

President of India

[UPSC Notes]

Article 52 of Indian Constitution

The President of India is defined in the constitution in Article 52. It states that “There shall be a President of India.” Subsequently, several other articles in the Indian constitution defines other powers and office of the President

- Article 53 - Executive Power of the Union
- Article 54 - Election of President
- Article 55 - Manner of election of President
- Article 56 - Term of office of President
- Article 57 - Eligibility for re-election
- Article 58 - Qualifications for election as President
- Article 59 - Conditions of President's office
- Article 60 - Oath or affirmation by the President
- Article 61 - Procedure for impeachment of the President
- Article 62 - Time of holding election to fill the vacancy in the office of president and the term of office or person elected to fill a casual vacancy
- Article 70 - Discharge of President's functions in other contingencies
- Article 71 - Matters relating to, or connected with, the election of a President or Vice-President
- Article 72 - Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases
- Article 74 - Council of Ministers to aid and advise President
- Article 75 - Other provisions as to Ministers
- Article 87 - Special address by the President
- Article 123 - Power of President to promulgate Ordinances during recess of Parliament
- Article 143 - Power of President to consult Supreme Court

How is the President of India Elected?

The President of India is elected indirectly by the people but by the members of the electoral college consisting of the elected members of Lok Sabha and Rajya Sabha, elected members of the Legislative Assembly of States, and elected members of the Legislative Assembly of Delhi and Puducherry.

President of India Election

- There should be uniformity between States, uniformity among the states together union.
- Value of the vote of 1 MLA- Total population divided by total no. of elected members and then multiplied by 1/1000.

- Value of the vote of 1 MP- Total value of votes of all MLAs of all states divided by total no. of elected MPs.
- The President election is held on the principle of a Single Transferable Vote by way of Proportional Representation (STVPR).
- FORMULA - Total no. of valid votes divided by No. of seat +1 then whole added by 1.

The President of India is elected through a process in which a particular candidate is required to win/secure a certain number of absolute votes decided by the above formula.

- If no candidate secures the requisite vote, then the candidate with the least number of first category votes is picked, and his second category votes are divided among other candidates.
- The process goes on till the president is elected.
- It is a completely secret ballot, and no whip can be issued.
- The election of the President can only be challenged in the Supreme Court and vacancy in case of resignation, death, or dissolution of state legislative assembly cannot be a reason to challenge the election.

Who Cannot be a part of President Election?

In the election of the President, the following group of the people is not involved-

- The 12 nominated members of the Rajya Sabha, nominated members of the State Legislative Assemblies, In bicameral legislature- both elected and nominated members of the Legislative Councils, and nominated members of the Union Territories of Delhi and Puducherry.

Oaths and the Qualifications of the President of India

The qualification of the President (nominee) to be eligible for election as a president are as follows-

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

The Oath of the President of India is mentioned in the constitution itself.

Faithfully execute the office, preserve and protect the constitution, and dedicated to the service and well-being of the people of India.

The tenure is of 5 years but he can stay in office until the new President arrives.

Conditions of the President's Office

The condition of the President's office are as follows-

- He should have to vacate the seat of the member of either house on the first day as President in office, that is he cannot be a member of Lok Sabha and Rajya Sabha.

- He should not hold any office of profit in the Union, States, and Local Authority of India.
- Rashtrapati Bhavan is provided for his residence without any rent payment.
- President's emoluments, allowances, and privileges are decided by the Parliament.
- During his term of office, the emoluments and allowances cannot be diminished by the Parliament.
- He enjoys the privileges in case of any criminal proceeding, even in respect of his personal acts.
- After giving the prior two-month notice, only civil proceedings can be initiated for his personal acts, and the president cannot be arrested or imprisoned.

Impeachment of the President in India

The parliament can impeach the President of India. The violation of the Constitution can remove the President, but the Constitution's violation is not defined in the constitution.

According to the Constitution President's removal is through a process where-

- A proposal to prefer a charge is contained in a resolution brought after 14 days' notice to the President in writing.
- The house then takes up the resolution and if the house passes the resolution with the majority of two-thirds of the total membership of the house.
- Then the resolution is passed to the second house and the second house investigates the charges where the President is entitled to either represent himself or get represented.
- If the second house passes the resolution with the same majority the president stands impeached.

Vacancy in the President's Office

The followings are the situation when the president's office can be vacant-

- When the tenure of 5 years of the President of India is completed.
- If the President of India resigns to the Vice President of India.
- He is removed when an impeachment charge initiated by Lok Sabha and Rajya Sabha stands valid.
- In case he dies in the office.
- If the election of the President is declared invalid by the Supreme Court.

Powers and Functions of President of India

1. **Executive Powers:**

- All the business shall be in his name.
- All the International Treaties are signed in his name subject to ratification by Parliament.
- Allocates business among ministers on the advice of the Prime Minister.

- The President of India is to be informed on affairs of the Union and proposed legislative power.
- The Prime Minister and Council of Ministers are appointed by the President.

2. **Legislative Powers**

Summoning, Prorogation, sending messages with respect to the bills to both houses, calling joint session, in case of abrupt vacancy in case of the office of the speaker or deputy speaker the president will make a temporary arrangement, dissolves Lok Sabha, gives assent to the bill, Ordinance lay before both the houses- the report of the Union Public Service Commission, Annual Financial Statement, Comptroller and auditor general of India Finance Commission and other constitutional and statutory bodies. He gives permission for the introduction of money bills.

3. **Financial Powers**

- Only with the prior recommendation of the president, a money bill can be introduced in Parliament.
- The Annual Financial Statement which is the Union budget is laid before the Parliament by the President.
- To recommend the distribution of the revenues between the Centre and States, he constitutes a Finance Commission after every 5 years.

4. **Judicial Powers**

The President can pardon, commute, remit, respite and deprive any sentence of any court except military court; Appointment of the Supreme Court and High Court Judges, he also refers to the Supreme Court any case for its opinion (Presidential reference).

5. **Diplomatic Powers**

- The President represents India in International Forums.
- Negotiations and conclusions of the International Treaties and Agreements are done on the behalf of the president.

6. **Military Powers**

- He appoints the chiefs of the Army, the Navy, and the Air Force.
- He is the supreme commander in chief of the defence forces of India.
- He can declare war or conclude peace, subject to the approval of the parliament.

7. Emergency Powers

President has extraordinary power with the following three types of emergency-

- a) National Emergency under Article 352.
- b) President Rules under Articles 356 and 365 on the basis of the report of Governor or otherwise.
- c) Financial Emergency under Article 360.

Pardoning Power of the President

The President has the pardoning power in case of death, other matters in the union law, Court Martial and also gives a respite, commute, remit, and reprieve.

The Supreme Court has ruled that the court can't issue guidelines but it can decide over the principle to be followed-

- Must be on the advice of the Council of Ministers.
- The Convict has no right to oral hearing etc.

Veto Power of the President

The President of India enjoys the three types of Veto power as follows-

Absolute Veto - To withhold consent with the bill (The bill dies then and there).

Suspensive Veto- Overridden by a simple majority.

Pocket Veto- The President may delay the bill for an unlimited period (In the US the maximum difference is 10 years)

The President after the 24th Constitutional Amendment is under obligation to sign the bill if it seeks to amend the Constitution.

Ordinance-making power of the President

- It is not a legislative provision but an emergency provision.
- The ordinance can only be promulgated on those subjects on which Parliament is empowered to legislate that is Union list or Concurrent list.
- No Constitutional Amendment is done through an ordinance.
- The ordinance cannot be issued if both houses are in session.
- Ordinance-making power is subject to Judicial Review.
- Ordinance making is an emergency provision that should be avoided in a normal sense and the maximum life of the Ordinance is 6 months or 6 weeks.
- The ordinance is issued by the President on the advice of the cabinet.

Differences between the President of India and Queen in Britain

The institution of the Queen is hereditary (not dependent on elections) whereas the institution of the President is indirectly elected.

- The Queen in Britain enjoys 'absolute immunity' there is a convention that 'King can do no wrong' whereas the President in India can be impeached for violation of the Constitution.
- In Britain, the Queen has no discretionary power but the original Constitution in India gives discretionary power to the President.

