

## 10. PRESIDENT AND VICE-PRESIDENT

### PRESIDENT

Articles 52 to 78 in Part V of the Constitution deal with the Union executive.

The Union executive consists of the President, the Vice-President, the Prime Minister, the council of ministers and the attorney general of India.

The President is the head of the Indian State. He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.

### ELECTION OF THE PRESIDENT

The President is elected not directly by the people but by members of electoral college consisting of :

- the elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry;
- the elected members of both the Houses of Parliament;
- the elected members of the legislative assemblies of the states; and

Thus, the nominated members of both of Houses of Parliament, the nominated members of the state legislative assemblies, the members (both elected and nominated) of the state legislative councils (in case of the bicameral legislature) and the nominated members of the Legislative Assemblies of Delhi and Puducherry do not participate in the election of the President. Where an assembly is dissolved, the members cease to be qualified to vote in presidential election, even if fresh elections to the dissolved assembly are not held before the presidential election.

The Constitution provides that there shall be uniformity in the scale of representation of different states as well as parity between the states as a whole and the Union at the election of the President. To achieve this, the number of votes which each elected member of the legislative assembly of each state and the Parliament is entitled to cast at such election shall be determined in the following manner:

- Every elected member of the legislative assembly of a state shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the state by the total number of the elected members of the assembly. This can be expressed as:

Value of the vote of an MLA

$$= \frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{1000}$$

- Every elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to members of the legislative assemblies of the states by the total number of the elected members of both the Houses of Parliament. This can be expressed as :

Value of the vote of an MP =

$$= \frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of Parliament}}$$

The President's election is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot. This system ensures that the successful candidate is returned by the absolute majority of votes. A candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes. The quota of votes is determined by dividing the total number of valid votes polled by the number of candidates to be elected (here only one candidate is to be elected as President) plus one and adding one to the quotient. The formula can be expressed as :

**Electoral quota =**

$$= \frac{\text{Total number of valid votes polled}}{1+1 = (2)} + 1$$

Each member of the electoral college is given only one ballot paper. The voter, while casting his vote, is required to indicate his preferences by marking 1, 2, 3, 4, etc. against the names of candidates. This means that



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the voter can indicate as many preferences as there are candidates in the fray.

In the first phase, the first preference votes are counted. In case a candidate secures the required quota in this phase, he is declared elected. Otherwise, the process of transfer of votes is set in motion. The ballots of the candidate securing the least number of first preference votes are cancelled and his second preference votes are transferred to the first preference votes of other candidates. This process continues till a candidate secures the required quota.

All doubts and disputes in connection with election of the President are inquired into and decided by the Supreme Court whose decision is final.

#### **Elections of the Presidents (1952-2012)**

##### ***Sl. No. Election Victorious Candidate Year***

|     |      |                          |
|-----|------|--------------------------|
| 1.  | 1952 | Dr. Rajendra Prasad      |
| 2.  | 1957 | Dr. Rajendra Prasad      |
| 3.  | 1962 | Dr. S. Radhakrishnan     |
| 4.  | 1967 | Dr. Zakir Hussain        |
| 5.  | 1969 | V.V. Giri                |
| 6.  | 1974 | Fakhruddin Ali Ahmed     |
| 7.  | 1977 | N. Sanjeeva Reddy        |
| 8.  | 1982 | Giani Zail Singh         |
| 9.  | 1987 | R. Venkataraman          |
| 10. | 1992 | Dr. Shankar Dayal Sharma |
| 11. | 1997 | K.R. Narayanan           |
| 12. | 2002 | Dr. A.P.J. Abdul Kalam   |
| 13. | 2007 | Ms. Pratibha Patil       |
| 14. | 2012 | Pranav Mukherjee         |

#### **QUALIFICATIONS, OATH AND CONDITIONS**

##### **Qualifications for Election as President**

A person to be eligible for election as President should fulfil the following qualifications:

- He should be a citizen of India.
- He should have completed 35 years of age.
- He should be qualified for election as a member of the Lok Sabha.
- He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

Further, the nomination of a candidate for election to the office of President must be subscribed by at least 50 electors as proposers and 50 electors as seconders.

Every candidate has to make a security deposit of Rs. 15,000 in the Reserve Bank of India.

##### **Oath or Affirmation by the President**

Before entering upon his office, the President has to make and subscribe to an oath or affirmation. In his oath, the President swears :

- to faithfully execute the office;
- to preserve, protect and defend the Constitution and the law; and
- to devote himself to the service and wellbeing of the people of India.

The oath of office to the President is administered by the Chief Justice of India and in his absence, the seniormost judge of the Supreme Court available.

Any other person acting as President or discharging the functions of the President also undertakes the similar oath or affirmation.

#### **TERM, IMPEACHMENT AND VACANCY**

##### **Term of President's office**

The President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the Vice-President. Further, he can also be removed from the office before completion of his term by the process of impeachment.

##### **Impeachment of President**

The President can be removed from office by a process of impeachment for 'violation of the Constitution'. However, the Constitution does not define the meaning of the phrase 'violation of the Constitution'.

The impeachment charges can be initiated by either House of Parliament. These charges should be signed by one-fourth members of the House (that framed the charges), and a 14 days' notice should be given to the President. After the impeachment bill is passed by a majority of two-thirds of the total membership of that House, it is sent to the other House, which should investigate the charges. The President has the right to appear and to be represented at such investigation. If the other House also sustains the charges and passes the impeachment bill by a majority of two-thirds of the total membership, then the President stands removed from his office from the date on which the bill is so passed.

No President has so far been impeached.



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### **Vacancy in the President's Office**

A vacancy in the President's office can occur in any of the following ways :

- Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.
- On the expiry of his tenure of five years.
- On his removal by the process of impeachment.
- By his death.
- By his resignation.

When the vacancy is going to be caused by the expiration of the term of the sitting President, an election to fill the vacancy must be held before the expiration of the term. In case of any delay in conducting the election of President by any reason, the outgoing President continues to hold office (beyond his term of five years) until his successor assumes charge.

When a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise, the Vice-President acts as the President until a new President is elected.

In case the office of Vice-President is vacant, the Chief Justice of India (or if his office is also vacant, the seniormost judge of the Supreme Court available) acts as the President or discharges the functions of the President.

### **POWERS AND FUNCTIONS OF THE PRESIDENT**

The powers enjoyed and the functions performed by the President can be studied under the following heads.

#### **Executive Powers**

The executive powers and functions of the President are :

- He directly administers the union territories through administrators appointed by him.
- He can declare any area as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas.
- He can make rules for more convenient transaction of business of the Union government, and for allocation of the said business among the ministers.
- He appoints the prime minister and the other ministers. They hold office during his pleasure.

- He appoints the attorney general of India and determines his remuneration. The attorney general holds office during the pleasure of the President.
- He appoints the comptroller and auditor general of India, the chief election commissioner and other election commissioners, the chairman and members of the Union Public Service Commission, the governors of states, the chairman and members of finance commission, and so on.
- He can seek any information relating to the administration of affairs of the Union, and proposals for legislation from the prime minister.
- He can require the Prime Minister to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council.
- He can appoint a commission to investigate into the conditions of SCs, STs and other backward classes.
- He can appoint an inter-state council to promote Centre-state and inter-state co-operation.
- All executive actions of the Government of India are formally taken in his name.
- He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated.

#### **Legislative Powers**

The President is an integral part of the Parliament of India, and enjoys the following legislative powers.

- He decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission.
- His prior recommendation or permission is needed to introduce certain types of bills in the Parliament. For example, a bill involving expenditure from the Consolidated Fund of India, or a bill for the alteration of boundaries of states or creation of a new state.
- He can address the Parliament at the commencement of the first session after each general election and the first session of each year.
- He can send messages to the Houses of Parliament, whether with respect to a bill pending in the Parliament or otherwise.



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- He can summon or prorogue the Parliament and dissolve the Lok Sabha. He can also summon a joint sitting of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.
- He can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, he can also appoint any member of the Rajya Sabha to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.
- He nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service.
- He can nominate two members to the Lok Sabha from the Anglo-Indian Community.
- When a bill is sent to the President after it has been passed by the Parliament, he can:
  - give his assent to the bill, or
  - withhold his assent to the bill, or
  - return the bill (if it is not a money bill) for reconsideration of the Parliament.

However, if the bill is passed again by the Parliament, with or without amendments, the President has to give his assent to the bill.

- When a bill passed by a state legislature is reserved by the governor for consideration of the President, the President can:
  - give his assent to the bill, or
  - withhold his assent to the bill, or
  - direct the governor to return the bill (if it is not a money bill) for reconsideration of the state legislature. It should be noted here that it is not obligatory for the President to give his assent even if the bill is again passed by the state legislature and sent again to him for his consideration.
- He can promulgate ordinances when the Parliament is not in session. These ordinances must be approved by the Parliament within six weeks from its reassembly. He can also withdraw an ordinance at any time.
- He lays the reports of the Comptroller and Auditor General, Union Public Service Commission,

Finance Commission, and others, before the Parliament.

- He can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu. In the case of Puducherry also, the President can legislate by making regulations but only when the assembly is suspended or dissolved.

### **Financial Powers**

The financial powers and functions of the President are:

- He can make advances out of the contingency fund of India to meet any unforeseen expenditure.
- He constitutes a finance commission after every five years to recommend the distribution of revenues between the Centre and the states.
- Money bills can be introduced in the Parliament only with his prior recommendation.
- He causes to be laid before the Parliament the annual financial statement (ie, the Union Budget).
- No demand for a grant can be made except on his recommendation.

### **Judicial Powers**

The judicial powers and functions of the President are:

- He appoints the Chief Justice and the judges of Supreme Court and high courts.
- He can seek advice from the Supreme Court on any question of law or fact. However, the advice tendered by the Supreme Court is not binding on the President.
- He can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person convicted of any offence:
  - In all cases where the punishment or sentence is by a court martial;
  - In all cases where the punishment or sentence is for an offence against a Union law; and
  - In all cases where the sentence is a sentence of death.

### **Diplomatic Powers**

The international treaties and agreements are negotiated and concluded on behalf of the President. However, they are subject to the approval of the Parliament.



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### **Military Powers**

He is the supreme commander of the defence forces of India. In that capacity, he appoints the chiefs of the Army, the Navy and the Air Force. He can declare war or conclude peace, subject to the approval of the Parliament.

### **Emergency Powers**

In addition to the normal powers mentioned above, the Constitution confers extraordinary powers on the President to deal with the following three types of emergencies:

- National Emergency (Article 352);
- President's Rule (Article 356 & 365); and
- Financial Emergency (Article 360)

### **VETO POWER OF THE PRESIDENT**

A bill passed by the Parliament can become an act only if it receives the assent of the President. When such a bill is presented to the President for his assent, he has three alternatives (under Article 111 of the Constitution):

- He may give his assent to the bill, or
- He may withhold his assent to the bill, or
- He may return the bill (if it is not a Money bill) for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, the President must give his assent to the bill.

The veto power enjoyed by the executive in modern states can be classified into the following four types:

- Qualified veto, which can be overridden by the legislature with a higher majority.
- Absolute veto, that is, withholding of assent to the bill passed by the legislature.
- Suspensive veto, which can be overridden by the legislature with an ordinary majority.
- Pocket veto, that is, taking no action on the bill passed by the legislature.

Of the above four, the President of India is vested with three—absolute veto, suspensive veto and pocket veto.

#### **Absolute Veto**

It refers to the power of the President to withhold his assent to a bill passed by the Parliament. The bill then ends and does not become an act.

In 1954, President Dr. Rajendra Prasad withheld his assent to the PEPSU Appropriation Bill.

Again in 1991, President R. Venkataraman withheld his assent to the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill.

### **Suspensive Veto**

The President exercises this veto when he returns a bill for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, it is obligatory for the President to give his assent to the bill.

### **Pocket Veto**

In this case, the President neither ratifies nor rejects nor returns the bill, but simply keeps the bill pending for an indefinite period. This power of the President not to take any action (either positive or negative) on the bill is known as the pocket veto.

In 1986, President Zail Singh exercised the pocket veto with respect to the Indian Post Office (Amendment) Bill. The bill, passed by the Rajiv Gandhi Government, imposed restrictions on the freedom of press and hence, was widely criticised.

### **Presidential Veto over State Legislation**

When a bill is reserved by the governor for the consideration of the President, the President has three alternatives (Under Article 201 of the Constitution):

- He may give his assent to the bill, or
- He may withhold his assent to the bill, or
- He may direct the governor to return the bill (if it is not a money bill) for the reconsideration of the state legislature. If the bill is passed again by the state legislature with or without amendments and presented again to the President for his assent, the President is not bound to give his assent to the bill. This means that the state legislature cannot override the veto power of the President.

### **ORDINANCE-MAKING POWER OF THE PRESIDENT**

Article 123 of the Constitution empowers the President to promulgate ordinances during the recess of Parliament. These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws.

- He can promulgate an ordinance only when both the Houses of Parliament are not in session or when either of the two Houses of Parliament are



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not in session. An ordinance can also be issued when only one House is in session because a law can be passed by both the Houses and not by one House alone. Thus, the power of the President to legislate by ordinance is not a parallel power of legislation.

- He can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action.
- His ordinance-making power is coextensive as regards all matters except duration, with the law-making powers of the Parliament. This has two implications:
  - An ordinance can be issued only on those subjects on which the Parliament can make laws.
  - An ordinance is subject to the same constitutional limitation as an act of Parliament. Hence, an ordinance cannot abridge or take away any of the fundamental rights.
- Every ordinance issued by the President during the recess of Parliament must be laid before both the Houses of Parliament when it reassembles.

The President can also withdraw an ordinance at any time. However, his power of ordinance-making is not a discretionary power and he can promulgate or withdraw an ordinance only on the advice of the council of ministers headed by the Prime Minister.

### PARDONING POWER OF THE PRESIDENT

Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases where the:

- Punishment or sentence is for an offence against a Union Law;
- Punishment or sentence is by a court martial (military court); and
- Sentence is a sentence of death.

The pardoning power of the President includes the following:

- **Pardon :** It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.

- **Commutation :** It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.

- **Remission :** It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.

- **Respite :** It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender.

- **Reprieve :** It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

The Supreme Court examined the pardoning power of the President under different cases and laid down the following principles:

- The petitioner for mercy has no right to an oral hearing by the President.
- The President can examine the evidence afresh and take a view different from the view taken by the court.
- The power is to be exercised by the President on the advice of the union cabinet.
- The President is not bound to give reasons for his order.
- The President can afford relief not only from a sentence that he regards as unduly harsh but also from an evident mistake.
- The exercise of power by the President is not subject to judicial review except where the presidential decision is arbitrary, irrational, *mala fide* or discriminatory.

### VICE-PRESIDENT

The Vice-President occupies the second highest office in the country. He is accorded a rank next to the President in the official warrant of precedence.

### ELECTION

The Vice-President, like the president, is elected not directly by the people but by the method of indirect election. He is elected by the members of an electoral college consisting of the members of both Houses of





Parliament. Thus, this electoral college is different from the electoral college for the election of the President in the following two respects:

- It consists of both elected and nominated members of the Parliament (in the case of president, only elected members).
- It does not include the members of the state legislative assemblies (in the case of President, the elected members of the state legislative assemblies are included).

#### **Elections of the Vice-Presidents (1952-2012)**

| <b>Sl. No.</b> | <b>Election Year</b> | <b>Victorious Candidate</b> |
|----------------|----------------------|-----------------------------|
| 1.             | 1952                 | Dr. Radhakrishnan           |
| 2.             | 1957                 | Dr. S. Radhakrishnan        |
| 3.             | 1962                 | Dr. Zakir Hussain           |
| 4.             | 1967                 | V.V. Giri                   |
| 5.             | 1969                 | G.S. Pathak                 |
| 6.             | 1974                 | B.D. Jatti                  |
| 7.             | 1979                 | M. Hidaytullah              |
| 8.             | 1984                 | R. Venkataraman             |
| 9.             | 1987                 | Dr. Shankar Dayal Sharma    |
| 10.            | 1992                 | K.R. Narayanan              |
| 11.            | 1997                 | Krishna Kant                |
| 12.            | 2002                 | B.S. Shekhawat              |
| 13.            | 2007                 | Mohd. Hamid Ansari          |
| 14.            | 2012                 | Mohd. Hamid Ansari          |

#### **QUALIFICATIONS**

To be eligible for election as Vice-President, a person should fulfil the following qualifications:

- He should be a citizen of India.
- He should have completed 35 years of age.
- He should be qualified for election as a member of the Rajya Sabha.
- He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

The nomination of a candidate for election to the office of Vice-President must be subscribed by at least 20 electors as proposers and 20 electors as seconders. Every candidate has to make a security deposit of Rs. 15,000 in the Reserve Bank of India.

#### **OATH OR AFFIRMATION**

Before entering upon his office, the Vice-President has to make and subscribe to an oath or affirmation. In him oath, the Vice-President swears:

- to bear true faith and allegiance to the Constitution of India; and
- to faithfully discharge the duties of his office.

The oath of office to the Vice-President is administered by the President or some person appointed in that behalf by him.

#### **TERM OF OFFICE**

The Vice-President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the President. He can also be removed from the office before completion of his term. A formal impeachment is not required for his removal. He can be removed by a resolution of the Rajya Sabha passed by an absolute majority (ie, a majority of the total members of the House) and agreed to by the Lok Sabha.

#### **VACANCY IN OFFICE**

A vacancy in the Vice-President's office can occur in any of the following ways:

- On the expiry of his tenure of five years.
- By his resignation.
- On his removal.
- By his death.
- Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.

#### **ELECTION DISPUTES**

All doubts and disputes in connection with election of the Vice-President are inquired into and decided by the Supreme Court whose decision is final. The election of a person as Vice-President cannot be challenged on the ground that the electoral college was incomplete (i.e., existence of any vacancy among the members of electoral college).

#### **POWERS AND FUNCTIONS**

The functions of Vice-President are two-fold:

- He acts as the *ex-officio* Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha.
- He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, death or other-wise.



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