

PRESIDENT, VICE-PRESIDENT AND COUNCIL OF MINISTERS **SUMMARY OF PROVISIONS**

Executive power of the Union

Article 53

- **Executive power of Union** shall vest in President
 - to be exercised by him directly or through subordinate officers
 - to be exercised **in accordance with this Constitution**
- Supreme command of defence forces shall vest in President

Election of President

Article 54

- Electoral college for election of President consists of
 - **Elected** members of both Houses of Parliament
 - **Elected** members of State Legislative Assemblies including Delhi and Puducherry

Manner of Election

Article 55

- Number of votes of MLA of a State = $\text{Population of State} / \text{total number of elected MLAs}$; further divided by 1000
- Number of votes of every MP = $\text{Total number of votes of all MLAs} / \text{total number of elected MPs}$
- 'Population' in this Article means
 - **Population as per 1971 census**
- Population remains frozen at this level
 - till a census beyond 2026

Term of Office

Article 56

Normal term

- 5 years from the date of entering office

Shorter term

- Removal by impeachment
- Resignation, to be addressed to Vice-President, who shall communicate it to the Speaker of Lok Sabha

Eligibility for re-election

Article 57

- Re-election is possible any number of times

Qualifications

Article 58

- Should be a citizen of India
- Should be at least 35 years of age
- Should be qualified to be elected to Lok Sabha
- Should not hold any office of profit under govt or any authority under govt control
- Following offices are **not** considered as '**office of profit**':
 - President, Vice President, Governor
 - Union Minister, Minister of a State

Oath of office

Article 60

- Oath or affirmation
 - in presence of Chief Justice of India

Content

- "To preserve, protect and defend the Constitution and the law"
- "To be in the service and well-being of the people of India"

IMPEACHMENT

Article 61

Ground:

- Violation of Constitution

Procedure:

Step 1: Preferring of charge

- By either House of Parliament
- A 14-days prior notice signed by not less than 1/4th members to be given
- Charge is preferred by passing a resolution
 - with a special majority of not less than two-thirds of the **total membership** of the House

Step 2: Investigation of charge

- By the other House, to be called the Investigating House
- If the investigating House passes a resolution
 - by the same special majority sustaining the charge
- the President stands removed

Time of holding election

Article 62

- Election for President in case of death, resignation or removal
 - shall be held within 6 months

Functions of Vice-President

Article 64

- Vice-President is **ex-officio Chairman** of Council of States
 - except when acting as President

Vice-President to act as President

Article 65

- Vice-President to **act** as President
 - in case of President's death, resignation or removal
- Vice-President to **discharge** functions of President
 - in case of President's inability to do so due to absence, illness etc.
- In this period
 - Vice-President to have all powers, immunities and emoluments of President

Election of Vice-President

Article 66

- Electoral college for election of Vice-President consists of
 - **All** members of both Houses of Parliament

QUALIFICATIONS

- Should be a Citizen of India
- Should be at least 35 years of age
- Should be qualified to be elected to RS
- Should not hold any office of profit under govt or any authority under govt control

Removal of Vice-President

Article 67

- By a resolution of Rajya Sabha
 - passed by a majority of all the **then members** of RS and
- agreed by Lok Sabha
 - by simple majority

Other contingencies

Article 70

- Parliament may make provision
 - for discharge of functions of President
 - in any contingency not provided for

Election disputes

Article 71

- Disputes relating to the election of President and Vice-President
 - shall be inquired into and decided by the Supreme Court

Pardoning power of President

Article 72

- President has the power

- to grant pardons or remissions of punishment
- to suspend, remit or commute sentences
- of any person convicted
 - by a Court Martial
 - of any offence against a law on a matter within executive power of Union or
 - where the sentence is a sentence of death

Executive Power of Union

Article 73

- **Executive power of Union** extends to:
 - all matters enumerated in the Union List
 - those matters in Concurrent List where expressly so provided by Constitution or Parliament
 - rights and authority by virtue of any treaty or agreement with other countries

Council of Ministers

Article 74

- Council of Ministers with PM at the head
 - to aid and advise the President
 - **who shall act in accordance with such advice**
- President may return the advice for reconsideration
 - but the subsequent advice is binding

Other provisions as to Ministers

Article 75

- Prime Minister is to be **appointed by President**: Other ministers are to be appointed by him on advice of PM
- Number of ministers shall not exceed **15%** of total members of Lok Sabha
- An MP disqualified under Tenth Schedule is not to be appointed as Minister

- Ministers shall hold office during **pleasure of President**
- Council of Ministers is **collectively responsible** to Lok Sabha
- A minister who is not an MP for 6 month ceases to be a minister

Attorney General

Article 76

Appointment

- Attorney General is to be appointed by the President

Qualifications

- He should be qualified to be a judge of the Supreme Court

Duties

- To give advice to govt upon legal matters
- To perform duties of legal character as assigned by the President

Rights

- Has a right of audience in all courts in India

Removal

- Holds office during the **pleasure** of the President

Remuneration

- Remuneration is to be determined by the President

Conduct of Govt business

Article 77

- All executive action of Union
 - is to be taken in the name of President
- President is to make rules
 - for transaction of business of Govt of India
 - for allocation of work among ministers

Provisions relating to the President, Prime Minister and Council Of Ministers explained in question-answer form:

Q 1:

- **Who elects the President of India?**

Ans:

- The President of India is elected by elected members of both Houses of Parliament and elected members of State Legislative Assemblies including Delhi and Puducherry

Q 2:

- **What weight does the vote of an MLA of a State carry?**

Ans:

- An MLA of a State has a number of votes. This number equals the population of the State divided by total number of elected MLAs in that State; further divided by 1000

Q 3:

- **What is the number of votes of an MP?**

Ans:

- The number of votes of an MP equals total number of votes of all MLAs divided by total number of elected MPs

Q 4:

- **Who decides disputes relating to the election of President?**

Ans:

- Disputes relating to the election of the President shall be inquired into and decided by the Supreme Court

Q 5:

- **How many times can a President be re-elected?**

Ans:

- A President in India can be re-elected any number of times

Q 6:

- What are the qualifications for a person to contest the election of the President?

Ans:

- He should be a citizen of India
- He should be at least 35 years of age
- He should be qualified to be elected to Lok Sabha
- He should not hold any **office of profit** under govt or any authority under govt control

Q 7:

- Which offices are excluded from the ambit of the term '**office of profit**'?

Ans:

- The following offices are **not** considered as '**office of profit**':
 - President, Vice President, Governor
 - Union Minister, Minister of a State

Q 8:

- Which Constitutional Authority has been entrusted with the onerous task of protecting and defending the Constitution?

Ans:

- The content of the oath prescribed in Article 60 shows that it is the President of India who takes oath to protect and defend the Constitution and **not** the Judges of the Supreme Court

Q 9:

- In which constitutional authority is the Executive power of the Union vested and how is it to be exercised?

Ans:

- Executive power of Union is vested in the President of India.
- He shall exercise this power either directly or through subordinate officers and in accordance with this Constitution

Q 10:

- What matters are included in the Executive power of the Union?

Ans:

- Matters included in the executive power of the Union:
 - all matters enumerated in the Union List
 - those matters in Concurrent List which are expressly so included by the Constitution or Parliament
 - rights and authority by virtue of any treaty or agreement with other countries

Q 11:

- How shall the President exercise his powers?

Ans:

- The President shall exercise his powers with the aid and advice of the Council of Ministers with the Prime Minister at the head. He shall act in accordance with such advice.
- However, the President may return the advice for reconsideration once, but the subsequent advice is binding

Q 12:

- Who can be appointed a minister in the Union Council of Ministers?

Ans:

- Any person who has not been disqualified as a Member of Parliament under the Tenth Schedule can be appointed a minister.
- He shall however cease to be a minister if he is not a Member of Parliament for a continuous period of six months.

Q 13:

- What is the maximum number of ministers in the Union Council of Ministers?

Ans:

- **15%** of the total members of Lok Sabha

Q 14:

- What authority can remove the Union Council of Ministers and how?

Ans:

- The Union Council of Ministers can be removed by the House of People by passing a no-confidence motion against the Council.

Q 15:

- What is meant by the collective responsibility of the Union Council of Ministers to the Lok Sabha?

Ans:

- The Union Council of Ministers is collectively responsible to the Lok Sabha. It can be removed as a whole by the House of People by passing a no-confidence motion.

Q 16:

- In what cases can the President grant pardon?

Ans:

- The President can grant pardon to any person
 - convicted by a Court Martial or
 - convicted of any offence against a law on a matter within executive power of Union or
 - sentenced to a sentence of death

Q 17:

- What is the effect of a Presidential pardon?

Ans:

- The grant of pardon wipes off the guilt of the convict and brings him to the original position of innocence as if he had never committed the offence for which he was convicted.
- It affects both the punishment prescribed for the offence and the guilt of the offender.

Q 18:

- Can the power under Article 72 be exercised by the President on his own or has it to be exercised on the advice of the Central Government?

Ans:

- A Constitutional Bench of the Supreme Court held in **Maru Ram v. Union of India** [1980] that the power under Article 72 is to be exercised on the advice of the Central Government and not by the President on his own, and that the advice of the Government binds the head of the Republic.

Q 19:

- Can there be a judicial review of the clemency powers of the President?

Ans:

- A limited judicial review of exercise of clemency powers is available to the Supreme Court and High Courts as held by the Supreme Court in *Epuru Sudhakar v. Govt. of Andhra Pradesh*.

Q 20:

- What are the grounds on which the clemency powers can be challenged?

Ans:

- Granting of clemency by the President can be challenged on the following grounds:
 - The order has been passed without application of mind.
 - The order is mala fide.
 - The order has been passed on extraneous or wholly irrelevant considerations.
 - Relevant material has been kept out of consideration.
 - The order suffers from arbitrariness.

Q 21:

- What is the procedure for impeachment of the President ?

Ans:

- The procedure for impeachment of the President:

Step 1: Preferring of charge

- The charge can be preferred by either House of Parliament
- A 14-days prior notice signed by not less than $\frac{1}{4}$ th members of that House has to be given
- For preferring the charge a resolution has to be passed by this House with a special majority of not less than two-thirds of its **total membership**

Step 2: Investigation of charge

- The charge preferred by the first House shall be investigated by the other House, to be called the Investigating House
- If the investigating House passes a resolution by the same special majority sustaining the charge, the President shall stand removed

Q 22:

- Who discharges the functions of the President when there are vacancies in the offices of both the President and the Vice-President?

Ans:

- While exercising its powers under Article 70 of the Constitution, the Parliament enacted the President (Discharge of Functions) Act in 1969 for this contingency.
- This Act provides as under:
- In the event of the occurrence of vacancies in the offices of both the President and the Vice-President, the Chief Justice of India or, in his absence, the seniormost Judge of the Supreme Court available shall discharge the functions of the President until a new President enters upon his office or a new Vice-President begins to act as President under article 65, whichever is earlier

Q 23:

- State with reasons whether it is essential to have a Council of Ministers under Article 74(1) even at a time when the House of the People has been dissolved or its term has expired?

Ans:

- yes

Reasons as given by the Supreme Court in U. N. R. Rao v. Indira Gandhi [1971] :

- Article 75(3) brings into existence what is usually called “Responsible Government”. The Council of Ministers must enjoy the confidence of the House of People. While the House of People is not dissolved, Article 75(3) has full operation. But when it is dissolved the Council of Ministers cannot naturally enjoy the confidence of the House of People.
- *On the other hand, Article 74(1) is mandatory and, therefore, the President cannot exercise the executive power without the aid and advice of the Council of Ministers.*
- We must then harmonise the provisions of Article 75(3) with Article 74(1) and Article 75(2).
- In the context, therefore, *Article 75(3) only applies when the House of People does not stand dissolved or prorogued.*

Q 24:

- *State with reasons weather a person who is not a member of either House of Parliament can be appointed as the Prime Minister of India?*

Ans:

- yes

Reasons as given by the Supreme Court in S.P. Anand v. H.D. Deve Gowda [1997]:

- On a plain reading of Article 75(5) it is obvious that the Constitution-makers desired to permit a person who was not a member of either House of Parliament to be appointed a Minister.
- The form of the oath prescribed in the Third Schedule under Article 75(4) is the same for the Prime Minister as well as a Minister. The Constitution does not draw any distinction between the Prime Minister and any other Minister in this behalf.
- The caption of Article 75 as a whole is “Other provisions as to Ministers”. No separate provision is to be found dealing with the appointment of the Prime Minister as such.
- The person who is appointed the Prime Minister is chosen by the elected representatives of the people and can occupy the position only if he enjoys the confidence of the majority of the elected representatives in the Lok Sabha.

- Even if a person is not a member of the House, if he has the support and confidence of the House, he can be chosen to head the Council of Ministers without violating the norms of democracy and the requirement of being accountable to the House would ensure the smooth functioning of the democratic process.

THE VICE-PRESIDENT

Q 25:

- What are the qualifications for a person to contest the election of the Vice-President?

Ans:

- He should be a citizen of India
- He should be at least 35 years of age
- He should be qualified to be elected to the Rajya Sabha
- He should not hold any office of profit under govt or any authority under govt control

Q 26:

- Who elects the Vice-President of India?

Ans:

- The Vice-President of India is elected by all the members of both Houses of Parliament

Q 27:

- What functions does the Vice-President of India perform?

Ans:

- The Vice-President presides over the sittings of the Council of States in his capacity as its **ex-officio Chairman**
- The Vice-President acts as the President or discharges the functions of the President in case of the latter's unavailability

Q 28:

- In what cases shall the Vice-President act as the President and in what cases shall he discharge the functions of the President?

Ans:

- The Vice-President shall **act** as the President
 - in case of the President's death, resignation or removal
- the Vice-President shall **discharge** the functions of the President
 - in case of the President's inability to do so due to absence, illness etc.

Q 29:

- What is the procedure for removal of the Vice-President of India?

Ans:

1st step:

- A resolution of the Rajya Sabha passed by a majority of all the then members of the Rajya Sabha

2nd step:

- A resolution of the Lok Sabha by simple majority agreeing with the resolution passed by the Rajya Sabha

Q 30:

- What qualification are required for a person to be appointed as the Attorney General of India?

Ans:

- He should be qualified to be appointed a judge of the Supreme Court
