UNIT 1: PRESIDENT OF INDIA

UNIT STRUCTURE

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1.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- know the qualifications, election procedure, tenure, removal procedure of the President of India
- discuss the powers and functions of the Indian President
- analyse the constitutional position of the President of India

1.2 INTRODUCTION

The Constitution of India has adopted the basic principles of the British Parliamentary system. In a Parliamentary form of government, there are two executives i.e. the nominal executive and the real executive. The President is the nominal executive while the real executive is the Council of Ministers headed by the Prime Minister. The Constitution has given enormous powers and functions in the hands of the President which are in theory only. In this unit, we will discuss in detail about the qualifications, election

procedure, tenure, removal procedure, powers, functions and position of the President of India.

1.3 PRESIDENT OF INDIA

Article 52 of the Constitution of India states that there shall be a President of India and Article 53 confers executive powers of the Union on the President. He/she shall exercise these powers directly or through officers subordinate to him/her in accordance with the Constitution of India. But practically, he/she does not exercise any of them. He/she is thus a nominal head. He/she is a Constitutional ruler and head of the state but not head of the government. The President is the first citizen of India.

1.3.1 Qualifications

Article 58 of the Constitution lays down the following qualifications for the candidates contesting for Presidential election who:

1. must be a citizen of India.
2. must have completed 35 years of age.
3. must possess all qualifications prescribed for election as a member of the House of the People (Lok Sabha)
4. must not hold any office of profit under the Central and the State Governments or local authority.
5. should not be a member of the either House of the Parliament or any State Legislature.

1.3.2 Election Procedure

Article 54 states that the President of India Shall be elected indirectly by an Electoral College composed of the elected members of both the Houses of Parliament and the State Legislative Assemblies in accordance with the principle of proportional representation by means of single transferable vote system and secret ballot.

Thus, common citizens of the country cannot take direct part in this election. Nominated members of both the Houses of Parliament, State Legislative Assemblies and the members of the State Legislative Councils are not allowed to participate in the Presidential election.

Article 55 of the Constitution lays down the manner of election of the President. The election is based on two principles:

(a) The States are given uniform or near uniform representation.

(b) Parity is established between the States and the Union.

- In order to determine the value of vote of an M.L.A. of a state, the following formula is to be used.

Value of vote of an MLA of a State:

$$= \frac{\text{Total population of the state (as per last census)}}{\text{Total number of elected MLA of the state state}} \div 1000$$

If the remaining figure is 500 or more, the vote value is further increased by one and if it is less than 500 it is ignored.

- The value of the vote of the elected members of the Parliament would be as follows:

Value of vote of each elected MP=

$$\frac{\text{Total value of votes of all the elected MLAs of all the states}}{\text{Total numbers of elected Members of Parliament}}$$

In the process of division, a fraction exceeding one half being counted as one and fraction less than one –half is to be ignored.

- Each voter can cast only one vote and while casting his/her vote should indicate the order of his/her preference against each Presidential candidate.
- In order to win a Presidential election, a candidate has to secure a minimum fixed quota of votes which is calculated in accordance with the Drop Method, that is:

$$\text{Quota} = \frac{\text{Total number of valid votes polled}}{2} + 1$$

If no candidate secures the quota in the first count, the candidate who secures the least number of votes is eliminated and his/her second preference votes are transferred to the remaining candidates. This process of elimination goes on until one of the candidates secures the fixed quota of votes or remains in the field after the other candidates are eliminated.

1.3.3 Tenure

As per articles 56, the President holds office for a period of five years from the date on which he/she enters upon his/her office. He/she is eligible for re-election.

The office of the President may fall vacant on the expiry of five years term, by death, by resignation or removal by impeachment.

1.3.4 Removal Procedure

Article 61 of Constitution lays down that the President of India can be removed from the office before the expiry of his/her term, through a process of impeachment on grounds of violation of the Constitution. The charges for this purpose may be referred to by either House of the Parliament. But it is provided that at least 14 days' prior notice in writing must be given by not less than one-fourth of the total number of members of the House before such a resolution is moved. If the House, after deliberation, passes this resolution by a majority of 2/3 of its total members, it goes to the other House. If the other House, after investigation, passes the resolution by not less than 2/3rd majority of the total membership of the House, then the President is removed from office from the date of passing of the resolution. However, the President has the right to appear in person or through a lawyer to defend himself/herself. So far, no President has been impeached.



Check Your Progress

Q. 1: What is the term of office of the President of India?

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Q. 2: What is the minimum age to be the President of India?

.....

Q. 3: Write True or False:

(a) The President is the Head of the State.

.....

(b) The President cannot be removed from his / her office.

.....

Q. 4: Write about the composition of the Electoral College.

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1.3.5 Powers and Functions of the President

The Constitution confers extensive powers on the President of India. His/her powers and functions can be discussed under following heads:

- **Executive Powers and Functions**

The Executive powers mean not only the execution of laws passed by the legislature but also the power to carry on the business of the government. The President is the chief executive head of the Union Government. All executive action is taken in his/her name.

(a) He/she makes appointment of the Prime Minister and on his/her advice, other ministers of the Central Government are appointed.

(b) Besides, the President makes all important appointment such as Chief Justice and Judges of the Supreme Court and of the High Courts, Attorney General, Ambassadors and other diplomatic representatives, Governors of the States, Lt. Governor

and Chief Commissioner of the Union Territories, Comptroller and Auditor General, Chairman and members of UPSC, Election Commission, Finance Commission and other statutory commissions etc.

- **Military Powers and Functions**

(a) The President is the commander-in-chief of the Armed Forces and appoints the Chief of the Army, Navy and Air Force.

(b) He/she has the power to take any military action i.e., declaration of war and concluding peace treaties in case of any danger or threat to the country's sovereignty.

(c) He/she grants all military honours and titles for acts of bravery and commendable service to the nation during peace and war. Of course, his/her military powers, regulated by laws are made by the Parliament.

- **Diplomatic Powers and Functions**

(a) As the head of the State, the President accredits India's diplomats to foreign countries and receives the diplomats who come from foreign countries.

(b) All the international treaties and agreements are signed in the name of the President.

(c) He/she represents India in international affairs and undertakes goodwill tours of other countries to promote good relations between India and other countries.

- **Legislative Powers and Functions**

Though the President is not a member of either House of the Parliament, but he/she is an integral part of the Parliament.

(a) The President has the power to summon and prorogue the session of the Parliament or either of its Houses.

(b) He/she can dissolve the Lok Sabha before the expiry of its full term of five years.

(c) He/she can summon a joint sitting of both the Houses of Parliament in case of differences between the two.

(d) The President has the right to address the opening session of a newly elected Parliament and the first session of each year. Besides, he/she may address either House or their joint sitting at any time.

(e) The President has the right to send messages to either House of Parliament on any pending matter or on a bill before the Parliament, which must be considered by it.

(f) He/she can nominate two members from the Anglo-Indian community to the Lok-Sabha if that community has not been adequately represented in the House. On the other hand, he/she nominates twelve members to the Rajya Sabha from the field of Art, Science, Literature or Social Service.

(g) No bill passed by the Parliament can become an Act without the President's assent. He/she may give his/her assent to a Bill or withhold his/her assent or he/she may send the Bill for reconsideration of the House along with his/her suggestions. If, however, the Parliament passes the Bill for the second time with or without amendment, then the president is bound to give his/her assent to it. This power of the President to withhold his/her assent is known as the Veto Power.

(h) The President has the power to approve or disapprove all such state Bills which the Governors of the States reserve for his/her consent.

(i) According to article 123, the President can issue ordinances to meet the urgent necessities of laws during the intervals between the two sessions of the Parliament. But such ordinance has to be placed

before both the Houses of the Parliament, when they come into session.

- **Financial Powers and Functions**

The President has some financial powers also. These are:

(a) Before the beginning of a financial year, he / she causes to be laid before Parliament the annual budget and the supplementary budget, if any.

(b) No money bill can be introduced in the Lok Sabha without his/her prior recommendation.

(c) The President controls the Contingency Fund of India. He/she has the power to order an expenditure out of it for meeting an unforeseen expenditure.

(d) He/she distributes the share of all income-tax receipts between the Centre and States and allocates grant-in-aid to the States of Assam, Bihar, Odisha and West-Bengal in lieu of their share in export duty on jute.

(e) The President appoints the Finance Commission after every five years for allocation of the share of the States in regard to receipts from other taxes.

- **Judicial Powers and Functions**

The President enjoys the power to grant pardon, reprieve or remission of punishment to any convict, particularly in cases involving punishment with death. The President can refer any matter of Constitutional law or a bill of public importance to the Supreme Court for advice. The Supreme Court may give such advice but he/she is not bound to accept such advice given by the Supreme Court.

- **Legal Immunities**

The President enjoys certain legal immunities. He/she is not answerable to any court of law for the exercise and performance of the powers and duties of his/her office. No criminal action can be taken against him/her in any court in India during the term of his/her office.

➢ **Emergency Powers and Functions**

The emergency provisions have been enumerated in the articles 352 to 360 of part XVIII of the Constitution. These provisions are known as emergency powers of the President of India. As per the advice of the Prime Minister and the Union Cabinet, the President exercises these special emergency powers for dealing with three kinds of emergencies, viz, (a) National Emergency (b) State Emergency and (c) Financial Emergency.

(a) National Emergency: The President of India has the Power to proclaim Emergency on the ground of threat to the security of India or any part thereof by war, external aggression or armed rebellion under Article 352 of the Constitution. Such an emergency can be proclaimed either in the whole of India or any part/parts of India.

The proclamation of National Emergency needs to be approved by both the Houses of Parliament within one month from the date of Proclamation. But if the Parliament doesn't give its approval, this emergency ceases to operate after one month.

After approval, an emergency proclamation can remain in force for six months. After every six months, through subsequent approval, the proclamation can remain operative for any length of time.

➢ **Effects of National Emergency:**

(i) Under this emergency, the Parliament acquires powers to frame laws regarding the subjects mentioned in the State list.

(ii) The President can issue direction to any State regarding the conduct of executive powers.

(iii) He/she can modify the distribution of sources of revenue between the Union and the States, but all

such decisions have to be placed before each House of the Parliament.

(iv) The President can suspend the operation of Fundamental Rights and their Constitutional guarantees, given in Article 19 and 32. No citizen can move to a court of law for the enforcement of these rights during the emergency period.

(v) The terms of the Lok Sabha and the State Legislative Assemblies can be extended for one year during such an emergency.

(b) State Emergency : If the President is satisfied either on the recommendation of the Governor or otherwise that the government of a particular State cannot be carried on in accordance with the Constitution, he/she may declare, under Article 356, the emergency in that State, which is also popularly known as President's Rule.

This type of emergency ceases to be effective after two months unless approved by the Parliament. It cannot be issued for more than six months at a time but it can be extended every six month up to a maximum period of 3 years. All extension to the life of such a proclamation must be approved by the Parliament.

➢ **Effects of State Emergency or President's Rule**

(i) The President assumes all the powers and functions exercised by the government and the Governor of the state and conducts its administration through the Governor assisted by some advisor if required.

(ii) The Council of Ministers of the State is dissolved. The Legislative Assembly of the State may be dissolved or kept in animated suspension.

(iii) The Parliament shall have the power to make laws on any of the subject of the State list and such laws will apply to this State alone.

(iv) The President gets the power to authorise expenditure from the Consolidated Fund of the State.

It is criticised that this has given some opportunity to the ruling party to misuse the power of state Emergency for the enhancement of its interests.

(c) Financial Emergency: The President under Article 360 can proclaim financial emergency in India if he/she is satisfied that a situation has arisen whereby the financial stability or credit of India or any part thereof is endangered.

Such a proclamation of Emergency will expire after a period of two months unless approved by the Parliament. It can extend its life by six months at a time but by subsequent extensions of six months each, it can lend a maximum lease of three years to this type of emergency.

➢ **Effects:**

(i) During the Financial Emergency period, it becomes necessary for the States to observe those canons of financial propriety which the President may deem fit for overcoming the crisis.

(ii) The President can reduce the salaries and allowances of all or any class of public servants including the Judges of the Supreme Court and High Courts.

(iii) The President may direct the State governments to reserve all the Money Bills or other Financial Bills passed by the State Legislature for his/her consideration.

Fortunately, Financial Emergency has not yet been imposed in our country.

1.3.6 Constitutional Position of the President of India

There are conflicting views expressed by Constitutional experts on the position of the President. Some critics seem to be confused about the actual position of the President of India.

Apparently, it seems that the President of India is a very powerful ruler in the world. He/she dominates the executive, legislative, financial and judicial spheres. During the time of emergency, he/she almost becomes a dictator.

But, in reality, the powers enjoyed and exercised by the President mean the powers of the Council of Ministers headed by the Prime Minister in a Parliamentary form of government like ours. The President is the Constitutional figurehead only. He/she cannot ignore the advice of the Council of Ministers. Therefore, some critics compare the President to a rubber stamp.

Neither of the above opinions regarding the actual position of the President can be considered as totally acceptable. As the head of the state, he/she occupies a very significant position. His/her influence over the government cannot be underestimated. He/she has right to be consulted, to encourage and to warn the Council of Ministers and even ask them to reconsider their decision. For a wise and intelligent President, this power is undoubtedly very significant.

His/her office is of great honour, dignity and prestige. The actual status of the President depends on the personality and integrity of character of the person who holds the post. A wise, intelligent and dynamic President may exert considerable amount of influence on the Council of Ministers to take proper steps towards the welfare activities and betterment of the people and all-round development of the country. We may conclude in the words of Late Shri Jawaharlal Nehru that the President enjoys no powers but he can exercise a lot of influence.



Check Your Progress

Q. 5: The President can nominate .... members to the Rajya Sabha (Fill in the blank).

.....

.....

Q. 6: The emergency proclaimed under Article ... is also known as the imposition of President's Rule (Fill in the blank).

.....

Q. 7: The Lok Sabha can be dissolved by the .... (Fill in the blank).

.....

Q. 8: How many members can be nominated to the Lok Sabha by the President?

.....

Q. 9: Which Article of the Constitution of India provides for Financial Emergency?

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Q. 10: On what ground the President can declare National Emergency?

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1.4 LET US SUM UP

- The President is the Constitutional head of the State.
- As the Constitutional head of the state, the President exercises a wide range of powers and functions including very special emergency powers.
- The entire administration of the country runs in his / her name.
- The Constitution of India has provided for a Parliamentary system of government with two kinds of executives, nominal and real. Here, the Union Council of Ministers headed by the Prime Minister is the real executive and the President is the nominal or titular executive.
- All the powers of the President are exercised by the Union Council of Ministers headed by the Prime Minister.
- As per the advice of the Prime Minister and the Union Cabinet, the President exercises three special emergency powers namely, (a) National Emergency (b) State Emergency and (c) Financial Emergency

- Of course the position of the President depends upon the personality, ability and intelligence of the person who occupies the post. He/she can exercise a lot of influence on the Union Government.



1.5 FURTHER READING

1) Chander, Prakash. (2000). *Indian Government and Politics.* New Delhi: Cosmos Bookhive Pvt. Ltd.

2) Ghai, K.K. (2007). *Indian Government and Politics.* New Delhi: Kalyani Publishers.

3) Kapur, Anup Chand and Misra, K.K. (2006). *Select Constitutions.* New Delhi: S. Chand and Company.

4) Pylee, M.V. (2006). *Constitutional Government in India.* New Delhi: S. Chand and Company.

5) Phillip A.T. and Shivaji Rao K.H.- Indian Government and Politics.



1.6 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: 5 years

Ans to Q No 2: 35 years

Ans to Q No 3: (a) True

(b) False

Ans to Q No 4: The Electoral College for the Presidential election is composed of the all elected members of both the Houses of Parliament and all the elected members of the State Legislative Assemblies of all the states of the country.

Ans to Q No 5: 12

Ans to Q No 6: 356

Ans to Q No 7: President

Ans to Q No 8: 2

Ans to Q No 9: 360

Ans to Q No 10: The President can declare National Emergency under Article 352, on the grounds of threat to the security of India or any part thereof, by war, external aggression or armed rebellion.



1.7 MODEL QUESTIONS

A. Very Short Questions

Q. 1: Which article of the Indian Constitution deals with office of the President of India?

Q. 2: Who is the present President of India and from which year he assumed the office?

Q. 3: To remove the President from his duty, a 14 days' prior notice have to be submitted to the President—— (True/False)

B. Short Questions (Answer each in about 150-200 words)

Q. 1: What are the necessary qualifications of a candidate contesting for Presidential election?

Q. 2: How is the value of the votes of the members of the State Legislative Assemblies determined for the purpose of election of the President of India?

Q. 3: Name three emergency powers of the President.

Q. 4: What is meant by President's Rule in a State?

C. Long Questions (Answer each in about 300-500 words)

Q. 1: Mention four legislative powers of the President of India.

Q. 2: Discuss the procedure of election and removal of the President of India.

Q. 3: Describe the powers and functions of the President of India.

Q. 4: Discuss the effects of the Proclamation of Financial Emergency.

Q. 5: Ascertain the position of the President of India.

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