

PART V – THE UNION
CHAPTER 1 – THE EXECUTIVE

- The Executive broadly covers the President, Council of Ministers and position of the Prime Minister.
- President is the head of the Union Executive. Article 52 creates the position of the President.

Qualifications

The qualifications for the office of President are:

- (i) Should be a citizen of India;
- (ii) Should have completed the age of 35 years;
- (iii) Should be qualified to be elected as a member of Lok Sabha; and
- (iv) Should not hold any office of profit i.e. the candidate should not be a government servant. However the office of the President, the Vice-President, the Governor or the Minister of the Union or the State is not considered as an office of profit for this purpose;

Election of President

Electoral College which elects President consists of-

- Elected members of both the Houses of Parliament (does not include nominated members)
- Electoral college which elects the President consists of elected MP's and elected MLA's at the state level
- MLA's of National Capital Territory of Delhi and the Union territory of Pondicherry are also included
- The election is held by means of single transferable vote system of proportional representation. The voting is done by secret ballot.
- The term of President is five years.

Single Transferable Vote System: The election of the President is held through single transferable vote system of proportional representation. Under this system names of all the candidates are listed on the ballot paper and the elector gives them numbers according to his/her preference. Every voter may mark on the ballot paper as many preferences as there are candidates. Thus the elector shall place the figure 1 opposite the name of the candidate whom he/she chooses for first preference and may mark as many preferences as he/she wishes by putting the figures 2, 3, 4 and so on against the names of other candidates. The ballot becomes invalid if first preference is marked against more than one candidate or if the first preference is not marked at all.

Conditions of President's office

- Article 59 of the constitution lays down the conditions.
- The President cannot be a member of either of House of Parliament or State Legislature when holding the office of President.
- The President cannot hold any other office of profit.
- Parliament by law will determine the salary of President.

Time of holding Presidential Elections

- An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the current term.
- An election to fill a vacancy in the office of President occurring by the reasons of death, resignation or removal, or otherwise, should be held within 6 months from the date of occurrence of vacancy.

Privileges and Immunities

- The President cannot be asked to be present in any court of law during his tenure.
- A prior notice of two months' time is to be served before instituting a civil case against him.

- The President can neither be arrested nor any criminal proceedings be instituted against him in any court of law during his tenure.
- The President is not answerable to any court of law for the exercise of his functions.

Removal of the President

The President can only be removed from office through a process called impeachment. The Constitution lays down a detailed procedure for the impeachment of the President.

Procedure: The resolution to impeach the President can be moved in either House of Parliament. Such a resolution can be moved only after a notice has been given by at least one-fourth of the total number of members of the House. Such a resolution charging the President for violation of the Constitution must be passed by a majority of not less than two-third of the total membership of that House before it goes to the other House for investigation. The charges levelled against the President are investigated by the second House. President has the right to be heard or defended when the charges against him are being investigated. The President may defend himself in person or through his counsel. If the charges are accepted by a two-third majority of the total membership of the second House, the impeachment succeeds. The President thus stands removed from the office from the date on which the resolution is passed.

Article 53 – Executive power of the Union

- 53. (1)** The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
- 53. (2)** Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.
- 53. (3)** Nothing in this article shall— (a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or (b) prevent Parliament from conferring by law functions on authorities other than the President.

Indian Government is following the Westminster system of Parliamentary democracy. In India, the President is the nominal head. The President is empowered to exercise executive powers either directly or through officers subordinate to him which means through the Prime Minister and Council of Ministers. This is mentioned in Article 74 of the Indian Constitution.

Executive Powers of the President

- The President appoints the Chief Justice and other judges of the Supreme Court and High Courts. However, in all judicial appointments, the Chief Justice of India is consulted.
- Besides the President may also consult such other judges of the Supreme Court as the President may be deemed necessary. While appointing Chief Justice and justices of High Courts the President has to consult the State Governor also. In the appointment of High Court judges, the President also consults the Chief Justice of the State. But now in accordance with the 1993 decision of the Supreme Court as re-interpreted in 1999, the President is bound by the recommendations of a panel of senior most judges of the Supreme Court in matters of all judicial appointments. This panel headed by the Chief Justice is known as the collegium of the Supreme Court.
- The President appoints the Attorney General, the Comptroller and Auditor General of India, the Chief Election Commissioner and other Election Commissioners, the Chairman and Members of Union Public Service Commission (U.P.S.C.). He/she also appoints the Governors of States and Lt. Governors of Union Territories. All such appointments are made on the advice of the Union Cabinet headed by the Prime Minister.
- The President is the Supreme Commander of the armed forces.

- All laws enacted by the Union Parliament are enforced by him/her. All officials appointed by him/her (such as Governors and Ambassadors) may be removed or recalled by him/ her, on the advice of the Union Council of Ministers.
- All the functions are performed by the President on the advice of the Prime Minister. All decisions of the Union Government are communicated to him/her by the Prime Minister.

Administrative Powers of the President

- Under Article 77, all the actions of the government are taken under the name of the President.
- Under Article 78, the President has the right to seek any information from the Centre and the State.
- Under Article 310, every officer of the government occupies his/her position during the pleasure of the President.

Legislative Powers of the President

- President summons both the Houses of the Parliament for sessions.
- President also prorogues the sessions.
- President is also responsible for dissolving the Lok Sabha.
- The first session of each year and the first session of newly elected Lok Sabha after the general elections begin with the address of the President.
- President can nominate two members in the Lok Sabha belonging to the Anglo Indian community.
- President has the power to send messages to the Parliament.
- President can nominate 12 members to the Rajya Sabha.
- President submits the reports of UPSC, Finance Commission etc. to the Parliament.
- No bill can become a law without the assent of the President. To introduce certain bills in the Parliament, prior permission of the President is required. E.g. Money bills.
- President possesses Veto power.
- President has Ordinance making power under Article 123.

Judicial Powers of the President

- The President, as head of state, can pardon a criminal or reduce the punishment or suspend cummute or remit the sentence of a criminal convicted by the Supreme Court or High Courts for an offence against the federal laws.
- Presidents pardoning power comprises of Pardon, reprieve, remission, respite and commutation.
- The President can pardon a person convicted by a Court Martial. His/her power of pardon includes granting of pardon even to a person awarded death sentence. But, the President performs this function on the advice of Law Ministry.
- Advisory Jurisdiction under Article 143 also comes under judicial powers of the President.

Emergency powers of the President

- President has the power to declare National emergency under Article 352 on the grounds of war, external aggression and armed rebellion.
- President also has the power to declare Constitutional Emergency under Article 356.
- President can also declare financial emergency under Article 360.

Areas where the President can act independently

- Can reject the advice of the Prime Minister if the PM has lost majority in the house.
- Power to send messages to the Parliament.
- Power of suspensive veto.

- If the general elections to the Lok Sabha throws up a 'Hung House'.
- Under Article 78 – Presidents Right to Information.
- Under Article 74 – Send an advice back to the Council of Ministers for reconsideration.
- Receive memorandum from the opposition, study the situation and speak to the PM privately.
- Entitled to comment on the affairs of the state.

