

## POLITICAL SCIENCE NOTES - PART III

### 12. PRESIDENT

#### **Elected for 5 year term & eligible for re-election**

Executive head of India & all the executive powers of the union shall be vested in him

Supreme commander of the armed forces

1<sup>st</sup> citizen of India & occupies 1<sup>st</sup> position under warrant of precedence

Executive powers vested in president shall be exercise on advice of Council of Ministers responsible to the parliament, however, 42<sup>nd</sup> amendment made it obligatory for the president to accept advice of Council of Ministers.

#### Election of President: Article 54

The President of India is elected indirectly by the Electoral College by the secret ballot and the system of proportional representation through single transferable vote. The President of India is elected by an electoral college consisting of:

- Elected members of the two Houses of Parliament and Legislative Assemblies of the States
- States includes national capital territory of Delhi and the Union territory of Pondicherry

#### **Do Not Participate**

- Nominated members of both the houses of the parliament & of state legislative assemblies
- All the members of legislative Council of States

There shall be uniformity in the scale of representation of the different states at the election of the President as follows:

- **Value of vote of an MLA of a state:** (Population of state divided by Total number of elected members of state legislative assembly) X 100
- **Value of vote of an MP:** (Total value of votes of MLA's of all states divided by Total number of elected members parliament) X 100
- Hence, value of vote of MLA of UP is highest & value of vote of MLA of Sikkim is lowest
- By 42<sup>nd</sup> amendment, census of 1971 was to be followed till 1<sup>st</sup> census after 2000, but in 2000, It has been extended till 1<sup>st</sup> census after 2026 by 81<sup>st</sup> amendment 2001

#### **For a candidate to be President, one must fulfil electoral quota**

**Electoral Quota:** (Total number of valid votes polled divided by 2) + 1

- Candidate with least votes is eliminated & 2<sup>nd</sup> preference of all ballots, who ranked eliminated candidate 1<sup>st</sup>, is added to all accordingly. This process is followed till someone fulfil electoral quota

- If there is a Dispute regarding election of president (Article 71) or vice president is inquired & decided by Supreme Court whose decision is binding.
- Article 71 further states that no such disputes can be raised on the grounds of any vacancy in electoral college.

#### Qualification for election of President (Article 58)

- Must be a citizen of India
- Must be of 35 years of age
- Must be qualified for election for member of house of the people (Lok Sabha)
- Must not hold any office of profit under Government of India or Government of any state or any local or other authority

Following persons shall not be deemed to hold any office of profit, hence are qualified for being a candidate for presidential election:

- President
- Vice President
- Governor of any state
- MP / MLA
- Nomination of a candidate for election to the office of President must be subscribed by at least 50 electors as proposers & 50 electors as seconders
- Every candidate has to make a security deposit of ₹ 15000 in RBI, liable to be forfeited in case candidate fails to secure 1/6<sup>th</sup> of the votes polled

#### Conditions to Presidential Office

- Shall not be member of any house of the Parliament or State legislature & if he is, then must vacate the seat.
- Shall not be holding any other office of profit.

#### Immunities to the President

- Personal immunity from legal liabilities for his official acts
- Immune from any criminal proceeding during his terms of office means cannot be imprisoned or arrested, However, civil proceedings can be instituted in his term of office with respect to his personal acts, giving 2 months of notice prior to the proceedings

#### Oath by President (Article 60)

- President takes oath in presence of Chief Justice of Supreme Court “ To preserve, protect & defend the constitution & law”

#### Terms of office of President (Article 56)

- President shall hold the office for terms of 5 years from the date he assumes his office. Even after expiry of his terms, he shall continue in office until his successor enters upon his office
- May resign his office before the expiry of his normal term of 5 years by writing to the vice president

#### Article 61 (Impeachment of the President)

Power of impeachment of president lies in Parliament for violation of the Constitution & can be removed from his office before the completion of period of 5

years (**Quasi-judicial process**)

- Impeachment resolution can be initiated in any house of the parliament
- Resolution initiated must be signed by 1/4<sup>th</sup> of the candidate of the initiating house
- Before the resolution is passed, a 14 days' notice must be given to the president
- Such a resolution must be passed by majority of not less than 2/3<sup>rd</sup> of total membership of the initiating house
- Then the other house of the Parliament also called investigating house investigates the charges by itself
- President has the right to appear & to be represented at such investigation to defend himself
- If as a result of investigation, other house also passes a resolution supported by not less than 2/3<sup>rd</sup> of total membership of the house, President stands removed from his office, from the date investigating house passed the resolution
- Other than impeachment, no other penalty can be imposed on the president for violation of the constitution

**However, the 'Process of impeachment of President' is deficient on following accounts:**

- Term 'violation of constitution is very vague term & has not been defined anywhere in the constitution'
- Elected members of legislative assemblies have no role to play in impeachment proceeding while they have a role in election of the president
- Nominated members of parliament have the right to deliberate & vote when the resolution of impeachment is under consideration while they have no vote in election of president
- Procedure & authority to investigate the charges against president have not been specified nor any definite time period has been specified

*Vacancy in President's Rule*

- In case, office of president falls vacant due to death, resignation or removal of President, Then Vice president or in his absence Chief justice of India or in his absence Senior most judge of SC becomes the president until next elections are held & new president assumes the office
- President's office can remain vacant for maximum of 6 months
- If president is not able to discharge his duties due to sickness or absence or due to any other reason than the vice president discharges the functions of President.

**Article 53:** Executive powers of the union shall be vested in president & shall be exercised by him either directly or indirectly or through officers subordinate to him, But always in accordance with the constitution

**Executive powers**

Powers to carry out administration of affairs of the state, except functions of legislature & judiciary

**Administrative Powers of president**

***Powers to appoint***

- Prime minister of India
- Attorney General of India
- Comptroller & Auditor general of India
- Judges of Supreme Court & High court
- Governor of the states

- Finance commissioner & its members
- Members of UPSC
- Chief Election Commissioner & its members
- Chairman & members of SC & ST Commissions
- In fact every appointment of union government is made in the name of president or under his authority.
- In a way he directly administers the Union territories through administrator appointed by him
- President can declare any area as scheduled area & has powers to administer the scheduled & Tribal areas.

### **The following officials functions until the pleasure of The President**

- Attorney general of India
- Governor of the state
- Chairman of UPSC
- Judges of SC or HC
- Chief Election Commissioner
- Comptroller & Auditor General of India

### **Legislative Powers**

- Summons the houses of Parliament at least twice a year, Prorogue either house & can dissolve Lok Sabha
- Nominates 12 members of Rajya Sabha & may nominate 2 representatives of Anglo Indian community to Lok Sabha
- May address either house separately or jointly or can send messages to them. At the commencement of 1<sup>st</sup> session of parliament annually, President delivers an address
- Every bill passed by Parliament must receive Presidential assent before it can become an act. President may give his assent or withhold or return it for reconsideration along with his own suggestions ( Except money bill and constitutional amendment bill)
- But if the bill is passed again with or without the amendments President is bound to give his assents to it

President makes certain reports & statements to be laid before parliament as stated below:

- Annual financial statement (Budget) & supplementary statement
- Auditor General Report relating to accounts of government of India
- Recommendation made by finance commission
- Report of UPSC
- Report of National commission for SCs & STs
- Report of Special Officers for linguistic Minorities

Certain bills (Bill for formation of new states or alteration of boundaries of states, money bill, financial) needs Presidential recommendations for introduction in parliament

### **Veto powers of the President**

**Absolute Veto:** Power of president to withhold his assent to a bill passed in parliament. The bill then ends & does not become an act. If before passing assent to a bill, ministry resigns & a new Council of Ministers is formed, then on its advice President can use his veto powers against the bill . (In 1954, Rajendra prasad withheld his assent to PEPSU appropriation bill)

**Suspensive Veto:** Power of president to return a bill passed in parliament for reconsideration (except money Bill)

**Pocket Veto:** No time frame for President to give his assent or refuse i.e. pocket a bill for infinite times (Not for constitutional amendment bill as 24<sup>th</sup> amendment 1971, made it obligatory for the president to give his assent to constitutional amendment bill)

### Ordinance making powers of the President

**Ordinances** – President can issue ordinances only on subjects’ parliament can legislate or make laws with same limitations as of parliament

President promulgate Ordinances under article 123 when either or both the houses of parliament are not in session & immediate action is needed

A Presidential ordinance has same force & effect as an act of parliament. However, it must be laid down before both the houses of the parliament & must be approved by both the houses within 6 weeks from re-assembly of houses. Failure to comply with this condition or parliamentary disapproval within 6 weeks period will make ordinance invalid

### Judicial Powers (Basically Pardoning Powers)

- Where the punishment or sentence is by Court Martial
- Where the punishment is for offence against Union law
- In all cases where sentence is death sentence (Only authority for pardoning a death sentence)

**Pardon:** Can rescinds both conviction & sentence + can absolve the offender from all offences & disqualification

**Reprieve:** Can make stay of execution of a sentence (esp. of death) for pardon or commutation

**Remission:** To reduce amount of sentence without changing its character (ex. 6 months for 1 yr)

**Respite:** Awarding a lesser sentence instead of a prescribed penalty in view of special facts (ex. in case of pregnant women offender)

**Commutation:** Substitutes one form of punishment for another or lighter character

### Emergency Powers

**National Emergency** - Article 352, On grounds of threat to security of India or any part of it, by war, external aggression or armed rebellion

**Presidential Rule** - Article 356 Proclamation for taking over the administration of a state, when state government cannot carry out administration in state in accordance with provisions of the constitution

**Financial Emergency** - Article 360 When financial stability of credit of India or any part thereof is threatened

“Any proclamation under the emergency powers of the president, in order to be in operation beyond a certain period, should be approved by parliament within the period so specified by parliament”

### **Financial Powers**

- It is only on the permission of president that annual financial statement (Budget) is laid down before the parliament
- Recommends the introduction of money bill & financial bill in parliament
- Constitutes finance commission after every five years
- Controls contingency fund for unforeseen expenses like flood, drought, war etc.
- Places report of CAG before parliament & recommendations of Finance commission

### **Military Powers**

- Supreme commander of armed forces
- Has power to declare war & peace
- But, His military powers are subjected to the regulations of law, therefore, parliament has the real power to regulate or control the exercise of such powers

### **Diplomatic Powers**

- Sends & receive ambassadors & other diplomatic representatives
- All treaties & international agreements are negotiated & amended in the name of president, though subjected to ratification by parliament

**42<sup>nd</sup> amendment (1976 )** Amended article 74 & made advice of Council of Ministers binding on the president

**44<sup>th</sup> amendment (1978 )** Further amended 74<sup>th</sup> article that President may require Council of Ministers to reconsider an advice, but is bound to act after reconsideration

Though president is not connected with decision making power of the cabinet, yet article 78 A, casts on PM to keep President informed of all cabinet decisions, concerning administration of affairs of the union & proposal for legislation. Under some circumstances, president has to act as per his own wisdom, sense of justice & discretion:

- Appointment of PM, under situation when no single political party commands clear majority support of Lok-Sabha
- Appointing a PM in case of vacancy due to sudden death & availability of no acknowledged leader, due to inability of legislature party to do so and absence of settled seniority among cabinet members; name of PM is proposed from outside
- Dissolution of Lok Sabha on advice of Council of Ministers which have lost the support of majority members of Lok Sabha or against whom a motion of no confidence has been passed
- Dismissing ministries, in case Council of Ministers has lost the confidence of lower house of the parliament but still refuses to resign

## **13. VICE PRESIDENT**

Appointed for 5 years

- Ex- officio chairman of council of states (Rajya Sabha)
- 2<sup>nd</sup> highest dignitary of India, occupying 2<sup>nd</sup> place in Warrant of Precedence
- Presides over the proceedings of Rajya Sabha.

Whenever vacancy occurs in the office of President or President is unable to discharge his duties, Vice President acts as President of India & ceases to perform duties as Chairman of Rajya Sabha (During this period, he is entitled to all emoluments & incentives of President)

### **Qualification for Vice President**

- Must be citizen of India
- Must be 35 years of age
- Must not held any office of profit
- Qualified to be elected as a member of Rajya Sabha  
Cannot be a member of either house of the parliament or state legislature & if a member of parliament or state legislature is elected as Vice President, he ceases to be member of parliament or state legislature from the date he enters upon his office of Vice President.
- Nomination of a candidate for election to the office of Vice President must be subscribed by at least 20 electors as proposers & 20 electors as seconders.
- Every candidate has to make security deposit of Rs. 15000 to RBI, stands forfeited if failed to get 1/6<sup>th</sup> of the votes polled

VP holds office for 5 years, but if his successor is unable to enter the office, he continues to hold his office beyond the stated period of 5 years until his successor enters upon his office (But election is to be held no later than 60 days of expiry of the term of office of outgoing VP)

### **Election of Vice President**

- Elected indirectly by Electoral College, consisting of all members of parliament  
Both elected & nominated
- State governments do not participate in Vice President election
- Election is held in accordance with system of proportional representation by means of single transferrable vote & voting by a secret ballot.
- Supreme Court has final & exclusive jurisdiction for resolving disputes & doubts relating to election of Vice President

### **Oath – Vice President**

VP takes oath in presence of President, “to bear true faith & allegiance to constitution of India & to faithfully discharge duties of his office”

### **Removal of Vice President**

- Vice President can be removed from his office by a resolution raised only in Rajya Sabha, passed by majority greater than 50% of (Total membership – Vacancy) & agreed upon by simple majority i.e. greater than 50 % of total voting members, of the Lok Sabha.
- Prior to passing the resolution in Rajya Sabha, a 14 days’ notice should be served to him
- A formal impeachment is not required for his removal as in case of President
- When acts as President, he gets all the allowances, powers, immunities & salary of President

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