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Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

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Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

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Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

POSITION OF PRESIDENT IN INDIA AND AMERICA

AUTHORED BY - SHERBAJ SINGH

1. INTRODUCTION

The Constitution of India, which was expected to be the precursor of the new Indian renaissance, became effective on Jan 26, 1950. The Constituent Assembly took about two years to finalize the new Constitution. A lot of efforts were made by legal luminaries and people of great eminence comprising the constituent assembly so that India could get the best provisions from the Constitutions of different countries of the world, such as the U.S.A., the U.K., Australia, Ireland etc. The efforts made by them were very sincere and they gave the best possible Constitution to the country undoubtedly and their ability to do so can't be questioned. Like UK, India has also adopted the parliamentary form of government rather than USA's presidential form of Government. The real power has been given to the Prime Minister when acting along with his cabinet and the Indian President is only the nominal head.

President, Vice President, Prime Minister, Council of Ministers and Attorney General of India together forms the union executive of India. Under the Indian Constitution, very special place has been assigned to the President of India. As per the Indian Constitution, most of the important authorities are directly or indirectly related to the President. The President is deemed to be the symbol of Unity, integrity and solidarity of the nation. The first citizen at the head of India is its President. Great Prestige and authority has been attached to the office of Indian President. The President is entitled to all the dignities, protocols and immunities. Regarding the powers and position of the Indian President the theme is that like the British Monarch, he is a ceremonial head, always bound to act on the advice of the Council of Ministers (especially so, after the 42nd and 44th amendments). Various legislative, executive and other powers have been entrusted to the office of Indian President but his powers are not alike the American President.

Ambedkar, President of the Drafting Committee, emphasized: "The President of India is only the

symbol of the Nation, the Head of the State, but not the Head of the Executive. President is merely a nominal figure-head.” Prime Minister Nehru reiterated the same view: "What is wanted in India is power in ministry legislature and not in the President.” The President of the Constituent Assembly, Rajendra Prasad, was specific in his assertion: “His position is that of a Constitutional President. who is bound to act according to the advice.”

Though the Constitution of India vests in the President formidable powers, our system significantly differs from that of the U.S.A.:

Firstly, in U.S.A. the President is both head of the state as well as head of the Government, while in India President is head of the State but not the head of the Government.

Secondly, in India reliance has been placed upon the theory of ‘fusion of powers’ whereas on the other hand the Presidential system in U.S.A. is based upon the doctrine of separation of powers.

Thirdly, it’s up to the choice of U.S. President whether to consult his cabinet or not, but it’s mandatory for the Indian President has to act on the aid and advice of the ‘Council of Ministers’.

Fourthly, the members specifically elected to choose the President elects the American President, whereas in India the persons initially elected as legislators of the national and state legislatures elects the President.

2. MEANING OF PRESIDENT, PRIME MINISTER AND PARLIAMENT

Meaning of President

- In the Presidential form of Government, President is an official elected to serve as the chief of the State as well as chief of the Government.
- In Parliamentary Government, President is an official elected holding the post of chief of the State but he is not chief of the Government and have only minimal political powers¹.

Meaning of Prime Minister

In parliamentary systems, Prime Minister is the leading minister as well as the head of Government. He is the chief of the cabinet or ministry². The cabinet’s head in Parliamentary form of Government is its Prime Minister. Under this system, a prime minister is neither the head of state nor a monarch³.

¹ President, available at: <https://www.merriam-webster.com/dictionary/President> (last visited on July 26, 2021).

² Prime Minister, available at: <https://www.dictionary.com/browse/prime-minister> (last visited on July 26, 2021).

³ Prime Minister, available at: https://en.wikipedia.org/wiki/Prime_minister (last visited on July 26, 2021).

Meaning of Parliament

Elected politicians those who legislate laws for the country together form the Parliament⁴. Parliament is often described as a mere “Talking shop”. The word ‘Parliament’ means and largely it describes the actual institutions. It is a place where people talk about the affairs of the nation.

3. CLASSIFICATION OF FORMS OF GOVERNMENT

As per the particular criteria, when something is systematically arranged in a groups or categories it is known as the classification⁵. There are mainly two forms of Government:

(a) Parliamentary form of Government- Characteristics of the Parliamentary Government are as follows:

- In the parliamentary form of government, the power is concentrated with the parliament. The responsibility of the government is taken by the legislature.
- There are two parts of the executives: (i) head of the state (ii) the head of the government. The head of the state is its President and the head of the government is its Prime Minister. President is merely the nominal head and on the flipside Prime Minister is the real executive head. The constitutional of India regulates the relationship between the President and the Prime Minister.
- The Prime Minister is appointed by the President. If there is majority of any party in the parliament,
- the President has no option except to appoint the leader of that party as the Prime Minister but if no party is in majority in the parliament then in this matter the President has the prerogative.
- Ministry is composed by the head of the government and the formal appointment of the ministers are done by the head of the State.
- The Council of Ministers are collectively responsible. So long as the confidence is enjoyed by the Government, it shall remain in office.
- The collective body has the decision-making power.
- Generally, the ministers are the members of the parliament.
- For the dissolution of the parliament, the President may be advised by the Prime Minister.
- Both government and the parliament mutually depends upon each other.
- Indirect responsibility towards the electorate is of the government as a whole.

⁴ Parliament, available at: <https://dictionary.cambridge.org/dictionary/english/parliament> (last visited on July 26, 2021).

⁵ Classification, available at: <https://www.merriam-webster.com/dictionary/classification> (last visited on July 27, 2021).

- Parliament enjoys the ultimate power to control and supervise the executive.

(b) Presidential form of Government- Characteristics of the Parliamentary Government are as follows:

- Powers are in the hands of President. He can take initiatives of his own.
- President can even choose cabinet member from the persons not having the membership of Parliament.
- For the country's administration, the President can nominate any person of outstanding competence and intellectual integrity.
- President can function with liberal tenets in a democratic nation.
- Chief executive of the nation i.e. the President plays the role of the head of Government.
- President is not the legislature member. President is elected directly by the electoral college.
- President is empowered to appoint any person as head of any Government department.
- To high offices, person of excellence even though belonging to different political parties can be appointed by the President.
- President can make appointment of ministers for his team from the members of the political party enjoying majority in the legislature.
- In this form of Government, professional experts elected by the President forms the cabinet and run the administration of the nation. The apex body for framing the policies is the cabinet.
- Presidency is supreme over the Government in this system of Government.

4. CONSTITUTIONAL FRAMEWORK (POWERS OF INDIAN VIS A VIS AMERICAN PRESIDENT)

Part-V (The Union) under Chapter-I (The Executive) Article 52 to 62⁶ deals with the qualification, impeachment, election of the Indian President.

POWERS OF THE INDIAN PRESIDENT-

Being the head of the State, the President has been vested with the executive powers and thus, he plays very crucial role in the Governance of the country. President, Vice President, Prime Minister, Council of Ministers and Attorney General of India together form the union executive of India. The

⁶ The Constitution of India, 1950.

preservation and protection of the Constitution of India as well as the law of India is the primary and basic duty of the Indian President. Powers and functions entrusted in the Indian President are mentioned below:

❖ *Executive Powers*⁷-

While exercising its executive powers, the President is bound to act as per the advice of the council of the ministers. The President has been empowered with the following executive powers:

- The executive decisions been taken by the government of India undertaken in the name of the President.
- For the convenient business transactions of the Government of India, the President has been given the power to make rules in regard to that⁸.
- Various Union Ministers along with the Prime Minister appointed by the President of India.
- The members of the union government as well as many other constitutional officers can be appointed and removed from their post by the President.

❖ *Legislative Powers*-

Some of the legislative powers have also been given to the President of the India:

- The Parliament can be summoned and prorogued by the President of India⁹.
- The President has the power to dissolve the Lok Sabha¹⁰.
- For any bill to get converted into an Act, the assent of President is essential.
- For recognition of any new state or alteration of the boundaries of the state, the President Can recommend the bill in either House of the Parliament.
- If any restriction is to be imposed on the freedom of the trade and commerce of the state, the recommendation of the President is required.
- 12 members in the Rajya Sabha are nominated by the President and in Lok Sabha, the President has power to nominate two Anglo Indians.

❖ *Diplomatic powers*-

- Ambassadors and other diplomatic representatives are send and received by the President of the India.

⁷ Ibid., Art. 53.

⁸ Ibid., Art. 77.

⁹ Ibid., Art 85.

¹⁰ Ibid.

- In the name of the President, every international treaty and agreement are being concluded.
- The Indian representative in international forums and affairs is its President.

❖ *Military powers-*

- Being the supreme commander of the defence forces of the India, the President is exclusively empowered to declare war and peace.
- The chiefs of all the three forces (Army, Navy, Air force) are appointed by the Indian President.
- The parliament controls and regulates the military powers of the President.

❖ *Financial powers-*

- Prior recommendation of the President for the introduction of money bill is required.
- The one who lays the union budget before the parliament is none other than the Indian President.
- Contingency fund of the India is controlled by the President.
- For the term of five years, the finance Commission can be established by the President

❖ *Emergency powers-*

- The emergency can be declared by the President. The President have power to suspend the right to go for the protection of fundamental rights in the court.
- The President can direct any state to exercise its executive power.
- The term of Lok Sabha can be extended for one more year by the President.
- The salaries of state officials, Supreme Court judges and High Court judges can be reduced by the President.
- In the situation of emergency, the President may assume to have with himself the powers of state Governor.

❖ *Pardoning power¹¹-*

- In case of conviction of an offence by the court martial, conviction is against any law which is related to the matter to which the executive power of the union extends or the conviction is

¹¹ Ibid., Art. 123

for death sentence, the President has been granted the power to pardon, reprieve, respite, commute or remit the sentence of the convicted person.

❖ *Veto power-*

- The President has the choice to reject, return or withhold his assent over the bill when it comes before him for the approval.

POWERS OF THE AMERICAN PRESIDENT-

Under the Constitution¹² and under legislations of the Congress the President of USA has been granted the powers. Powers granted by the constitution to the President of US are as follows:

- President is empowered to put signature or veto the legislation.
- The US President is the commander of the armed forces of the US.
- The President is free to ask the written opinion of their cabinet members.
- The Congress can be convened or adjourned by the President of the USA.
- The pardons and the reprieves can be granted by the President of USA.
- The ambassadors in US are received by its President.
- The executive officers can be appointed and removed by the President.
- The American diplomatic corps can be instructed by the President.
- Communication as well as formation of the foreign policies are controlled by the President.
- Upon the advice and consent of the U.S. Senate, Judges¹³ and some other officers may be
- appointed by the President. Even during this recess of the Senate the President is empowered to make temporary appointment.

FUNCTIONS OF THE AMERICAN PRESIDENT

The president is anticipated to perform a number of duties as part of the office. While the Constitution mentions several of these duties, others have evolved over time. How a president carries out these functions depends on his personality, as well as on his view of the administration and the part of government. For illustration, the State of the Union wasn't delivered as a speech until the administration of Woodrow Wilson.

¹² [Article II](#) of the [United States Constitution](#)

¹³ *Ibid.*, Art. III.

Modern presidents generally take a leadership approach to their job. They consider themselves representatives of all the people, put in place to pursue a political docket by using their essential powers. Scholars generally praise presidents who follow this model, because it results in ambitious policy programs that (for good or ill) leave a strong mark on American government. Of course, when presidents view themselves as policymakers, they occasionally are intolerant with indigenous limitations on administrative exertion. For illustration, Abraham Lincoln suspended the right of habeas corpus during the Civil War. Both Andrew Jackson and Franklin Roosevelt tried to blackjack the Supreme Court, some say successfully, after a maturity of judges ruled against them.

"Chief clerk" presidents, on the other hand, take a further unresistant approach to the job. They're much more careful about exceeding their indigenous authority and frequently believe in a limited government. Still, numerous scholars feel that such presidents similar as James Buchanan and Herbert Hoover didn't move aggressively enough to deal with heads during their administrations.

Presidents also differ on their generality of the part of the civil government. Lyndon Johnson believed the government had a responsibility to help the underprivileged. His Great Society, the domestic program that included the War on Poverty and Medicare, reflected this concern. Ronald Reagan, on the other hand, saw government as the problem, not the result to the nation's problems.

➤ Commander in principal

The president is the loftiest-ranking officer in the fortified services. As noted preliminarily, presidents have shown no vacillation in filling this part by transferring American forces to trouble spots around the world as an instrument of foreign policy. Over the last 25 times, American colors have fought in Grenada, Panama, the Persian Gulf, Haiti, Bosnia, Afghanistan, and Iraq.

➤ Chief of state

Amusement as chief of state is a president's most visible function, whether meeting the heads of other countries, drinking astronauts or council football titleholders to the White House, or opening the Olympic Games. Although largely conventional, the part of chief of state makes an important statement to the world and the nation about the president as a leader.

➤ Diplomat

The president not only decides the direction of American foreign policy but also plays an important part in carrying it out. During the Cold War period, for illustration, face- to- face meetings between leaders of the United States and the Soviet Union contributed to an easing of pressures and important arms- control improvements; indeed, the relationship between Ronald Reagan and Mikhail Gorbachev was crucial to ending the Cold War. President Jimmy Carter worked out the Camp David Accords between Israel and Egypt. Bill Clinton was laboriously involved in Middle East peace accommodations during his administration. This type of exertion is occasionally called peak tactfulness.

➤ Chief administrative

The president is the principal director, or principal mandarin, of the nation and is eventually responsible for all the programs in the administrative branch. Responsible for seeing that " all laws are faithfully executed," a president sets the broad policy for the superintendent departments and agencies rather than managing their day- to- day operations.

➤ Legislator

A president doesn't simply propose legislation but is laboriously involved in seeing that it becomes law. The White House staff maintains close connections with Congress, while the president meets with Congressional leaders to press for passage of bills and calls individual members of Congress to ask for their vote. In cases of a disunited government, in which the White House and Congress are controlled by different political parties, the president can appeal directly to the people for support.

➤ Moral leader

The president is anticipated to set the moral tone for the nation, including exemplary honesty, religious faith, and integrity. The question of a president's moral leadership has assumed new significance in recent times as the media and public have given the private lives of the tagged officers closer scrutiny. The " character issue" is constantly included in public opinion pates on a president's performance.

➤ Party leader

In addition to performing easily governmental functions, the president serves as the "nominal head" of a political party. A president is anticipated to support the party's platform, help raise plutocrat for the party, and crusade for the party's campaigners. The president expects the support of party members in Congress on crucial votes; still, recent experience has shown that party fidelity is declining.

An implicit conflict exists between the president as public leader and as party leader. Canny presidents address their party's positions really while trying to make agreement on nonpartisan issues. The rise of interest groups that take daises on controversial or emotional issues similar as revocation, academy prayer, and weal spending can make this balance delicate to achieve.

Organization of the Administrative Branch

Policy isn't developed nor are all administrative opinions made by the president alone. presidents have come to calculate on a large staff grounded in the White House to handle a wide range of executive tasks from policymaking to speechwriting. The staff is pious to the president, not to Congress or a government agency. unbounded by the president, the White House staff can come a source of reproach. Watergate under President Nixon is a good illustration.

The Constitution gives virtually no direction on the association of the administrative branch. It does mention "administrative departments," which came the base for the press. While counting primarily on the White House staff for advice, a president turns to members of the press for advice in their areas of moxie. In the main, still, press registers are responsible for running the departments they head.

The Executive Office of the President

The Executive Office of the President (EOP) comprises four agencies that advise the president in crucial policy areas The White House Office, the National Security Council, the Council of Economic counsels, and the Office of Management and Budget.

The president's main counsels, frequently long- time particular musketeers or people who played a crucial part in the election, make up the White House Office. It includes the president's particular counsel, press clerk, movables clerk, and other support labor force. The most important position in

this group is the chief of staff, who's responsible for seeing that the president's legislative pretensions are carried out by working with Congress on the legislative docket.

The National Security Council (NSC), organized in 1947, deals with domestic, foreign, and military programs affecting security issues. By law, the NSC is composed of the president, vice president, clerk of defense, and clerk of state. Representatives of the intelligence and defense communities are also members. The president's public security counsel supervises the council's conditioning.

The Council of Economic counsels (CEA) was created in 1946 to give the president with information on profitable policy. It's best known for prognosticating public profitable trends.

The tremendously complex task of preparing the civil budget for submission to Congress falls to the Office of Management and Budget(OMB). Firstly, established in the Treasury Department as the Bureau of the Budget, the OMB has had its powers expanded vastly since 1970. It's involved in drafting the president's legislative program and assessing how effectively civil agencies use their appropriations.

The Executive Office of the President also includes the Council on Environmental Quality, the Office of National AIDS Policy, the Office of National Drug Policy, and the Office of the United States Trade Representative. The president is free to establish new agencies within the EOP. George W. Bush created the Office of Faith- Grounded and Community enterprise and the USA Freedom Corps.

4. JUDICIAL TRENDS

The President of India, like the British Monarch is merely a nominal or titular head. The real power is vested in the Council of Ministers. The Supreme Court had, in a number of decisions, expressly accepted this position of the President.

In **Ram Jawaya V. Punjab**¹⁴, the Court held that the English system of a Parliamentary executive had been adopted by our Indian Constitution and the constitutional head of the executive is President and the real power is in the hands of the Cabinet members.

¹⁴ AIR 1955 SC 549.

The Supreme Court stated in **U.N.R. Rao V. Indira Gandhi**¹⁵, that in the light of conventions functioning in England dealing with the Crown and the Ministers relationship, the formal provisions of the Indian Constitution should be read.

The apex court in **R.C. Cooper V. India**¹⁶ opined that even though the President is the constitutional head of India but he is bound to follow the advice of his Council of Ministers normally in all matters including the promulgation of an Ordinance.

After the Supreme Court decision in **Shamsher Singh V. State of Punjab**¹⁷, it has become mandatory for the President to act on the advice of the Council of Ministers. A future amendment, however, made some concession by giving the President, power to refer back the decision to the Council of Ministers (44th Amendment Act) for reconsideration. But if the Cabinet resubmits it, the President has no option but to grant assent.

The supreme court in the case **Rameshwar Prasad V. Union of India**¹⁸, though the President cannot be prosecuted and imprisoned during his term of office, he can be prosecuted after he/she steps down from the post for any guilt committed during the term of presidency as declared earlier by the courts.

¹⁵ AIR 1971 SC 1002.

¹⁶ AIR 1955 SC 549.

¹⁷ AIR 1974 SC 2192.

¹⁸ AIR 2006 SC 35.