

The President of India (Articles 52-62)

Part V of the Constitution (The Union) under Chapter I (The Executive) lists out the qualification, election and impeachment of the President of India.

There shall be a President of India (**Article 52**). He is the head of state of the Republic of India. The President is the formal head of the executive, legislature and judiciary of India and is also the commander-in-chief of the Indian Armed Forces.

Although Article 53 of the Constitution of India states that the President can exercise his or her powers directly or by subordinate authority, with few exceptions, all of the executive authority vested in the President are, in practice, exercised by the Council of Ministers (CoM).

ELECTION OF PRESIDENT:

The President of India is not directly elected by the people of the Country. **Art 54** provides that the President shall be elected by an electoral college consisting of:

- The elected members of both Houses of Parliament; and
- The elected members of the Legislative Assemblies of the States.

The Constitution (70th Amendment) Act, 1992 had added a new explanation to **Art.54** which provides that the word “State” includes the National Capital Territory of Delhi and the Union Territory of Pondicherry. This means that the MLAs of the National Territory of Delhi and the Union Territory will be included in the electoral college of the President.

TERM OF OFFICE OF THE PRESIDENT:

Article 56 says that the President shall hold office for a term of five years from the date on which he enters upon his office. Even after the expiry of his term he shall continue to hold office until his successor enters upon his office. He is also eligible for re-election. He may be elected for any number of terms. But in America after 22nd Amendment to the U.S.A Constitution, a person cannot be elected to the office of the President more than twice. The President in India can resign his office before the expiry of his normal term of five years by writing it to the Vice-President and the President can be removed from his office for the violation of the Constitution by the process of Impeachment.

QUALIFICATION:

Article 58 provides the qualifications which a person must possess for being elected to the office of the President of India as follows:

1. He is a **Citizen of India**
2. He has completed the **Age of 35 years**
3. He is qualified for election as a Member of the House of the People (ie the President must be registered to be an Voter in Parliamentary House).

4. He does not hold any office of profit under the Government of India, or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

CONDITIONS OF PRESIDENT'S OFFICE (ARTICLE 59)

- (1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.
- (2) The President shall not hold any other office of profit.
- (3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.
- (4) The emoluments and allowances of the President shall not be diminished during his term of office.

OATH OR AFFIRMATION BY THE PRESIDENT(ARTICLE 60) :

Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior most Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say – “I, A.B., do swear in the name of God / solemnly affirm that I will faithfully execute the office of President (or discharge the function of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India.”

PROCEDURE FOR IMPEACHMENT OF THE PRESIDENT:

Article 61 of the Indian Constitution lays down the procedure for the impeachment of the President. The President of India can be removed from his office by a process of Impeachment under the ‘Violation of the Constitution’. The either Houses of Parliament can impose Impeachment Charges against Him. The charge must come in the form of a proposal contained in a resolution signed by not less than **1/4th of the total number of the members of the House** and moved after giving at least 14days advance notice. The Above said Resolution must be passed by Majority of **2/3rd of Members** of the House. The charge is then investigation by the other House. The President of India has right to appear and to be represented at such investigation. If the other House after investigation passed a resolution by 2/3rd majority declaring that the charge is proved, such resolution is passed then the Effect of Removing President From his Office can be made.

The nominated members of the both the Houses at the Centre and the States do not have voting rights in the election of the President. The Election of the President shall be held in accordance

with the system of proportional representation by means of the single transferable vote. The Secret Ballot System is used for Voting.

MODE OF VOTING:

Under the Constitution, the election of the President must be held in accordance with the system of proportional representation by means of the single transferable vote. The secret Ballot System is used for Voting.

DISPUTES REGARDING THE ELECTION:

Article 71 provides that all doubts and disputes arising out of or in connection with the election of the President or Vice-President shall be 'inquired' into and 'decided' by the Supreme Court whose decision shall be final. But if the election of the President or Vice-President is declared void by the Supreme Court acts done by President or Vice-President in the exercise of their powers before the date of decision of the Supreme Court shall not be invalidated by reason of that declaration. Under Art. 71(3), Parliament may, by law, regulate any matter relating to the election of the President or Vice-President. Art. 71 (4) makes it clear that the election of the President or Vice-President cannot be challenged on the ground of existence of any vacancy for whatever reason in the electoral college electing him.

TIME OF HOLDING ELECTION ON EXPIRY OF TERM AND FILLING CASUAL VACANCIES:

Article 62(1) provides that elections to fill the vacancy caused by the expiry of the term of office of the President must be completed before the expiration of the term. According to Article 62(2) an election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal or otherwise shall be held as soon as possible and in no case later than six months from the date of occurrence of the vacancy. The person so elected shall, subject to the provisions of Art. 56, hold office for the full term of five years from the date on which he assumes his office. If any vacancy occurs in the office of the President, the Vice-President shall act as the President. If the Vice-President is not available then the Chief Justice of India and the Senior most Judge of the Supreme Court of India available will be in the line of succession to discharge function of the President.

In In re Presidential Election case, the Supreme Court held that the election to fill the vacancy in the office of the President must be completed before the expiration of the term of the President having regard to **Articles 62 (1), 54 and 55 of the Constitution. Art. 56 (1) (c)** applies President can continue in his Office by only when his Successors is has not entered the Office.

OFFICIAL RESIDENCE, EMOLUMENT AND ALLOWANCES OF PRESIDENT:

The President shall be entitled to use his official residence free of rent. He is also entitled to such emoluments 'allowances and privileges as may be' determined by Parliament by law and until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

POWERS OF INDIAN PRESIDENT :

Powers of the President of India can be broadly classified under 8 headings. They are :

1. Legislative
2. Executive or Appointment powers
3. Judicial powers
4. Financial powers
5. Diplomatic powers
6. Military powers
7. Pardoning Powers
8. Emergency powers

There are articles outside Chapter 1 of Part V related with powers of President of India like Article 72 and Articles 352-360. We shall discuss in detail each of them later.

Article 72: Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

- (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any persons convicted of any offence – (a) in all cases where the punishment or sentence is by a Court Martial;
- (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;
- (c) in all cases where the sentence is a sentence of death.
- (2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court martial.
- (3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.