



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2026 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## The President who Reigns but does not Rule: Nominal Executive and Evolution of the President's Power

Harman Kamboj<sup>a</sup>

<sup>a</sup>Chandigarh University, Mohali, India

Received 06 May 2026; Accepted 06 June 2026; Published 10 June 2026

---

*The President of India occupies a profound constitutional paradox, formally vested with sweeping executive, legislative, judicial, and emergency powers, yet bound to exercise virtually none of them at personal discretion. This paper examines why the Republic's highest office remains, by deliberate design, a ceremonial institution rather than a governing one. Rooted in the Westminster parliamentary model chosen by the framers over the American presidential system, Articles 52, 53, and 74(1) vest executive power in the President but subject its exercise entirely to the Council of Ministers, a subordination progressively hardened through *Shamsher Singh v State of Punjab* (1974), and the 24th, 42nd, and 44th Constitutional Amendments. The research yields significant findings. First, even if a President were to assert independence, structural mechanisms make it constitutionally and practically unworkable: every executive act requires funding, and no expenditure can be drawn from the Consolidated Fund of India without an Appropriation Bill under Article 114, a bill that only a Lok Sabha majority can pass, a majority that always belongs to the Cabinet's party. The President is thus fiscally caged before any defiance can begin (electing cabinet or PM) and can be impeached based on a violation of the constitution as a violation of the democratic and republican nature of India. This incapacity was further entrenched through deliberate constitutional curtailment, which stripped the President of any veto over constitutional amendment bills, making assent mandatory under Article 368. Second, the presidential oath under Article 60 operates not as a ceremony but as an active internal restraint; any unilateral assertion of power against a parliamentary majority would itself violate the democratic Constitution the President is sworn to protect. Third, despite this subordination, the presidency is not entirely hollow: genuine discretion survives in hung parliament situations, as affirmed in *Chaudhary Charan Singh v Dinesh Kumar*, the one constitutional moment where latent presidential power briefly, and consequently, becomes real. Through systematic comparison with the U.S. President holding plenary*

*authority as Head of State, Head of Government, and Commander-in-Chief, this study demonstrates that the divergence reflects fundamentally different constitutional philosophies about executive accountability. Where the American presidency is the engine of government, elected with an independent democratic mandate and designed to act, the Indian presidency is its dignified face, elected indirectly and designed to restrain. The Indian President reigns but does not rule, and in that carefully maintained restraint lies the enduring genius of Indian constitutionalism.*

**Keywords:** *nominal executive, parliamentary democracy, constitutional amendments.*

---

## INTRODUCTION

India follows a parliamentary form of government, which is 'A cabinet government [or parliamentary system] is that system of government in which the real executive is immediately and legally responsible to the legislature for its political policies and acts.'<sup>1</sup> As the definition itself suggests, the real executive, which in the Indian context is the Prime Minister, and the nominal executive is the President of India. Though the position of president is vested with all executive powers and also bits of legislative and judiciary power in the form of ordinance-making and pardoning power, respectively. But still, the power of the president remains just that of a signing role rather than an inclusive one.

According to the Constitution of India, the position of the President is mandatory and has been vested with numerous duties and functions to be performed, but on aid and advice of the Council of Ministers.<sup>2</sup> But the President holds the position of constitutional head of the Indian Republic and is designated as the First Citizen of the country. A primary obligation of the President under Article 60 is to safeguard, uphold, and defend the Constitution, but how is the President able to execute and uphold the provisions of the Constitution when he himself acts on the advice of the Council of Ministers, and with several constitutional amendments, the power of the President has been significantly curtailed.

Unlike the President of the United States, the position of the Indian President is much weaker in actual implementation of power. The president of the USA is vested with all executive power, and he himself appoints his cabinet and is not answerable to Congress. As the USA president is appointed by one of the most complicated methods of election, directly by the

---

<sup>1</sup> James Wilford Garner, *POLITICAL SCIENCE AND GOVERNMENT* (Tradd Street Press 2026)

<sup>2</sup> The Constitution of India 1950

people rather than elected indirectly, as in India. The American president serves both as Head of state and head of government simultaneously, meaning he personally runs the administration without depending on any prime minister or Cabinet. The president is bound to act on aid and advice of the Cabinet and cannot take any major decision independently, whereas the US president can appoint ministers and take executive decisions entirely on his own.

In this article, we will see why, despite being given executive, legislative and judiciary power, the president of India can act on his own and why he, despite having all power, never turned despotic and the reasons for checks and balances on the powers of the prime minister and the practical operation of presidential power, in contrast with the US president. We will also delve into what the reasons were for adoption for continues, depending upon the particular country's needs for adoption of either presidential or parliamentary forms of government. Furthermore, we will analyse the specific constitutional provisions, such as Articles 74 and 75,<sup>3</sup> that firmly anchor the Indian President as a constitutional head rather than an executive authority. This discussion will highlight how the founding fathers meticulously crafted the role to ensure stability without risking authoritarianism. By examining key historical precedents, the article will demonstrate how the office acts as a vital safety valve during political crises and why the president can't act on his own discretion.

## **HISTORICAL PERSPECTIVE**

The position of President of India was formally established when the Constitution of India came into force on 26th January 1950, with 'The people of India' being the ultimate source and authority of power, marking the country's transition from a British dominion to a sovereign democratic republic. The framers of the Constitution, particularly Dr B.R. Ambedkar and Jawaharlal Nehru, deliberately chose a parliamentary system of government modelled largely on the British Westminster model, which meant that the President was designed to be a constitutional head rather than a real executive. This was a conscious departure from the American presidential model, where the President holds genuine executive power.

---

<sup>3</sup> Constitution of India 1950, arts 74 and 75

During the drafting of the Constitution in the Constituent Assembly debates of 1946 to 1949, there were serious discussions about whether India should have a strong executive President like the United States or a nominal President with a Prime Minister holding real power. Ultimately, the Assembly chose the latter model, fearing that a directly elected, powerful President could lead to authoritarianism in a newly independent and diverse nation. Thus, Article 53 of the Constitution vested executive power in the President, but Article 74 made it clear that a Council of Ministers with the Prime Minister at its head would aid and advise the President in exercising these functions.

Dr Rajendra Prasad became the first President of India in 1950 and served until 1962. During his tenure, there were occasional tensions between the President and Prime Minister Nehru regarding the extent of presidential discretion. Rajendra Prasad personally believed that the President should have more independent authority, but constitutional conventions and political realities kept the office largely ceremonial.<sup>4</sup> His tenure established the important precedent that the President would generally act on the advice of the Cabinet and not assert independent judgment in matters of governance.

A landmark moment in the evolution of the presidential office came during the Emergency period of 1975 to 1977 under President Fakhruddin Ali Ahmed. Ahmed signed the proclamation of Emergency on the advice of Prime Minister Indira Gandhi without significant resistance, which was widely criticised as a rubber-stamp action.<sup>5</sup> This episode highlighted the vulnerability of the presidential office to political misuse and raised serious questions about whether the President had any independent duty to protect the Constitution even against the advice of the Cabinet.

In response to the abuses of the Emergency era, the 44th Constitutional Amendment was passed in 1978, which made a significant change to Article 74. It provided that the President may send the advice of the Council of Ministers back for reconsideration once, but if the Cabinet sends the same advice again, the President is bound to act upon it. This amendment attempted to give the President a limited deliberative role while still maintaining the

---

<sup>4</sup> Rajendra Prasad, *AUTOBIOGRAPHY* (Penguin India 2010); Granville Austin, *WORKING A DEMOCRATIC CONSTITUTION: The Indian Experience* (OUP 2000)

<sup>5</sup> Shah Commission of Inquiry, *Interim and Final Reports* (1978)

supremacy of the elected government, striking a careful balance between presidential discretion and parliamentary democracy.

The tenure of President Zail Singh in the 1980s brought further controversies regarding the role of the President. When Rajiv Gandhi's government was perceived to be acting against constitutional norms, Zail Singh reportedly considered dismissing the government, which sparked a national debate about the extent of presidential discretionary powers.<sup>6</sup> Though he ultimately did not act, this episode demonstrated that the President retained certain residual reserve powers that could theoretically be exercised in extreme constitutional crises.

The Supreme Court of India also played a crucial role in defining the President's position through landmark judgments. In the *Shamsher Singh Case* of 1974, the Supreme Court firmly held that the President must act on the advice of the Council of Ministers in all matters. Later in the *S.R. Bommai Case* of 1994, the Court placed important restrictions on the President's power to impose President's Rule in states under Article 356<sup>7</sup>, ruling that such imposition was subject to judicial review. This significantly curtailed one of the most powerful and frequently misused presidential powers.

## **ELECTION PROCESS AND ITS RELEVANCE**

The president's inclusion in the constitution starts from the preamble itself, and that goes by saying that India is a republican state and the head of state is elected and not a monarch and elected by the electoral college, including elected members of parliament (Lok Sabha and Rajya Sabha) and legislative assemblies of all states and legislative assemblies of Delhi and Puducherry. Reason for non-inclusion of non-elected member and its relevance: Now, the reason that only elected members are authorised to elect the president and the nominated members is that the framers of India. This decision was deeply rooted in the democratic philosophy that underpinned the entire constitutional framework. As the Constituent Assembly Debates clearly record, the founders believed that only those who had themselves received a popular mandate from the people could legitimately participate in choosing the highest constitutional office of the nation.

---

<sup>6</sup> A G Noorani, *Constitutional Questions and Citizens' Rights* (OUP India 2005)

<sup>7</sup> Constitution of India 1950, art 356

The primary reason was the principle of democratic legitimacy. The framers reasoned that nominated members, whether in Parliament or State Legislatures, are appointed by the government of the day and therefore represent the will of the executive rather than the will of the people. Allowing nominated members to vote in a presidential election would effectively mean that the sitting government could indirectly influence or manipulate the outcome of the presidential election by appointing favourable nominees and then using their votes. Dr B.R. Ambedkar specifically emphasised in the Constituent Assembly on 4th November 1948 that the President, even as a constitutional head, must derive his authority from a source that is democratically pure and untainted by executive patronage.

The second reason was the need to maintain a federal balance. The framers wanted the President to represent not just the Union but also the federal units, meaning the States. By including elected members of State Legislative Assemblies in the electoral college under Article 54, they ensured that the President's election reflected the federal character of the Indian polity. However, including nominated members of State Legislatures would have distorted this federal balance, since nominated members are appointed by State governments and do not represent any particular constituency or region democratically.<sup>8</sup> The Supreme Court later affirmed the soundness of this approach in various constitutional decisions, including the S.R. Bommai case of 1994, where the Court emphasised that democratic accountability and popular legitimacy are the cornerstones of the Indian constitutional structure, and that every major constitutional institution must trace its authority back to the elected will of the people.<sup>9</sup>

Whereas in the United States, the election of its President is through a unique indirect system known as the Electoral College, rather than through a simple direct popular vote. Under this system, when American citizens cast their votes on Election Day, they are technically not voting directly for the President but rather for a slate of electors who are pledged to vote for that presidential candidate. The total number of electors across all fifty states and the District of Columbia is 538, and a candidate must secure a majority of 270 electoral votes to win the presidency.<sup>10</sup>

---

<sup>8</sup> D D Basu, *Commentary on the Constitution of India* (vol 9, 9th edn, LexisNexis 2014)

<sup>9</sup> *S R Bommai v Union of India* (1994) 3 SCC 1

<sup>10</sup> Constitution of the United States 1787, art II, s 1; Alexander Hamilton, *The Federalist No 68* (1788)

Each state is allocated several electors equal to its total congressional representation, meaning the number of its seats in the House of Representatives plus its two Senate seats. For example, California, being the most populous state, has 54 electoral votes, while smaller states like Wyoming have only 3. Almost all states follow the winner-takes-all principle, meaning whichever candidate wins the popular vote in that state receives all of that state's electoral votes, regardless of the margin of victory.<sup>11</sup> Only Maine and Nebraska follow a proportional distribution system as exceptions to this rule.

The election process itself has several distinct stages. First comes the Primary and Caucus season, where candidates from each party compete against each other in state-level elections to win delegates who will nominate them at the party convention. Then comes the National Party Convention, where the party formally nominates its presidential and vice-presidential candidates. Following this is the General Election campaign period, culminating in Election Day on the first Tuesday after the first Monday in November. After Election Day, the electors of the winning candidate in each state meet in their respective state capitals in December to formally cast their electoral votes. Finally, the electoral votes are counted and certified by Congress in January, and the President is inaugurated on 20th January.<sup>12</sup>

## **WHY THE FRAMERS CHOSE THE ELECTORAL COLLEGE SYSTEM**

The framers of the US Constitution chose the Electoral College system in 1787 for several important reasons rooted in the political realities and philosophical beliefs of that era. The primary reason was a deep distrust of direct democracy. The founding fathers, particularly Alexander Hamilton and James Madison, believed that a purely popular vote could lead to uninformed or emotionally driven decisions by the masses, potentially resulting in the election of a demagogue or an unqualified person to the most powerful office in the nation. The second reason was the need to achieve a federal compromise between large and small states. At the Constitutional Convention of 1787, smaller states feared that a direct popular vote would make them irrelevant, since larger states with bigger populations would always dominate presidential elections. The Electoral College, by guaranteeing every state at least

---

<sup>11</sup> *Bush v Gore* [2000] 531 US 98

<sup>12</sup> Constitution of the United States 1787

three electoral votes regardless of population, gave smaller states a degree of influence they would never have in a pure popular vote system.<sup>13</sup>

## **CONSTITUTIONAL POWER AND ITS ACTUAL IMPLEMENTATION**

The president of India is the repository of power, including Administrative, Military, Diplomatic, Legislative, Judicial and emergency power. The constitution establishes that the executive authority of the central government is vested in the President of India, who exercises these powers either directly or through subordinate officers in accordance with the Constitution so why doesn't the president himself use the power and execute these functions like all contracts and deep in the name of the president, he is to be informed of the affairs of the union, he has the right to be consultation from honourable supreme court itself, appointment matters of high officials, military power as he is the supreme commander of the defence.

**Diplomatic Power:** The President of India is the supreme representative of the country in all international matters. All treaties and agreements with foreign nations are negotiated and concluded in the name of the President, though in reality, these are done on the advice of the Cabinet. The President appoints Indian ambassadors and high commissioners to foreign countries and similarly receives credentials from foreign diplomats posted to India. However, these powers are largely ceremonial as actual foreign policy is determined by the Prime Minister and the Ministry of External Affairs.

**Legislative Power:** The President plays a significant role in the legislative process despite not being a member of Parliament. He summons and prorogues both Houses of Parliament and can dissolve the Lok Sabha on the advice of the Prime Minister. Every bill passed by Parliament requires the President's assent before it can become law, and the President may return a non-money bill once for reconsideration, though he must give assent if Parliament passes it again. When Parliament is not in session, the President can promulgate ordinances which have the same force as law, though these must be approved by Parliament within six weeks of reassembly.

---

<sup>13</sup> Max Farrand, *THE RECORDS OF THE FEDERAL CONVENTION OF 1787* (Legare Street Press 2022); Robert A Dahl, *How Democratic Is the American Constitution?* (2nd edn, Yale University Press 2002)

**Emergency Power:** The emergency powers of the President are among the most significant provisions of the Indian Constitution. The President can proclaim three types of emergencies: National Emergency under situations of war or armed rebellion, President's Rule in a state when constitutional machinery breaks down, and Financial Emergency when the financial stability of the country is threatened. These powers, when invoked, dramatically alter the federal balance of the country and concentrate authority in the Central Government. However, following the S.R. Bommai judgment of 1994, the proclamation of President's Rule has been made subject to judicial review, significantly limiting the scope for misuse of these extraordinary powers.

The President of India is an integral part of Parliament under Article 79<sup>14</sup>, which provides that there shall be a Parliament of the Union consisting of the President and two Houses known as the Council of States and the House of the People. The President summons and prorogues both Houses and can dissolve the Lok Sabha on the advice of the Prime Minister. The President addresses both Houses at the commencement of the first session after each general election and at the commencement of the first session of each year, and this address effectively outlines the government's legislative agenda. Every bill passed by both Houses of Parliament must receive the President's assent under Article 111<sup>15</sup> before it becomes law, and the President may return a non-money bill once for reconsideration, though assent becomes obligatory if Parliament passes it again. In the case of constitutional amendment bills, however, after the 24th Amendment,<sup>16</sup> the President has no discretion whatsoever and must give assent mandatorily under Article 368.<sup>17</sup>

## **RELATIONSHIP BETWEEN THE PRESIDENT AND THE COUNCIL OF MINISTERS**

The relationship between the President and the Council of Ministers is governed primarily by Article 74 of the Constitution, which provides that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions, and that the President shall act in accordance with such advice. Before the 44th Amendment of 1978, there was some ambiguity about whether this advice was binding on the President. The 44th Amendment resolved this by providing that the President may send

---

<sup>14</sup> Constitution of India 1950, art 79

<sup>15</sup> Constitution of India 1950, art 111

<sup>16</sup> Constitution (Twenty-Fourth Amendment) Act 1971

<sup>17</sup> Constitution of India 1950, art 368

the advice back for reconsideration once, but if the Council of Ministers sends the same advice again, the President is constitutionally bound to act upon it. Article 75 provides that the Prime Minister shall be appointed by the President, and other ministers shall be appointed by the President on the advice of the Prime Minister.<sup>18</sup> Article 78 imposes a duty on the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to administration and proposals for legislation, and to furnish such information as the President may call for. The net effect of these provisions is that while the President is the formal head of the executive under Article 53, real executive power vests in the Council of Ministers under Article 74, making the President a constitutional head who reigns but does not govern.

Despite this power, why does the president not exercise his power, though he has been given constitutional powers? What is the reason stopping him? As we delve deep into the matter, we are a democratic country with strong principles, and the Lok Sabha is accountable to the people of India. Especially in the context of the pre-24th constitutional amendment, the oath of the president itself says to protect the democracy, sovereignty and republic of the people of India. So if he himself decides to appoint the council of ministers on his own terms, who are not part of the parliament, but according to Article 75, they need to be elected within six months. The executive decisions that are taken by the president himself cannot be implemented, as it needs to be passed by the Lok Sabha and Rajya Sabha, where the majority is the ruling party. If he tries to take funds from the consolidated fund of India, the appropriation bill must be passed, and it need fifty one percent vote, and it can only be passed by the prime minister who is in the majority at the Lok Sabha. If we look at the executive action, Article 53, he himself can execute any executive matter, but for that, money is needed, and the money bill cannot be passed without a majority in the parliament.

The 24th Constitutional Amendment of 1971 was a direct response to the landmark Supreme Court judgment in *Golak Nath v State of Punjab* (1967).<sup>19</sup> In this case, the Supreme Court, by a majority of six to five, held that Fundamental Rights enshrined in Part III of the Constitution could not be abridged or taken away by Parliament even through a constitutional amendment. The Court ruled that a constitutional amendment was itself a law within the

---

<sup>18</sup> Constitution of India 1950, art 75

<sup>19</sup> *I C Golaknath & Ors v State of Punjab & Anrs* (1967) AIR 1643

meaning of Article 13 and therefore any amendment violating Fundamental Rights would be void. This judgment severely restricted Parliament's amending power and created a confrontation between the judiciary and the legislature. In response to the Golak Nath judgment, Prime Minister Indira Gandhi's government passed the Constitution (24th Amendment) Act 1971, which made two significant changes. First, it amended Article 13 to clarify that nothing in that article would apply to amendments made under Article 368. Second, and more importantly, it amended Article 368 itself to make it obligatory for the President to give his assent to every constitutional amendment bill passed by Parliament. Before this amendment, the President had a theoretical discretion in the matter. After the 24th Amendment, the President was constitutionally bound to give assent to every constitutional amendment bill without any power of refusal or return. This effectively confined and curtailed whatever little independent discretion the President may have exercised in respect of constitutional amendments. Prime Minister Indira Gandhi's political philosophy at this time was centred around the slogan of 'committed judiciary' and 'committed bureaucracy', meaning she believed that constitutional institutions, including the President and the judiciary, should be committed to the social and economic transformation agenda of the elected government rather than acting as independent checks. She viewed the Golak Nath judgment as a judicial overreach that blocked progressive land reform and socialist legislation. By making presidential assent to constitutional amendments mandatory, she ensured that the President could never become a constitutional obstacle to Parliament's will, thereby subordinating the presidential office further to the elected legislature and the Cabinet she led.

### **CAN THE PRESIDENT ACT ON HIS DISCRETION?**

No, the president does not use his discretionary power because of the following reason: Impeachment as a remedy: If the president appoints or dismisses a minister or ministry with the support of L.S, then they may bring an impeachment resolution proceeding against the president. This serves as a deterrent against assuming real power.

**Unable to Incur Expenditure:** In case of conflict b/w president and the council of ministers. The President may not be able to incur expenditure as COM has the support of LS, which in turn control to pass appropriation bill (withdrawal of amount from the consolidated fund of India) Article 114.

**Appointment of PM:** The President's discretion is limited when a single party has an absolute majority and has accepted its leader. The President's choice of selecting PM is a mere formality. However, if no single party gains a majority and a coalition govt is to be formed, the President can exercise a little discretion and select the leader of any party who is, in his opinion form a stable ministry. However, even in such a situation, his action should be guided by convention when the president invites the leader of the party that has the highest number of seats. The Supreme Court itself has observed that the President may invite a person and appoint him PM and then ask him to prove his majority or seek a vote of confidence in L.S in a reasonable time.<sup>20</sup>

**Dismissal of Ministry:** Article 75(2) provides that a minister holds office during the pleasure of the president in accordance with the PM's advice. Here, it is necessary to realise the idea of collective responsibility.

**Dissolution of Lok Sabha:** The President is bound to dissolve L.S only when advised by the PM till the time the PM and his cabinet enjoy confidence, and without the support of a majority of Lok Sabha, the decision cannot be taken.

**Discretionary power of the President:** This advice will not be binding on the President when PM losses his majority, is unable to prove his majority or a no-confidence motion is passed against the ruling party. In such circumstances, the PM tries to find an alternative ministry to make efforts to avoid the midterm poll.

Q. Is the president justified in dismissing the PM when the PM does not furnish him information as per Article 78?

No, the president cannot dismiss the PM on the grounds of non-furnishing of information. A controversy arises during the tenure of President Gyani Jail Singh and Rajiv Gandhi due to mistrust created by the PM by not meeting the president frequently but keeping him uninformed about the affairs of the government, particularly the Bofors gun deal.

From the interpretation of Article 78, it is clear that the president has the right to know what the government is doing, but the question of how much information should be furnished to

---

<sup>20</sup> *Dinesh Chandra Pande v Chaudhury Charan Singh & Ors* (1979) SCC OnLine Del 156

the president by the PM is his prerogative, and the matter should be resolved by cooperation & confidence b/w them.

**Impeachment Article 61:** The President can be impeached for violation of the Constitution, and the impeachment ground will be decided by Parliament. It is for the body to decide what is a violation of the Constitution. Charge of violation of the constitution can be preferred by any house, either by the L.S. or the R.S.

Therefore, the President of India functions strictly as a nominal executive, bound to act in accordance with the aid and advice of the Council of Ministers, thereby exercising little to no personal discretion in ordinary governance. While the constitutional framework originally implied a parliamentary system where the executive head acts on advice, a definitive shift occurred through pivotal constitutional amendments. Although the 24th Amendment primarily solidified Parliament's power to amend fundamental rights and made it mandatory for the President to give assent to Constitutional Amendment Bills, it was the 42nd and 44th Amendments that explicitly anchored the binding nature of the Cabinet's advice under Article 74(1). Under the current mandate, while the President may return a matter to the Council of Ministers for reconsideration, they are legally bound to accept and act upon the subsequent advice tendered.<sup>21</sup> Furthermore, to ensure the accountability of this high office, the Constitution provides a stringent check: the President is not above the law and can be removed from office before the expiration of their term through the process of impeachment, specifically on the sole ground of a proven violation of the Constitution.

### **THE EVOLUTION OF BINDING ADVICE: ARTICLE 74(1)**

Initially, the text of Article 74(1) stated that there shall be a Council of Ministers with the Prime Minister at the head to 'aid and advise' the President. Because the word 'shall' was positioned next to the creation of the Council rather than the binding nature of the advice, early constitutional debates flirted with the idea that the President could act independently.

However, the Supreme Court consistently closed these loopholes. In the landmark judgment *Shamsher Singh v State of Punjab* (1974), the apex court solidified the Westminster model in India, ruling that the President is a formal head who must act on the satisfaction of the

---

<sup>21</sup> *Shamsher Singh & Anr v State of Punjab* AIR 1974 SC 2192

Council of Ministers. The 42nd Amendment (1976): Substituted the vague language to explicitly state that the President shall act in accordance with the advice tendered by the Council of Ministers. This effectively reduced the office to a rubber stamp. The 44th Amendment (1978): Introduced a democratic cushion by adding a proviso to Article 74(1). It granted the President the power to return a cabinet decision once for reconsideration. However, if the Council of Ministers sends the same advice back (with or without changes), the President loses all recourse and must sign it.

### **THE REMOVAL OF LEGISLATIVE VETO: THE 24TH AMENDMENT**

While the 42nd Amendment bound the President on executive matters, the 24th Constitutional Amendment Act of 1971 had already restricted presidential autonomy regarding constituent powers. Before this, it was theoretically possible for a President to withhold assent from a bill meant to amend the Constitution. The 24th Amendment modified Article 368 by changing the phrasing from 'it shall be presented to the President who shall give his assent...' to make it an absolute mandate. Today, when a Constitutional Amendment Bill passes both Houses of Parliament with the requisite special majority, the President has zero veto power; neither absolute, suspensive, nor pocket veto applies and giving assent is a mandatory obligation.

**The Ultimate Check: Impeachment Under Article 61:** Because the President is legally mandated to follow the Constitution and the advice of the elected government, any attempt to bypass the Cabinet or refuse mandatory assent constitutes a constitutional crisis. To address this, Article 61 outlines a rigid quasi-judicial mechanism for removal. The phrase 'violation of the Constitution' is deliberately left undefined in the document, giving Parliament the ultimate political and legal authority to determine what acts constitute a breach of the constitutional framework.

### **USA PRESIDENTIAL POWER**

The President of the United States is one of the most powerful elected leaders in the world, serving simultaneously as Head of State, Head of Government, and Commander-in-Chief, a concentration of authority with few parallels in democratic governance. Article II of the U.S.

Constitution vests all federal executive power directly in the President,<sup>22</sup> making the office the sole driver of the executive branch. The President is elected to a four-year term through the Electoral College, comprising 538 electors drawn from every state, and the 22nd Amendment limits any individual to two terms.<sup>23</sup> To qualify, a candidate must be a natural-born citizen, at least 35 years old, and a resident of the United States for no fewer than fourteen years. This is a directly democratic mandate; the President governs with the explicit, if indirect, backing of the American people.

The powers this office commands are sweeping and real. The President can issue executive orders, written policy directives that carry much of the same force as federal law, as an inherent aspect of presidential power, even without explicit congressional authorisation. The President conducts warfare, deploys troops, and directs military operations in defence of national security, though only Congress can formally declare war.<sup>24</sup> Pardon power is nearly limitless; the President can pardon anyone convicted of federal crimes without any Congressional involvement, except in cases of impeachment. The President also appoints Supreme Court Justices and ambassadors, shaping institutions that outlast any single administration. These are not ceremonial acts; they reshape law, foreign policy, and the judiciary for decades.

Congress does impose meaningful checks. The President can veto legislation, but Congress can override that veto with a two-thirds majority in both chambers. Treaties require Senate ratification, judicial appointments need Senate confirmation, and the House holds the sole power to impeach the President, with the Senate serving as the trial body. Yet in practice, the U.S. President operates with enormous day-to-day autonomy, setting budgets, commanding the military, directing foreign diplomacy, and steering the federal bureaucracy of millions, all without needing parliamentary confidence to survive in office.

The President of India occupies a constitutionally different universe. India follows a parliamentary model where the President is the formal repository of executive power, while the Council of Ministers, headed by the Prime Minister, is the real executive that governs the country. The Indian President is a constitutional head like the British monarch. Executive

---

<sup>22</sup> Constitution of the United States 1787, art II

<sup>23</sup> Twenty-Second Amendment to the United States Constitution 1951

<sup>24</sup> Constitution of the United States 1787

powers are vested in the President on paper, but in practice, exercised entirely by the cabinet. The President is elected not by the people directly, but by an electoral college of Parliament and state legislature members. After the 42nd and 44th Constitutional Amendments, the President is bound in every case to act on the advice of the Prime Minister and Council of Ministers; the powers really reside in the Ministry and Parliament, not in the President.<sup>25</sup>

The contrast between the two offices is ultimately a contrast between two entirely different models of democracy. The U.S. President is the government elected independently, governing independently, and removable only through the extraordinary mechanism of impeachment. The Indian President appoints the Prime Minister, senior judges, and Governors, and can declare emergencies,<sup>26</sup> but these acts are either constitutionally compelled or require cabinet advice. While the Indian President is the supreme commander of the armed forces and the first citizen of the nation,<sup>27</sup> real military and policy authority rests with the elected Prime Minister. One office is the engine of government; the other is its dignified face, powerful in symbol, restrained in action. The U.S. presidency has expanded significantly beyond its original constitutional text through historical practice, Supreme Court rulings, and congressional delegation of authority. The Indian President does retain certain 'pocket veto' discretion on bills and can play a pivotal role during hung parliaments when no party holds a clear majority, moments where the office's latent power briefly becomes real.

## OBSERVATIONS

The most fundamental observation emerging from this study is the striking constitutional paradox at the heart of India's republican structure. The President of India is formally vested with sweeping executive, legislative, judicial, and emergency powers under Articles 53, 72, 111, 123, 352, 356, and 360, yet exercises virtually none of them on personal discretion. Every contract is executed in the President's name under Article 299, every ordinance is promulgated by the President under Article 123, and every major appointment from the

---

<sup>25</sup> The Constitution (Forty-Second Amendment) Act 1976; The Constitution (Forty-Fourth Amendment) Act 1978

<sup>26</sup> 'The President of India' (*Next IAS*, 26 December 2024) <<https://www.nextias.com/blog/president-of-india/>> accessed 01 May 2026

<sup>27</sup> 'Powers and Functions of the President of India' (*Geeks for Geeks*, 08 April 2025) <<https://www.geeksforgeeks.org/social-science/powers-and-functions-of-the-president-in-india/>> accessed 01 May 2026

Prime Minister to the Chief Justice is made by the President. Yet these are not presidential decisions in any meaningful sense; they are Cabinet decisions clothed in the President's constitutional form. The President reigns but does not govern, a formulation deliberately embedded into the Indian constitutional framework through the Constituent Assembly debates of 1946 to 1949. As Dr B.R. Ambedkar explicitly acknowledged in his speech of 4th November 1948, India's founding generation chose a parliamentary model in which real executive power would vest in the Prime Minister and Cabinet, with the President serving as a dignified constitutional head rather than an active political engine.

This position stands in sharp and deliberate contrast to the President of the United States. Under Article II of the U.S. Constitution, the American President is simultaneously Head of State, Head of Government, and Commander-in-Chief, a concentration of authority with few parallels in democratic governance. The U.S. President issues executive orders carrying the force of law, appoints and dismisses Cabinet members entirely at personal discretion, conducts warfare, and governs without needing the confidence of Congress to remain in office. No Prime Minister mediates between the U.S. President and executive action. The office is the government. The Indian presidency, by deliberate constitutional design, occupies an entirely different institutional universe, powerful in symbol, restrained in action, a dignified face on a Cabinet-driven executive.

A further significant observation is the identification of the practical structural mechanisms beyond mere constitutional convention that prevent the President of India from acting on personal discretion even if politically tempted to do so. These operate as a self-reinforcing constitutional cage. The President cannot unilaterally incur expenditure, as any withdrawal from the Consolidated Fund of India requires an Appropriation Bill under Article 114, passed by the Lok Sabha, a body controlled by the ruling party. Any President defying Cabinet advice would be financially paralysed. Additionally, the 42nd Constitutional Amendment of 1976 inserted explicit language into Article 74(1) providing that the President shall act in accordance with Cabinet advice, and the 44th Amendment of 1978 further provided that while the President may return advice once for reconsideration, if the Cabinet resubmits the same advice, the President is constitutionally compelled to comply. No equivalent constraint operates upon the U.S. President, who may veto legislation outright and can only be overridden by a two-thirds supermajority in both chambers of Congress.

A novel finding of this research is that the presidential oath under Article 60 operates not merely as a ceremonial formality but as an active internal constitutional restraint that discourages independent presidential action. The President swears to preserve, protect and defend the Constitution. Paradoxically, any unilateral assertion of personal power in the face of a parliamentary majority appointing non-parliamentary ministers, dismissing a government that retains Lok Sabha confidence, or withholding mandatory assent would itself violate the democratic republican Constitution the President is sworn to protect. The oath thus transforms into a constitutional argument against presidential activism. This stands in fundamental contrast to the U.S. presidential oath under Article II, Section 1, Clause 8, which commits the President to faithfully execute the Office and actively govern. For the U.S. President, faithful execution requires active governance; for the Indian President, constitutional preservation demands restraint, a philosophical divergence rooted entirely in the choice of governmental model made at the founding moment.

A second finding concerns the relationship between the mode of presidential election and the scope of presidential power. The indirect election of the Indian President through an electoral college of elected parliamentarians and state legislators under Article 54 is not merely a procedural choice; it is a structural commitment to parliamentary supremacy. By making the President's democratic mandate derivative of and secondary to elected representatives, the framers ensured the President could never claim independent popular authority to override the Cabinet. Nominated members were specifically excluded from the electoral college to prevent executive manipulation, a principle affirmed by the Supreme Court in *S.R. Bommai v Union of India* (1994). The U.S. Electoral College, by contrast, generates a direct popular democratic mandate rooted in the people themselves, not in a legislative body – and that direct mandate is the constitutional foundation for American presidential independence from Congress.

A third and most nuanced finding is that the Indian presidency is not a perfectly hollow office. Contrary to the common characterisation of the President as a pure rubber stamp, limited but real discretionary power exists at constitutional margin points, specifically during hung parliament situations. When no single party commands a Lok Sabha majority, the President's discretion in inviting a party leader to form a government is genuine and consequential, as affirmed by the Supreme Court in *Chaudhary Charan Singh v Dinesh*

Kumar. The Zail Singh episode of the 1980s further confirmed that the office retains residual reserve powers theoretically exercisable in extreme constitutional crises. This marginal discretion has no structural parallel in the U.S. system, where presidential power is the continuous constitutional default. For the U.S., executive authority is inherent and permanent; for India, real presidential discretion is the rare exception activated only by constitutional breakdown, and this asymmetry is the most defining comparative finding of this entire research.

## **METHODS**

This study adopts a qualitative and non-empirical research design. It is descriptive and analytical in nature, aimed at examining the constitutional position of the President of India and contrasting it with the President of the United States. No primary data collection through surveys or interviews was conducted, as the research relies entirely on established legal texts, judicial pronouncements, and scholarly literature.

**Doctrinal Legal Research:** The primary method is doctrinal legal research involving systematic examination of constitutional provisions. Articles 52, 53, 74, 75, 78, 79, 85, 87, 111, 143, 299, 356, and 368 of the Constitution of India were studied in depth. Article II of the U.S. Constitution, along with the 12th, 20th, and 22nd Amendments were analysed to understand the American framework.

**Historical and Archival Research:** Primary historical sources were consulted to trace the evolution of the presidential office. These include the Constituent Assembly Debates (1946–1949), Dr B.R. Ambedkar's speech of 4th November 1948, the Shah Commission Report (1978), and Dr Rajendra Prasad's autobiography (1957).

**Case Law and Precedent Analysis:** Landmark judicial decisions were examined to understand how courts have interpreted presidential powers over time. Key cases include *Shamsher Singh v State of Punjab* (1974), *S.R. Bommai v Union of India* (1994), *Golaknath v State of Punjab* (1967), and *Chaudhary Charan v Dinesh Kumar*. *Bush v Gore* (2000) was referenced for the American context.

**Comparative Constitutional Analysis:** A comparative methodology was employed to contrast the Indian and American presidential systems across parameters such as electoral

processes, scope of executive power, legislative veto, cabinet accountability, pardon powers, and emergency provisions. This method helps identify structural similarities and fundamental differences between the two constitutional models.

**Secondary Literature Review:** Authoritative secondary sources were reviewed to supplement primary research. These include D.D. Basu's *Commentary on the Constitution of India* (8th Edition), Granville Austin's *Working a Democratic Constitution* (1999), A.G. Noorani's *Constitutional Questions and Citizens' Rights* (2006), Max Farrand's *Records of the Federal Convention of 1787*, and *The Federalist Papers* by Hamilton and Madison.

**Constitutional Amendment Tracing:** A legislative tracing method was used to analyse how successive constitutional amendments shaped presidential authority. The 24th Amendment (1971), 42nd Amendment (1976), and 44th Amendment (1978) are examined to show how the binding nature of cabinet advice was progressively codified and presidential discretion curtailed.

**Textual and Purposive Interpretation:** Constitutional provisions were interpreted using both textual analysis (plain reading of the text) and purposive interpretation (examining the intent behind the provision). This dual approach helps reconcile gaps between what the Constitution says and how it is actually practised.

**Institutional Analysis:** The study examines how constitutional institutions, the President, the Council of Ministers, Parliament, and the Supreme Court, interact and constrain each other. This institutional lens helps explain why the President, despite being vested with vast formal powers, functions as a nominal executive in practice.

## CONCLUSION

The foregoing analysis establishes that the President of India is a constitutional head in the fullest sense of that phrase, an office that is indispensable to the formal legitimacy of the Republic, yet deliberately stripped of autonomous governing power. This outcome was neither an accident of drafting nor a constitutional afterthought; it was the product of a carefully reasoned choice made by the framers of the Constitution during the Constituent Assembly debates of 1946–1949. Haunted by the spectre of authoritarian rule in a newly independent and immensely diverse nation, the founders consciously rejected the American

presidential model in favour of the British Westminster system, entrusting real executive authority to a Cabinet that is collectively responsible to the directly elected House of the People.

The constitutional journey traced in this paper reveals a consistent, incremental narrowing of whatever residual discretion the presidency might once have possessed. Articles 52, 53, and 74(1) together created the initial framework: executive power vested in the President, but exercised on the advice of the Council of Ministers. The *Shamsher Singh* judgment of 1974 removed the judicial ambiguity that had lingered over the phrase 'aid and advise', firmly ruling that the President must act on cabinet satisfaction. The 42nd Constitutional Amendment of 1976 translated that judicial reasoning into explicit constitutional text, obligating the President to act in accordance with cabinet advice in every executive matter. The 44th Amendment of 1978, while restoring a limited deliberative role by permitting the President to return advice once for reconsideration, simultaneously confirmed that if the Council of Ministers re-tenders the same advice, assent becomes an absolute constitutional obligation. The 24th Amendment of 1971 completed this architecture by making presidential assent to constitutional amendment bills mandatory under Article 368, eliminating even the theoretical possibility of a presidential pocket veto over constituent power. The cumulative effect of these amendments and judicial pronouncements is that the President of India today exercises power in a formal, ceremonial, and instrumental capacity, signing rather than deciding, summoning rather than directing, and representing rather than ruling.

The structural reasons why no President has successfully asserted independent power are rooted in democratic logic rather than mere convention. A President who attempts to govern autonomously would immediately confront the unyielding fiscal reality of Article 114: without the support of a majority in the Lok Sabha, no Appropriation Bill can be passed, no expenditure can be authorised from the Consolidated Fund of India, and governance grinds to a halt. The appointed (if on the President's discretion) Council of Ministers must command a majority in Parliament within six months under Article 75, ensuring that the executive always retains parliamentary confidence. The impeachment mechanism under Article 61, though never invoked in India's history, serves as a powerful political deterrent against any President who might contemplate stepping outside the constitutional boundaries of the office. Together, these mechanisms form an interlocking system in which the elected

legislature and the Cabinet it sustains are always supreme, and the presidency can never become a refuge for unilateral governance.

The comparative analysis with the American presidency illuminates these distinctions with particular clarity. The President of the United States is, in the truest constitutional sense, the government itself directly elected through the Electoral College with an independent democratic mandate, vested with plenary executive authority under Article II, and governing without any requirement of legislative confidence for day-to-day administration. The American President appoints the Cabinet at will, issues executive orders with the force of law, commands the armed forces in active military operations, exercises an almost unlimited pardon power, and shapes the judiciary through Supreme Court appointments that define the legal landscape for generations.

The Indian President holds all these powers on paper, supreme commander, head of state, appointer of judges and ministers, summoner of Parliament, and proclaimer of emergencies, but exercises none of them as personal prerogatives. Every such act is either constitutionally compelled by cabinet advice or is constrained by subsequent parliamentary oversight. The American presidency is the engine of government; the Indian presidency is its dignified and constitutionally necessary face.

In sum, the question this paper set out to answer, why the President of India, despite being constitutionally vested with executive, legislative, judicial, military, and emergency powers, does not act on personal discretion, admits of a clear and principled answer. The President does not govern because the Constitution, as interpreted by the Supreme Court and reinforced through successive amendments, mandates that governance in a parliamentary democracy flows from the confidence of the elected legislature, not from the personal will of a constitutional head. The President of India reigns but does not rule, and in that carefully maintained restraint lies the genius of Indian constitutionalism: a system that honours the form of executive power while ensuring that its substance always rests with those who are accountable to the people. The contrast with the American model is not a deficiency of the Indian system; it is a reflection of two nations' different historical experiences, different constitutional philosophies, and different judgments about how best to secure both effective governance and the liberties of a free people.