the ordinance lapses. Otherwise, the Parliament may enact a regular law to replace the ordinance within stipulated period.

Almost all the legislative powers or functions of the President are so in his capacity as the Head of the State. As he has to exercise all his powers and functions with the aid and advice of the Council of Ministers, there is little that remains with President. He summons or prorogues the Parliament on the advice of the Council of Ministers. The Lok Sabha is dissolved on the recommendation of the Council of Ministers. The President's address to the Parliament is prepared by the Council of Ministers. The powers to use veto (absolute, suspensive and pocket) or issue ordinances are, in fact, powers of the Council of Minister headed by the Prime Minister.

(iii) Financial Power

1. No money bill (annual or supplementary budget) can be introduced in the Lok Sabha without the prior permission of the President, which actually is the permission of the Council of Ministers/Finance Minister.
2. He has the control over the Contingency Fund of India. This means that he is authorised to sanction money from this Fund.
3. All expenditure charged on the Consolidated Fund of India is passed only when recommended by the President.
4. The President appoints a Finance Commission every five year which recommends changes in the allocation of funds, raised and recovered through taxes and levies, to the Union and the States.

(iv) Power of Pardon

1. The President of India, as Head of the State, possesses certain special prerogatives. He has the power to grant pardon, reprieve or remission of punishment.
2. He can suspend, commute, or reprieve the sentence of a criminal convicted by any Court Martial, or by any other court.
3. He has the pardoning power in respect of offences against laws made under the Union and the Concurrent Lists.
4. The only authority for pardoning a sentence of death is the President.

Prerogative is a special power vested in the Head of State by virtue of his office. The President, as Head of the State, has prerogatives, i.e., special power.

Even the prerogatives of the President are not exercised by him. They are there because the President is the Head of the State. Like all other Powers, the prerogatives are, in fact, the prerogatives of the Council of Ministers.

(v) Miscellaneous Powers

1. The President has the power to frame rules and regulations with regard to the business of the government.
2. He has the power to refer any question of public importance for the opinion of the Supreme Court.
3. He has the right to seek the advice of the Supreme Court on a matter involving the Constitution and the law. However, the President is not bound to accept such advice.
4. He has the power, as Head of the State, to bestow honours and awards to those who excel in their respective fields.

(vi) Emergency Powers

The President has certain powers to deal with emergencies which you have already studied in Lesson No. 9.

(vii) Position of the President

India has adopted a parliamentary form of Government with nominal executive, on the one hand, and the real executive, on the other. The President, in India, is a constitutional head, who has all powers in his name, but who exercises all of them on the aid and advice of the Council of Ministers headed by the Prime Minister which advice is ultimately binding on the President. To that extent, his powers become powers of the Council of Ministers and his functions, those of the ministry as a whole. The President is not the real head, for the Constituent Assembly, the Supreme Court of India affirms (*Rao vs. Indira, 1971*), "did not choose the Presidential system of Government." The Supreme Court, in *Ram Jawaya's* case (1955) clearly stated the position of the President in relation to the Council of Ministers, saying: "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 or the Cabinet....* In the Indian Constitution, therefore, we have the same system of Parliamentary executive as in England..."

The Constitution of India was not designed to project a real Head of the State, and that is why the President of India is not like the American President. But it did not aim at building a golden throne like the English King or Queen. That is why the President of India is not a rubber stamp or as ineffective as the English king or Queen. The Constitution wants the President of India to preserve, protect and defend the Constitution, to see that the Constitution functions and the administration is run according to the Constitution. That is why he has to see that there is the Council of Ministers with a Prime Minister as its head: he makes the Prime Minister, but he does not become the Prime Minister himself; he has to organise the Council of Ministers in a way that its collective responsibility is demonstrated to the Lok Sabha. That is why in doubtful cases, he asks the newly appointed Prime Minister to seek the confidence of the Lok Sabha in a stipulated period. Indeed, the President is not the ruler, but he has to see that the administration is carried on properly: he cannot make a law, but he can suggest, but suggest only once and that too without any guarantee that his suggestion would be accepted: he has the power to ask a minister or the Council of Ministers to reconsider the decision taken, whether the reconsideration is honoured or not is a different matter.

The Position of the President is not that of a nominal head. He is to be communicated all decisions of the Council of Ministers relating to the administration; he is to be furnished

with all the information relating to administration; and he is to be heard when administrative decisions are being taken. It is, in this process, that the President can ask the Government to pause and ponder the decisions it takes. It is in this context that the utility of the office of the President comes to be fully realised when he gives suggestions, warns the Government and encourages it above all party considerations. It is, in this sense, the President emerges as an advisor, a friend and a critic, one who has the right to be informed, to be consulted, to inspire, to encourage, to persuade and to warn the Government.

There is yet something more to be added with regard to the position of the President. As elected by an electoral college consisting of the elected members of the Parliament and the State Legislative Assemblies, the President emerges to be (a) non-partisan and (b) symbol representing the nation. He is non-partisan in the sense that he rises above party politics and provides continuity from one party's rule to that of the other. He emerges as the symbol of the unity of the nation in the sense that he represents both the Union and the States.

The Cabinet is a small body of senior ministers within the Council of Ministers. The Council includes all Ministers of different ranks.

By way of conclusion, we may describe the position of the President as Dr B.R. Ambedkar, Chairman of the Drafting Committee does: "He (the President of India) is the head of the state but not the executive. He represents the nation but does not rule over the nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device and seal by which the nation's decisions are made."

INTEXT QUESTIONS 10.3

- I. Fill in the blanks with appropriate word/words given in the brackets.
 - a) The is the Supreme Commander of the Defence Forces in the country.
(President/Prime Minister/ Defence Minister)
 - b) The President has the power to dissolve the
(Lok Sabha/Rajya Sabha/Vidhan Sabha)
 - (c) The President can summon a joint sitting of both the Houses of Parliament to resolve the deadlock on (a financial bill/an ordinary bill/ amendment bill)
 - (d) The President nominates members to the Rajya Sabha. (10,12,15)
 - (e) The President has the power of issue ordinances when the is not in session. (Lok Sabha/Rajya Sabha/Parliament)
 - (f) The President appoints a Finance Commission every..... years.
(Four/Five/Six).
- II. Choose the correct answers from the alternatives given below:
 1. Which form of government has been adopted in India :
 - (a) Parliamentary
 - (b) Presidential
 - (c) Authoritarian
 - (d) Monarchical
 2. The President exercises his powers
 - (a) himself

- (b) Independent of the Council of Minister
- (c) On the aid and advice of the Council of Minister
- (d) On the advice of the Chief Justice of India

10.6 THE VICE-PRESIDENT

The Constitution of India provides for the office of the Vice-President in the country. The Vice-President is elected by an electoral college consisting of the members of both Houses of Parliament in accordance with the system of proportional representation on the basis of single transferable vote device.

The candidate for the office of the Vice-President has to have the qualifications such as :
 (i) He has to be a citizen of India ; (ii) He should be at least 35 years of age ; (iii) He should possess the qualifications necessary for the member of the Council of States ; (iv) He should not hold any office of profit.

The Vice-President is elected for a period of five years. He can seek reelection. He may resign before the expiry of his term or may be removed from office. A 14 day notice is required for this purpose. If the Council of States (the Rajya Sabha) passes a resolution for the removal of the Vice-President by a majority of its total membership, and if the House of the People (The Lok Sabha) agrees to it, the Vice-President stands removed.

Through an Act of Parliament (4th Aug. 1998) The Vice-President gets a salary of Rs.40,000/-P.M.

The functions of the Vice-President are: (a) to preside over the meetings of the Rajya Sabha; he is thus its ex-officio chairman; (b) he acts as the President when the office of President falls vacant. In case of resignation or death of the President, the Vice-President assumes the charge of the President, as the acting President until the new President is elected. The election of the new President has to be held within a period of six months from the date when the office falls vacant.

INTEXT QUESTIONS 10.4

Fill in the blanks.

1. The Vice-President is elected by members of the (Rajya Sabha/
Lok Sabha/Parliament)
2. The tenure of the Vice-President is (Five years/Six
years/Seven years)
3. The Vice-President is the ex-officio chairman of the(Lok Sabha/
Rajya Sabha/Parliament)

10.7 THE GOVERNOR

As the President is the constitutional head at the Union level, so is the Governor at the

State level. There has to be a Governor for each state. The same person may be appointed Governor for two or more states. The executive powers of the state are vested in the Governor as those of the Union are vested in the President.

(i) The Governor : Appointment, Qualifications, Tenure, etc.

The Governor of a State is appointed by the President of India. As such, the office of the Governor is not an elected office, but is an appointed one. His qualifications include the following :

1. He should be a citizen of India;
2. He should be atleast 35 years of age; and
3. He should not hold any office of profit.

However, if a person is a member of either house of the Parliament of the Union or the Legislature of any State or a minister, and is appointed a Governor, he ceases to be a member of the legislature or a minister.

The Governor holds office during the pleasure of the President, but his normal term in office is five years or until a successor is appointed in his place. He may resign before the expiry of the term or may be removed by the President earlier.

The Governor gets a monthly salary of Rs. 36000/-P.M. together with other allowances. He is entitled to a rent-free residence which is called the Raj Bhawan. His emoluments and allowances and privileges are specified by law. However, the emoluments and allowances of a Governor cannot be reduced during his term of office.

(ii) The Governor : Powers, Position and Role

The powers of the Governor of a state can be studied under the following heads :

(a) Executive Powers

1. The Governor appoints the Chief Minister and on his advice appoints the Council of Ministers. He allocates portfolios among the ministers.
2. He appoints the Advocate-General of the State, and the Chairman and members of the State Public Service Commission.
3. He has the power to appoint judges of the courts other than the High Court. However, he is consulted when the judges of the State High Court are appointed by the President.
4. All the administration, in the State, is run in the name of the Governor

In the discharge of all his functions as Head of the Executive in the State, the Governor is aided and advised by the Council of Ministers headed by the Chief Minister

(b) Legislative Powers

1. The Governor has right to summon and prorogue the State Legislature. He can dissolve the State Legislative Assembly on the recommendation of the Council of Ministers headed by the Chief Minister.
2. He can address and read messages to the State Legislature.
3. He nominates one member of the Anglo-Indian community to the state Legislative Assembly if he is satisfied that the said community is not adequately represented in the Assembly.

4. He nominates the one-sixth members of the total strength of the Legislative Council if it is existing in a State. Such nominated members are those who possess special knowledge in the field of literature, art, science, cooperative movement and social service.
5. The assent of the Governor is necessary for a bill to become a law. In this regard, the Governor has the following options;
 - (i) He may give assent to the bill, in that case the bill becomes a law;
 - (ii) He may withhold the assent; in that case the bill fails to become a law ;
 - (iii) He may return the bill with his message. If the state Legislative passes the bill in original or in the modified form, he has to give the assent to the bill ;
 - (iv) He may reserve the bill for the consideration of the President.
6. The Governor has the power to issue ordinances during the period when the State Legislature is not in session. However, the ordinance has to be placed before the State Legislature when it reassembles within six weeks from the date of re-assembly. If the ordinance is not approved, it automatically ceases to have any effect. Its approval is not formally given. It may be replaced by a law enacted by the Legislature within the said period.

The legislative powers, like the executive powers, of the Governor are, in practice, exercised by the State Council of Ministers headed by the Chief Minister

(c) Financial Powers

1. No money bill can be introduced in the State Legislative Assembly without the prior permission of the Governor.
2. The annual and supplementary budgets are introduced in the Assembly in the name of the Governor.
3. The Governor has the control over the State Contingency Fund.

(d) Power of Pardon

The Governor has the power to grant pardon to a person convicted by the High court. He may reduce or commute or postpone the sentence of a criminal.

(e) Discretionary Powers

The Governor possesses certain discretionary powers as well. Ordinarily, the Governor acts on the advice of the State Council of Ministers, but under special circumstances, he may act even without the advice of the ministers. Such powers of the Governor as are exercised in his discretion are called discretionary powers.

Discretionary powers of the Governor are powers exercised without the advice of the State Council of Ministers ; exercised in his own discretion.

The discretionary powers of the Governor, mainly, are :

1. A situation may arise when in the opinion of the Governor there is the breakdown of the constitutional machinery in the state. In such a case, the Governor may report to the President for imposition of the President's Rule in that state. As the Governor exercises this power on his own, it is called the discretionary power of the Governor. In such an event, the State Council of Ministers is removed, and the State Legislative Assembly is either dissolved or put in animated suspension. During such emergency the Governor rules on behalf of the President.

2. A situation may arise when the Governor may reserve a bill for the consideration of the President. As the Governor does or can do this job on his own, it is his discretionary power.
3. Certain discretionary powers are given to the Governor in the case of Sikkim, Nagaland, tribal areas of Assam, Meghalaya and Tripura to safeguard the tribal way of life of the people in the area. In doing so, he acts in his own discretion.

The role and position of a state Governor depends on the two capacities in which he acts : acting as the constitutional head of the State, and acting on behalf of the President. When the Governor acts as the constitutional head of the State, he has only nominal powers. In that case, he/she exercises all powers and functions with the aid and advice of the State Council of Ministers; his powers are, if they are actually powers, limited to the right to be informed, to encourage and to warn. In such a case, he exercises his influence. To that extent, his office is like that of the President of India, the office of honour.

INTEXT QUESTIONS 10.5

Choose the correct answer from the alternatives given below :

1. Who appoints the Governor of the State ?
 - (a) The President
 - (b) The Vice-President
 - (c) The Prime Minister
 - (d) The Chief Justice of India
2. The Governor is appointed for a term of :
 - (a) Four years
 - (b) Five years
 - (c) Six years
 - (d) Seven years
3. The Chief Minister, along with the State Council of Ministers, is collectively responsible to :
 - (a) The State Legislative Assembly
 - (b) The State Legislative Council
 - (c) The Governor of the State
 - (d) The President of India
4. An ordinance, in the State, is issued by
 - (a) The Governor
 - (b) The State Home Minister
 - (c) The Chief Minister
 - (d) The President of India

WHAT YOU HAVE LEARNT

1. India has adopted a parliamentary form of government where the President, at the Union level, is the constitutional head of the state and the Council of Ministers headed by

the Prime Minister, is the real executive. Accordingly, at the State level, the Governor is the constitutional head, the State Council of Ministers headed by the Chief Minister is the real executive.

2. The President is indirectly elected by the people through an electoral college by means of proportional representation with single transferable vote system. The Governor, on the other hand is appointed by the President.
3. The President is indirectly elected by the People for five years with a provision of re-election. He can resign earlier as well, and can be removed through impeachment. The Governor is also appointed for a period of five years. He is appointed by President and can be removed by him.
4. The President's powers are vast, so are the powers of the Governor. But the powers of the President are usually exercised by the Council of Ministers headed by the Prime Minister and those of the Governor, by the State Council of Ministers headed by the Chief Minister.
5. Both enjoy numerous privileges and exert influence in the field of administration. Both possess the right to be informed, to be consulted, to warn, and to encourage.

TERMINAL EXERCISES

1. Explain the procedure of the election of the President of India.
 2. State the method through which the President of India is removed.
 3. Mention the salary, privileges, and immunities of the President of India.
 4. Write a short note on the Vice-President of India.
 5. Explain the executive powers of the President of India.
 6. Describe, in detail, the legislative powers of the President of India.
 7. Describe the powers and position of the Governor of a State.
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Answers to intext questions

- 10.1 (1) 35
(2) Lok
(3) Proportional representation
- 10.2 (1) Rs. 20,000
(2) Rs. 1,20,000
(3) Five years
(4) The Vice-President
(5) Either House of Parliament
- 10.3 I. (a) President
(b) Lok Sabha
(c) An ordinary bill
(d) 12
(e) Parliament
(f) Five
II. (1) Parliamentary
(2) On the advice of the Council of Ministers
- 10.4 (1) Parliament
(2) Five years
(3) Rajya Sabha
- 10.5 (1) President
(2) Five years
(3) The State Legislative Assembly
(4) The Governor

Key to the Terminal Exercises

1. Please refer to sections 10.3(ii) and 10.3(iii)
2. Please refer to section 10.4(v)
3. Please refer to sections 10.4(i) and 10.4(ii)
4. Please refer to section 10.6
5. Please refer to section 10.5(i)
6. Please refer to section 10.5(ii)
7. Please refer to section 10.7.(ii)