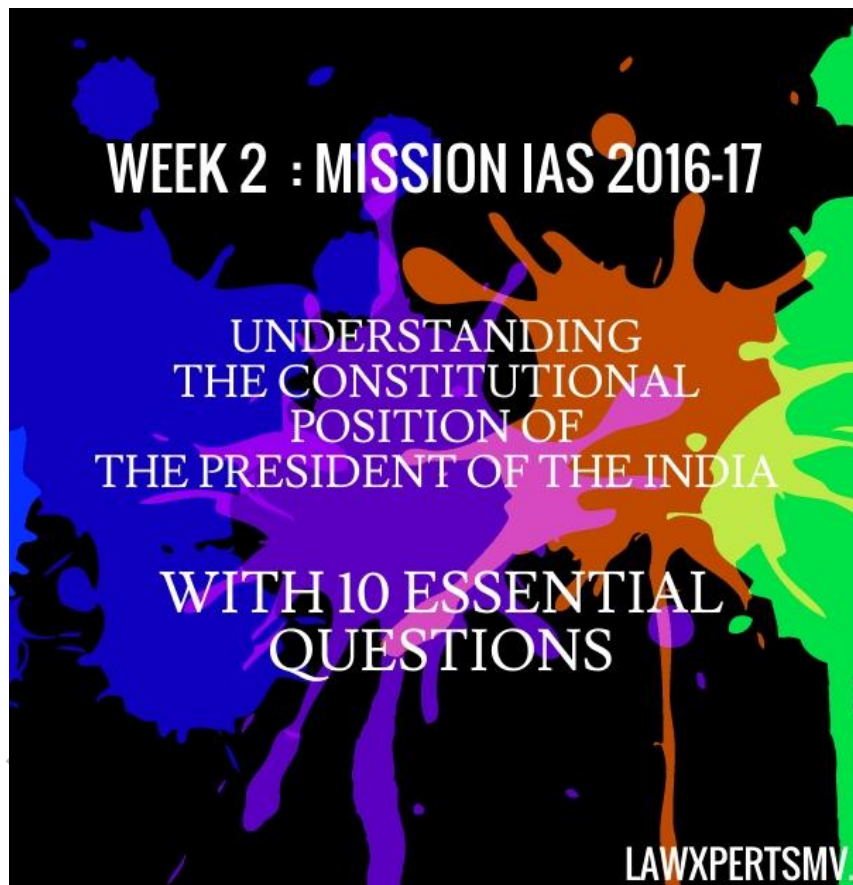


# LAWXPERTS.

## WHY YOU SHOULD STUDY THIS ?

1. HIGH QUALITY.
2. BASED ON STANDARD SOURCES
3. POSSIBILITY OF DIRECT QUESTIONS
4. COMPLETELY SYLLABUS-ORIENTED.



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## 1. India is a Republic. What does it mean?

It means that **head of the Indian state** is **Elected** by the ppl unlike Britain=**Hereditary**.

## 2. Elected by the Ppl. How ?

- ART.54. Indirectly by Electoral clge = Elected mems of LS + LAS of Sts + UTs.

**Value of vote of an MLA** = total population of st. / total elected members in LA ×1000

**Value of vote of an MP**= total value of votes of all MLAs of all sts / total elected members of parliament

- ART 56 : FOR 5yrs.
- ART 57 : eligible for re-election.

## 3. Am I qualified to be POI? Let us see.

35 YRS; Citizen of India; eligible for lok sabha ; no office of profit.

4. **Can he be removed ?** Yes. For "Violation of Constitution". By special Majority of Parliament ART.61.

## 5. Nature of the Powers of President<sup>1</sup>?

- Titular, Ceremonial Head. Real power resides with PM + CM and their COMs.
- " The President is the formal or constitutional head of the executive. The real executive powers are vested in the Ministers of the Cabinet. There is a Council of Ministers with the Prime Minister as the head to aid and advise the President in the exercise of his functions."Samsher v. State of Punjab, AIR 1974 SC 2192.
- What had Constituent assembly said?

Ambedkar in Constituent Assembly: **He represents the Nation but does not rule the Nation.** He can do nothing contrary to their(COM) advice; nor can he do anything without their advice.

Nehru in C.A. : it was **not** intended to make the President of India a mere figurehead.

TRIVIA : The parliamentary democracy connotes vesting of real power of governance in the Prime Minister and Council of his Ministers who are very often drawn from the majority party in Parliament. <sup>2</sup>

<sup>1</sup> **DO NOT WASTE YOUR TIME IN MUGGING UP THE POWER OF PRESIDENT ENLISTED IN LAXMIKANTH FOR THE PURPOSE OF LAW OPTIONAL.**

<sup>2</sup> In such a democracy, the head of the State, be he the King or the President, remains a constitutional head of the State. He acts in accordance with the aid and advice tendered to him by the Council of Ministers with the Prime Minister at its head. This is what clause (1) of Art.74 provided, even before it was amended by the 42nd (Amendment) Act. It was so understood and interpreted in Ram Jawaya Kapur v. State of Punjab<sup>53</sup>and in Shamsher \*\* The decision of this Court in Kesavananda Bharati (1973) 4 SCC 225,: 1973 Suppl SCR 1, 166, 280] says that secularism is one of the basic features of the Constitution. 53 AIR 1955 SC 549: (1955) 2 SCR 225 Singh<sup>22</sup>. The 42nd Amendment merely made explicit what was already implicit in clause (1). The 44th Amendment inserted a proviso to clause (1) which too was in recognition of an existing reality.

Confusing huh?

- All executive power of the Union is vested in him. ART.52. Awesome!
- BUT; Under Art. 53(1), executive powers vested in the President are to be exercised by him either **directly** or through **officers subordinate to him**.

So directly means that he can exercise by himself? BIG NO. Says Supreme court of India in *U.N.R. Rao v. Indira Gandhi*, AIR 1971 SC 1002, 1005 : (1971) 2 SCC 63.

Directly means that = he should act on advice of one minister/COM\*.

Official = as per Rules of Business framed under Art. 77(3).

6. **WHAT IS THIS - COUNCIL OF MINISTERS\* (COM):?** It runs the government at the national level.

- WHY? Coz. **DOCTRINE OF CONSTITUTIONAL IMPLICATIONS -**

"Although the executive power of the President is apparently expressed in unlimited terms, an implied limitation has been placed on his power on the ground that he is a formal or constitutional head of the executive and that the real executive power vests in the Council of Ministers" *Manoj Narula vs Union Of India* (2005) 7 SCC 52

- **Art. 74(1)** : there shall be a Council of Ministers with the Prime Minister at its head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.
- **Size of COM** - shall not exceed 15 percent of total number of members of the House of the People. 91st Amendment Act (2003).
- It has the collective responsibility to sustain the integrity and purity of the constitutional structure.

7. **Is COM permanent body ? YES.**

Contention in *U.N.R. Rao* : If "shall" be construed as "may" - then it would mean -PREZ need not have a PM +COM . IF NO COM, nobody would be responsible to the *Lok Sabha*. This would derail our parliamentary / responsible form of govt. Art.s 74 and 75 = Loosely worded ; practices of convention in U.K. will be adopted.

8. **Is the advice binding on the prez ? Very imp.**

*Func. of prez are exercised in acc with constitutional and statutory provisions + discharged on the advice of the Council of Ministers. Otherwise Constituent Assembly would've chosen the Presidential System of Government.*

Settled position : *Bommai v. Union of India*, (1994) 3 SCC 1 : AIR 1994 SC 1918,<sup>3</sup> held conclusively that, subject to the express provision of the constitutions, the role of the President of India is that of a constitutional head of the state like the English Crown, who is to act upon the advice tendered by the council of ministers which is 'binding upon the president'. [paras. 245-49]

*Samsher's*, AIR 1974 SC 2192; (1974) 2 SCC 831,<sup>4</sup> in these words: "But the harmonious reading of the mandatory character of Article 75(1) along with Articles 75(2) and 75(3) is that the President cannot exercise executive powers without the aid and advice of the Council of Ministers with the Prime Minister at the head."

### 9. Judicial Scrutiny into advice of COM?

Courts cannot ask what advice, if any, has been given by the Ministers to the President. **but we can** compel production of the materials on which the decision of the Council of Ministers is based 74(2) <sup>5</sup>

**"The court will only see what was the material on the basis of which the requisite satisfaction is formed and whether it is relevant to the action taken"**

### 10. What if ; he did not listen to COM ?

- No legal action against him Art.361.
- Political Sanction = fear of impeachment of the President if he violates Art. 74(1) on a crucial matter by not acting on ministerial advice. This may be regarded as "violation of *the Constitution*" in terms of Art. 56(b).

***The relationship between the President and the Council of Ministers is based on political sanctions and any error of judgment on the part of the President may well prove to be his graveyard.***

THE END.

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<sup>3</sup> *Bommai v. Union of India*, (1994) 3 SCC 1 : AIR 1994 SC 1918 (para.245)

<sup>4</sup> *Samsher v. State of Punjab*, AIR 1974 SC 2192; (1974) 2 SCC 831 (para.153).

<sup>5</sup> Whatever advice the Cabinet or a Minister has given to the President is confidential, and the courts can neither take any cognisance thereof nor enquire as to what advice has been given by the Ministers to the President.