

## **Executive of the Union The President**

1. President is the head of the Union Executive.
2. The President of India is indirectly elected by an electoral college, in accordance with the system of proportional representation by means of the single transferable vote.
3. The electoral college for the President consists of : ? The elected members of both Houses of Parliament; ? The elected members of the Legislative Assemblies of the states; and ? The elected members of the Legislative Assemblies of Union Territories of Delhi and Pondicherry (now Puduchery) {Ref.:Art. 54}.
4. In the President's election vote value of an
6. Indirect election of the President is supported on two grounds
7. Direct election by a large electorate of people would be very costly
8. Real power is vested in the Ministry, so, it would be normal us to elect the President directly without giving him real powers.

### **Qualifications for election as President are :**

Be a citizen of India; ? Have completed the age of thirty-five years; ? Be qualified for election as a member of the House of the People; and ? Must 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 { Art. 58 }

1. A sitting President or Vice-President of the Union or the Governor of any state or a Minister either for the Union or for any state is not disqualified for election as President {Ref.:Art. 58}
2. The President's term of office is five years from the date on which he enters upon his office.
3. President can submit resignation in writing under his hand addressed to the Vice-President of India
4. The only ground for impeachment of President specified in Art 61(1) is 'violation' of the Constitution.
5. An impeachment is a quasi-judicial procedure in Parliament.

6. Either House may prefer the charge of violation of the Constitution by the President provided that :

- A resolution containing the proposal is moved after a 14 days' notice in writing signed by not less than 1 / 4 of the total number of members of that House; and
- The resolution is then passed by a majority of not less than 2/3 of the total membership of the House.
- Charge preferred by one House is investigated by the other House.

7. The President has a right to appear and to be represented at such investigation

8. If a resolution is passed by not less than 2/3 of the total membership of the investigating House declaring that the charge had sustained, the President shall be removed from office {Ref.: Art. 61}.

9. The President shall not be a member of either House of Parliament or of a House of the Legislature of any State.

10. If a member of either House of Parliament or a House of the Legislature of any State is elected President, he shall be deemed to have vacated his seat in that House.

11. A vacancy in the office of the President can be caused in any of the following ways :

- On the expiry of his term of five years ? By his death. ? By his resignation. ? On his removal by impeachment. ? otherwise e. g. on the setting aside of his election as President.

12. An election to the office of the President must be completed before the expiration of the term.

13. The outgoing President continues to hold office, notwithstanding that his term has expired, until his successor enters upon the office {Ref.: Art 56 (1) (c)}. There is no scope for the Vice-President getting a chance to act as President in this case.

14. If vacancy arises other than by expiry of the term an election to fill the vacancy must be held within six months from the date of occurrence of the vacancy.

15. If a mid-term vacancy arises in the office of the President, Vice-President acts as President until a new President is elected.

## **Powers of President Administrative power**

The President is the formal head of the administration. All executive actions of the Union are expressed to be taken in the name of the President. {Ref. : Art. 77}

All officers of the Union are the President's subordinates and he or she has a right to be informed of the affairs of the Union {Art. 78,53(1)}.

The President shall have the power to appoint and remove high dignitaries including :

1. The Prime Minister of India
2. Other Ministers of the Union
3. The Attorney-General for India
4. The Comptroller and Auditor General of India\*
5. The Judges of the Supreme Court\*
6. The Judges of the High Courts of the states\*
7. The Governors of states\*
8. The Chief Election Commissioner\*

can be removed from office through special constitutional provisions (by impeachment)

### **Military power**

1. The Supreme command of the Defence Forces is vested in the President of India, but the Parliament can regulate or control the exercise of such powers {Ref : **Art. 53(2)**}.
2. Certain acts cannot be done by the President without approaching Parliament for sanction e.g. acts which involved the expenditure of money {Ref. : Art. 114(3)}, such as the raising, training and maintenance of the Defence Forces.

### **Diplomatic power :**

1. The President is empowered to negotiate treaties and agreements with other countries on the advice of his Ministers, subject to ratification by Parliament.
2. President of India represents India in International affairs, appoints Indian representatives to other countries and receives diplomatic representatives of other States.

### **Legislative power :**

1. President has the power to summon or prorogue the Houses of Parliament and to dissolve the Lok Sabha. {Ref. : Art. 85}
2. He also has the power to summon a joint sitting of both Houses of Parliament in case of a deadlock between them {Ref: Art. 108}.
3. The President addresses both Houses of Parliament assembled together, at the first session after each general election to the Lok Sabha and at the commencement of the first session of each year.
4. The President has the right to address either Houses or their joint sitting, at any time and to require the attendance of members for this purpose [Art. 86(1)]
5. In the Rajya Sabha 12 members are nominated by the President from persons having special knowledge or practical experience of literature, science, art and social service {Ref : Art. 80(1)}.
6. The President is empowered to nominate not more than two Anglo-Indian members to the Lok Sabha, if that community is not adequately represented in that House {Ref. : Art. 331}.
7. Previous sanction or recommendation of the President is required for introducing legislation on following matters : ? A Bill for the formation of new states or the alteration of boundaries, of existing states {Ref. : Art. 3}. ? A Bill providing for any of the matters specified in article 31A (1) ? A money Bill {Ref. : Art. 117(1)}. ? A Bill involving expenditure from the Consolidated Fund of India {Ref.: Art. 117(3)}. ? A Bill affecting taxation in which States are interested. ? State Bills imposing restrictions upon the freedom of trade {Ref.:Art. 30}
8. A Bill becomes an Act of the Indian Parliament only after it receives the assent of the President
9. When a Bill is presented to the President for assent : ? He may declare his assent to the Bill; or ? He may withhold his assent to the Bill; or ? He may, in the case of Bills other than Money Bills return the Bill for reconsideration of the Houses, with or without a message suggesting amendments. If the Bill is passed again by both Houses of Parliament with or without amendment and again presented to the President it would be obligatory upon him to declare his assent to it {Ref. : Art. 111}.
10. The veto power of the Indian President is a combination of the absolute, suspensive and pocket vetos.

**11.** President of India has the power of disallowance or return for reconsideration of a Bill of the state legislature, which are reserved for his consideration by the Governor of the State {Ref.: Art. 201}. A Money Bill so reserved, can not be returned by the President.

**12.** It is not obligatory upon the President to give his assent even to the Bills reconsidered by the state legislature {Ref.: Art. 201}.

**13.** The President can legislate by Ordinances at a time when it is not possible to have a Parliamentary enactment on the subject, immediately {Ref. : Art. 123}.

### **Pardoning Power :**

**1.** President as well as the Governors possess power to grant pardon {Ref. : Arts. 72,161}

**2.** Pardon rescinds (abrogates or revokes) both the sentence and the conviction and absolve the offender from all punishment and disqualifications.

**3.** Commutation merely substitutes one form of punishment for another of a lighter character.

**4.** Remission reduces the amount of sentence without changing its character.

**5.** Respite means awarding a lesser sentence instead of the penalty prescribed in view of pregnancy of a woman offender etc.

**6.** Reprieve means a stay of execution of a sentence, e.g. pending a proceeding for pardon or commutation.

### **Comparison Between Pardoning Powers of the President and a Governor**

**1.** President has power to grant pardon, reprieve, respite, suspension, remission or commutation, in respect of punishment or sentence by court-martial. Governor has no such power.

**2.** President's powers extend up to the executive power of the union. Governor's powers extend up to the executive power of the state.

**3.** Governor has no power to pardon in case of sentence of death, but he can suspend, remit or commute a sentence of death. Only President can pardon a death sentence.

### **Emergency power :**

- The President has extraordinary powers to deal with a situation of emergency.

### **Miscellaneous powers :**

1. The President has the Constitutional authority to make rules and regulations relating to various matters.
2. He / she has the power to give instruction to a Governor to promulgate an Ordinance if a Bill containing the same provisions requires previous sanction of the President.
3. President has the power to refer any question of Public importance for the opinion of the Supreme Court.
4. President has the power to appoint certain commissions for the purpose of reporting on specific matters, such as, Commissions to report on the administration of Scheduled Areas and welfare of Scheduled Tribes and backward classes; the Finance Commission; Commission on Official Language; an Inter-State Council.
5. President has some special powers relating to Union Territories or territories which are directly administered by the Union.
6. The President shall have certain special powers in respect of the administration of Scheduled Area and Tribes, and Tribal Areas in Assam. The President has certain special powers and responsibilities regarding the administration of the Scheduled Caste.

### **The Vice-President**

1. Vice-President is indirectly elected by means of single transferable vote.
2. State Legislature do not take part in the election of Vice-President.
3. The electoral college for Vice-President consists of the members of both Houses of Parliament {Ref.: Art. 66(1)}.
4. To be elected as Vice-President of India a person must be : ? A citizen of India. ? Over 35 years of Age. ? Must not hold an office of profit save that of President, Vice-President, Governor or Minister for the Union or a state {Ref.: Art. 66}. ? Qualified for election as a member of the Rajya Sabha.
5. In case a member of the Legislature is elected Vice-President, he shall be deemed to have vacated his seat in the House to which he belongs

6. Term of the office of Vice-President is five years from the date on which he enters upon his office. Office of Vice-President may terminate earlier than the fixed term either by resignation or by removal.
7. A formal impeachment is not required for Vice-President's removal.
8. Vice-President can be removed by a resolution of the Rajya Sabha passed by a majority of its members and agreed to by the Lok Sabha {Ref.: Art 67}.
9. A sitting Vice-President is eligible for re-election. Dr. S. Radhakrishnan was elected as the Vice-President of India for a second term in 1957.
10. No functions are attached to the office of the Vice-President. The normal function of the Vice-President is to act as the ex-officio Chairman of the Rajya Sabha.
11. If any vacancy occurs in the office of the President, Vice-President acts as President until a new President is elected and enters upon his office. Ref.: Art 65(1).
12. For the first time during the 15-day visit of Mr. R. Jendr Prasad to the Soviet Union in June 1960, the then Vice-President, Dr. S. Radhakrishnan acted as the President owing to the 'inability' of the President to discharge his duties.
13. The power to determine when the President is unable to discharge his duties or when he should resume his duties is understood to belong to the President himself.
14. If the offices of both the President and the Vice-President fall vacant by reason of death, resignation, removal etc. the Chief Justice of India or in his absence the senior most Judge of the Supreme Court acts as President.
15. For the first time in 1969 when the President Dr. Zakir Hussain died and the Vice-President Shri V. V. Giri resigned, the Chief Justice Md. Hidayatullah acted as President.
16. When the President acts as President, he gets the emoluments of the President; otherwise, he gets the salary of the Chairman of the Rajya Sabha. When the Vice-President acts as President, the Deputy Chairman of the Rajya Sabha acts as its Chairman [Art. 91].
17. Determination of doubts and disputes relating to the election of a President or Vice-President is described in Art. 71. Main provisions are as follows : ? Such disputes are decided by the Supreme Court whose jurisdiction is exclusive and final. ? No such dispute can be raised on the ground of any vacancy in the electoral college. ? If the election of the President or the Vice-President is declared void by the Supreme Court, acts done by him prior to the date of such decision of the Supreme Court is not

invalidated. ? Matters other than the decision of such disputes are regulated by law made by Parliament.

## **The Prime Minister and The Union Council Of Ministers**

- 1.** In a parliamentary system of Government, the Prime Minister occupies a unique position as the most powerful functionary who controls both the Parliament and the Executive.
- 2.** Prime Minister is appointed by the President. Other ministers are appointed and / or dismissed by the President on the advice of the Prime Minister.
- 3.** Prime Minister, must be the leader of the party in majority in the Lok Sabha or a person who can win the confidence of the majority in that House.
- 4.** As the head of the Council of Ministers, the Prime Minister (PM) is the head of the Government. Also, he / she is the leader of his / her party or / and of a coalition of parties in Parliament and usually the Leader of the Popular House.
- 5.** The PM enjoys large powers of patronage. All the ministers are appointed at his/her recommendation and stand dismissed at his/her demand.
- 6.** The PM allots work among the ministers. Also, he / she can change their portfolios at will.
- 7.** The PM is the channel of communication between the Council of Ministers and the President.
- 8.** Ministers get the salaries and allowances etc. as payable to members of parliament. In addition they get a constituency allowance at a varying scale and a residence, free of rent. Cabinet Ministers attend meeting of the Cabinet.
- 9.** Ministers who are not members of the Cabinet and they can attend a Cabinet Meeting only if invited to attend any particular meeting.
- 10.** A Deputy Minister assists the Minister in discharge of his duties and takes no part in Cabinet meetings.
- 11.** There is no bar to the appointment of a non- MP as Minister, but he cannot continue as Minister for more than 6 months unless he secures a seat in either House of Parliament.
- 12.** Though the ministers are collectively responsible to the legislature, they are individually responsible to the President.



13. A Minister can take part in the proceedings of both Lok Sabha and Rajya Sabha, but he / she can vote only if he / she is a member of that House.

### **The Attorney-General for India**

1. The Attorney-General is the first Law Officer of the Government of India, who gives advice on legal matters and performs other duties of a legal character as assigned to him by the President.
2. The Attorney-General for India is appointed by the President and holds office during the pleasure of the President. He must have the same qualifications as are required to be a judge of the Supreme Court.
3. He discharges the functions conferred on him by the Constitution or any other law {Ref.: Art. 76}.
4. The Attorney-General for India is not a member of the Cabinet. But he has the right to speak in the Houses of Parliament or in any Committee thereof, but he has no right to vote {Ref.: Art 88}.
5. He is entitled to the privileges of a member of Parliament [Art. 105(4)]. In the performance of his official duties, the Attorney-General has the right of audience in all Courts in the territory of India.
6. He is not a whole-time counsel for the Government nor a Government servant.

### **The Comptroller & Auditor General of India**

1. The CAG controls the entire financial system of the Union as well as the States {Ref.: Art. 148}
2. Though appointed by the President, the Comptroller and Auditor-General can be removed only by an address from both Houses of Parliament on the ground of proved misbehaviour or incapacity.
3. His salary and conditions of service are laid down by Parliament and can not be varied to his disadvantage during his term of office.
4. The term of office of the Comptroller and Auditor-General (CAG) is 6 years from the date on which he assumes office.

5. CAG vacates office on attaining the age of 65 years even without completing the 6-year term. He can resign by writing under his hand, addressed to the President of India. He can be removed by impeachment {Ref.: Arts. 148(1); 124(4)}.
6. His salary is equal to that of a Judge of the Supreme Court.
7. Other conditions of his service are similar to an I. A. S. of the rank of Secretary to the Government of India.
8. He is disqualified for any further Government office after retirement
9. The salaries, etc. of the Comptroller and Auditor-General and his staff and the administrative expenses of his office are charged upon the Consolidated Fund of India and thus non-votable {Ref.: Art. 148 (6)}.
10. The main duties of the Comptroller and Auditor General are : ? To audit and report on all expenditure from the Consolidated Fund of India and of each State and each Union Territory having a Legislative Assembly as to whether such expenditure has been in accordance with the law. ? To audit and report on all expenditure from the Contingency Funds and Public Accounts of the Union and of the states ? To audit and report on all trading manufacturing profit and loss accounts etc. kept by any department of the Union or a state. ? To see that rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue. ? To audit and report on the receipts and expenditure of all bodies and authorities substantially financed from the Union or State revenues, Government companies; and other corporations or bodies, if so required by the laws relating to such corporations or bodies.