

# Union Executive Form of Union Executive-President Election, Impeachment, Privileges, Immunities; Constitutional Position and Powers of the President, Prime Minister and Council of Ministers, Executive Functions, Attorney General.

## Privileges and Immunities

This article will highlight the concept of Privileges and Immunities of Parliament and its members

Powers, privileges and immunities of parliament and its members are conferred upon them by the constitution and as per rules of conduct governing the members in general. The privileges are rights and immunity are defense against lawsuits or prosecution.

What do you mean by Parliament?

In India, the parliament means Rajya sabha and Loksabha.

The term parliament is used both in British constitutional practice as well as Indian constitutional law. The word “Parliament” is derived from French and Latin.

The Parliament of India is made up of two Houses: – Rajya Sabha(The Council of States) and Lok Sabha (House of the People). The President’s duties are mostly ceremonial as long as the constitution and the law is obeyed by him/her.

Who are Parliament Members?

A member of parliament(MP) is a representative elected by the people to either house of the parliament.

Privileges and Immunities of Parliament Members:

1) The Privileges of Parliament have been set out in the article 105 and 194. The privileges of parliament members are:

1. a) Freedom of speech and publication under parliamentary authority: This privilege is not only for the members of parliament but also for the members of the state legislatures and the local legislative bodies. The privilege is an important part of parliamentary sovereignty.
2. b) Freedom of speech given to the member of Parliament and to the member of legislature of a state. Any publication under parliamentary authority/legislature of a state or anything said of by the member of parliament/legislature of a state in the proceedings or any vote given by him they shall not be held liable for these.
3. c) Power to make rules-they have the power to make its own rules: but these rules are not set in the constitution. The rules are made by the parliament or legislative body of the state.

4. d) Internal Independency/Autonomy Has Freedom from being Arrested: i) Members of the parliament shall not be arrested in any criminal case without the permission from the house in which he/she is a member.
5. ii) No civil suit can be filed against them for anything said or any vote given by them in parliament or its committees.

iii) The court cannot summon them to render personal accounts, nor can issue any ad interim order against them. A member of parliament will not be charged with contempt till they are convicted.

1. iv) They cannot be compelled to give evidence except on matters relating to their membership or conduct as an MP.
2. e) Also has the right to exclude the Strangers from its proceedings and hold secret sessions: The parliament has a right to exclude the stranger from its proceedings, it means the visitors and public cannot attend the proceedings of the parliament.
3. f) Has the right to prohibit the publication of its reports and proceedings: The parliament can prohibit the publication of its reports and proceedings in general.
4. g) Right to take part in the proceedings and debates of the house: The members of the parliament shall have a continuous right to take part in the proceeding and debate.
5. h) Has the right to regulate the internal proceedings: The parliament can regulate the process of their own proceeding.
6. i) Has the right to punish the members or outsiders for contempt or breach: The parliament can punish the members or outsiders for contempt or breach.

In general, the members of the parliament are not liable for criminal prosecution or civil liability.

2) The immunities of parliament members are:

1. a) A member can speak, debate and vote on all matters of public importance.
2. b) A member is free to express his views and can't be attacked on basis of those views.
3. c) A member can't be sued for something said in parliament.
4. d) No civil suit can be filed against him for anything said or any vote given by him in parliament or its committees.
5. e) The court cannot summon them to render personal accounts, nor can issue any ad interim order against them. A member of parliament will not be charged with contempt till they are convicted.

Misuse of Privileges and Immunities:

Rajya sabha is a constitutional body. Every member of the parliament has to obey the rules of conduct, that is all things that are in the constitution and the law have to be obeyed by

every member. The privilege and immunity conferred on them by the constitution are part of their rights and protected from any hostile action by anybody. If anybody tries to misuse or misbehave with these privileges and immunities, his actions will be considered as an attack on the parliamentary sovereignty/security of India/people of India, one will not only lose their own rights but also future generation's rights.

### Impeachment

Impeachment is defined as the act of questioning something's integrity or legitimacy. The term impeachment refers to the procedure for removing a person in a position from all of the powers and obligations that the post requires. Impeachment is the term used to describe the complete process of removing someone from office. It generally refers to the President, judicial judges, and other constitutional officers. Impeachment refers to a claim of misbehavior leveled against a public official in a country with a federal presidential Constitutional republic government.

### Conditions of President's Office (Article 59)

There are certain conditions laid down in the Constitution of India for the office of the President.

- The President should not be a member of either the house- Lok Sabha or Rajya Sabha of the Parliament of India or a member of the House of the state legislatures. If any such person enters the office of the President, he is believed to have vacated the seat of membership of that House on his entering date of the office of President.
- Any office of profit under the Union or state government shall not be held by the President.
- The President is entitled to use his official residence (Rashtrapati Bhavan) without payment of rent.
- The President is also entitled to allowances, emoluments and other privileges as determined by the Parliament of India.
- The allowances and the emoluments received by the President cannot be diminished he is in office.

### Term of the office of President (Article 56)

From the date President enters upon his office, he holds the office for a term of 5 years. However, the President can at his will resign from his office by tendering his resignation letter to the Vice-President at any time.

Further, by the impeachment process, the President can be removed from his office even he has not completed the term of five years.

Until the person succeeding to the office of President assumes his charge, the sitting President can hold office extending past 5 years.

The sitting President can also be re-elected to his office for any number of terms. However, as it happens, a person can be elected for the office of the President in the USA only for a maximum of two terms.

## Impeachment of President (Article 61)

- The sitting President can be removed from his office before completion of his term of 5 years by the procedure of impeachment of the President of India for ‘violation of the Constitution.
- Even though impeachment meaning as the removal from his office is known, the term ‘violation of Constitution’ has not been defined by the Constitution.
- Either House of the Parliament of India can initiate the charges of impeachment against the President.
- One-fourth of the members of the House that has framed the charges of impeachment should sign the charges and the Presidents should be handed over a notice of 14 days.
- The impeachment resolution is sent to the other House to investigate the allegations once it is passed by the two-thirds majority of the House which initiated the charges of impeachment.
- The right to appear before the investigating House and the right to be represented is possessed by the President.
- However, if the motion is passed in the other House too by a two-thirds majority, the President is deemed to have been removed from his office from that day.
- The important point to note here is that the nominated members can also participate in the impeachment process.
- However, the elected members of the state legislatures and the UTs of Delhi and Puducherry shall not participate in the impeachment process.

### A note of President Impeachment

Until now, no president has faced impeachment proceedings in India. The method, however, has been established by the law of the nation. The President may be impeached by the Indian Parliament before the end of his term for breaking the Indian Constitution. The procedure might start in either of Parliament’s two chambers. A House of Representatives begins by laying accusations against the President. The allegations are contained in a notice that must be signed by a fourth of the House’s total members. The notification is then forwarded to the President, who will examine it after 14 days.

A two-thirds mandate (special proportion) of the total population of the originating House is required to pass an impeachment resolution against the President, which is then transmitted to the other House. The allegations made are investigated by the other House. A two-thirds mandate (special proportion) of the total population of the originating House is required to pass an impeachment resolution against the President, which is then transmitted to the other House. The allegations made are investigated by the other House.

The Union Executive consists of the President, the Vice President, the Prime Minister, the Council of Ministers, and the Attorney General of India.

## # President

### PRESIDENT

The President is the Head of the State, the first citizen of India.

- **Article 52** – There shall be a President of India.
- **Article 53** – Executive Power of the Union shall be vested in President;
  - Power exercised directly or through offices subordinate.
- **Article 74** – Council of Ministers to aid and advice the President.
  - President shall Act in Accordance with Such Advice; **42<sup>nd</sup> CAA** made this advice binding on the President; **44<sup>th</sup> CAA** – President can send back the bills for reconsideration once.
  - Thus, President is the Nominal Executive; Real Executive – CoM's headed by PM.
- **Article 56** – Term of Office: 5 Years
  - Resignation addressed to Vice-President; Vice-President to communicate to speaker
- Removal by Impeachment (**Article 61**)
- Eligible for re-election (Article 57).
- **Article 58** – Qualification for election as President
  - Citizen of India.
  - Completed 35 year of age.
  - Qualified for election to Lok Sabha.
  - Not to hold office of profile.
    - Office of President; Vice-President; Governor; Minister of states or union- Exempted from Office of Profit.
  - **Article 59** – Conditions of the Office of the President
    - Not to be MP or MLA.
    - No office of Profit.
    - Entitled to official Residence emoluments and allowance.
    - Emoluments allowance no to be diminished.
- - 
  - **Article 60** – Oath administered by the Chief Justice of India (or senior most Supreme Court judge in his absence)
  - Election of the President
  - Electoral College
    - Elected members of both houses of Parliament
    - Elected members of legislative Assemblies of the state.

- Proportional representation by means of single transferable vote;  
voting by secret ballot
- Population Based on the 1971 census till 1st census after 2026 (84th CAA).
- Value of Vote of an MLA=(Total population of the state )/(Number of Elected MLA in the state Legislative Assembly ) x 1/1000
- Value of Vote of an MP=(Total value of votes of all Elected MLAs of all states)/(Total Numbers of Elected Member of Parliament )

This implies that:

- Value of vote of MLA of different state is different.
- Value of vote of MP is greater than MLA (of any State)
- Value of vote MP (LS) = MP (RS)
- Cumulative value of vote LS (MP) is greater than RS (MP)
- **Article 71** – Supreme Court has original and exclusive jurisdiction over Election dispute of President; Prior acts in the capacity of President will not be Invalidated, Vacancy of Electoral college is not a ground for dispute.
- **Article 61** – Impeachment of President
  - Only for Violation of the constitution.
  - Procedure – Resolution has to be moved in either house of Parliament (14 days prior notice to the President)
  - Resolution has to be supported by 1/4th of members before Introduction.
  - Has to be passed by 2/3rd of total membership of the house.
  - 2<sup>nd</sup> house shall investigate the charge (President has the right to represent his case).
  - If passed with 2/3rd majority (President stands impeached)
  - Nominated members of both houses can participate.
  - State legislatures although involved in election of president, are not involved in impeachment.
- Vacancy of the Office of President
  - Due to expiry of the term – Election to be completed before such expiry
  - Death
  - Resignation

- Impeachment
- Otherwise –Example: Election is declared void.
- Except in case of expiry of term – Vice-President will act as the president; Election to be held as soon as possible; within not more than 6 Months.

### **Power and Function of the President**

- President is **executive head (Article 53)**
- Act on Aid and advice of Council of Ministers (**Article 74**)
- All executive action taken in his name; make rules for convenient transaction of business of Government of India (Article 77)
- Power of appointment and removal of various dignitaries. Example: Comptroller and auditor General of India; Chief Election Commissioner and Election Commissioners; Attorney Generals; members of Union Public Service Commission; Joint Public Service Commission; Judges of Supreme Court and High Courts etc...
- Administers Union Territories directly (Article 239)
- Enjoys special powers with regard to administration of scheduled areas.

### **Legislative Power**

- Integral Part of Parliament; Bill will become Act only after his Assent.
- Sessions of parliament, prorogation and Dissolution (Article 85)
- Right of the President to Address and Send message to House (Article 86).
- Special address by President (Article 87)
- Power of Nomination of members of the house.
  - Lok Sabha – 2 members from **Anglo Indian Community** (Article 331).
  - Rajya Sabha – 12 members (**Art; Science; literature and Social Service**) (Article 80)
- Prior Sanction for Introduction of Certain Legislature.Example:
  - Bill for creation of new states (Article 3).
  - Introduction of certain Financial Bills (Article 117).
- Power of president to Assent Legislations (Article 111).
  - Give Assent
  - Withhold the Assent
  - Return for reconsideration.
- Type of veto: Absolute; Qualified; Suspensive; Pocket.



- Indian President: **Absolute; Suspensive and Pocket.**
- President Veto power with regards to Bills Passed by State Legislature. (Art.201).
- Governor's power to Assent (Article 200).
  - Give Assent
  - Withhold the Assent
  - Send for Reconsideration.
  - Reserve Bill for Consideration of the President.
- Reserving bill for Consideration of President (Article 201 – Options with the President)
  - Give Assent
  - Withhold the Assent
  - Send for Reconsideration (State Legislature to pass it again within 6 months).
  - If sent again for reconsideration, it is not mandatory for President to give his assent.
- President Shall Convene Joint Sitting (Article 108)
- Ordinance Making power of President and Governor (Art.123 and 213)
  - Legislative Power in the hands of Executive (Conditions) :
  - Recess of the parliament,
  - Any one House is not in Session.
  - Temporary in nature; (6 month and 6 weeks – Max.)
  - Not parallel powers of legislation; Coextensive with legislative Power of Parliament; no Constitutional Amendment.
  - Borrowed from GoI Act 1935; Aid and Advice of Council of Ministers'.
  - Subject to judicial Review on malafide Grounds. (R.C. Cooper Case 1970)
  - 38th CAA; president satisfaction final and beyond judicial Review.
  - 44th CAA, 1978 Repealed the above Permission.
  - Present position: Subject to the judicial review on malafide grounds. [D.C wadhwa case (1987)].
    - Re-promulgation of ordinance is a fraud and Violation of the Constitution.
    - Exceptional powers to be sparingly used (No Substitute for Legislative Power)
  - Supreme Court reiterated the same in Krishna Kumar case, 2017.



- Governor enjoys similar powers under **Article 213** except – on certain legislations where prior approval of president is required, prior instruction may be taken from President before passing the ordinance.

### **Pardoning Power of the President**

- President under **Article 72** (pardon; Commute; Remit; Reprieve and Respite)
  - **Pardon** with the grant of pardon convicts both conviction and sentence completely absolved
  - **Commutation** with this nature of the punishment of the convict can be changed
  - **Remission** reduces the term of the imprisonment
  - **Respite** awards lesser punishment than original punishment by looking at the special condition of a convict
  - **Reprieve** stays the execution of the awarded sentence for a temporary period
- In cases of:
  - Court martial,
  - Prosecuting agency is Central Govt. (Executive power of union extends)
  - All cases where punishment is the sentence of death.
- President power under **Article 72** is Subject to limited power of Judicial review (Maru Ram case 1980)
- Exercised based on Aid and Advice of CoM's (Devinder Pal Singh Case, 2013)
- Powers to be exercised within a reasonable time frame. (V. Sriharan case 2014)
- Remission power are also available UNDER ARTICLE 432 and 433 of CrPC irrespective of Article 72 and Article 161 (V. Sriharan Case, 2015)
- No right to oral hearing (Kehar Singh case 1989)
- Governor has powers of (Pardon, Commute; Remit; Reprieve and respite) in all Case where the prosecuting agency is the state authorities
  - No power with regard to court martial.
  - No power to pardon capital punishment (where the presenting agency is central government)

### **# Vice- President**

#### **VICE PRESIDENT**

- - **Article 63** – There shall be a Vice President.
  - Ex officio chairman of Rajya Sabha.
- Acts as President during death, resignation removal (or) otherwise of the incumbent President (**Article 65**)

- Vice President may also discharge the duties of the President during his absence, illness or any other cause (**Article 65**)
- Election of Vice President (**Article 66**)
  - Electoral college; proportional representation single Transferable vote; secret ballot
  - Electoral College – Member of both houses of the parliament (elected and nominated)
  - Eligibility Criteria – similar to that of President
  - Exception: He should be qualified to be one elected to RS.
- Oath to be administered by the President (or) any person appointed in that behalf by the president.
- Term of Office of Vice President (**Article 67**)
  - 5 Year
  - Resignation to President
  - Removed by resolution introduced only RS; 14 days prior notice; effective majority.
  - Continue to hold office until his successor assume office (on expiration)
- Vacancy to Office of Vice President (**Article 68**)
  - Expiry of term – Vacancy to be filled before such expiration
  - Death
  - Resignation
  - Removal
  - Otherwise

Note – Election in case of vacancy other than the end of term shall be held as soon as possible (and not within 6 months). Newly elected Vice-President occupies Office for full 5 years term.

## # Prime Minister

### **PRIME MINISTER**

President of India appoints a person as the Prime Minister who is either the leader of the party which holds a majority of seats in the Lok Sabha or is a person who is able to win the confidence of the Lok Sabha by gaining the support of other political parties.

- To become an Indian prime minister one has to be:
  - A citizen of India.
  - A member of either Rajya Sabha or Lok Sabha

- He should have completed his 30 years if he is a member of the Rajya Sabha or can be 25 years of age if he is a member of the Lok Sabha

Prime Minister of India serves the country by following various functions. He performs his functions taking responsibilities as:

- **The leader of Country:** The Prime Minister of India is the Head of the Government of India.
- **Portfolio allocation:** The Prime Minister has the authority to assign portfolios to the Ministers.
- **Chairman of the Cabinet:** The Prime Minister is the chairman of the cabinet and presides the meetings of the Cabinet. He can impose his decision if there is a crucial opinion difference among the members.
- **Official Representative of the country:** Prime minister represents the country for high-level international meetings
- **The link between the President and the Cabinet:** The Prime Minister acts as the link between President and cabinet. He communicates all decisions of the Cabinet to the President which is related to the administration of the affairs of the Union and proposals for legislation.
- **The Prime Minister is the head of Nuclear Command Authority, NITI Aayog, Appointments Committee of the Cabinet, Department of Atomic Energy, Department of Space and Ministry of Personnel, Public Grievances and Pensions.**
- **Chief Advisor:** He acts as the chief advisor to the President
- **Article 74** – Mentions how Prime Minister and President are both connected with council of ministers. The Council with PM as head advise President on various issues.
- **Article 75** – Mentions three things:
  - President appoints PM and other ministers are appointed by the President on the advice of the PM.
  - Ministers hold their office during the pleasure of the President.
  - Council of Ministers is collectively responsible to the Lok Sabha.
- **Article 78** – PM communicates all decisions made by the council of members to the President. President can also refer issues for the consideration of the council of members.

## # Council of Ministers

### COUNCIL OF MINISTERS

- They are appointed by the President on the advice of Prime Minister
- They along with the Prime Minister of India form 15% of the total strength of the lower house i.e. Lok Sabha. (The number cannot exceed 15%)

- **91st Amendment Act** provided for the disqualification of the minister when he stands disqualified as a Member of Parliament. (Difference between Lok Sabha and Rajya Sabha can be referred to in the linked article).
- A Minister ceased to exist as one if he is not a member of either house of Parliament for six consecutive months.
- Parliament decides the salary and allowances of the council of ministers.
- A Council of Ministers (CoM) may be chosen from either house of the Parliament. A CoM who is member of one house, has the right to speak in and take part in proceedings of other house without any right to vote if he is not the member of that house.

### **Principle of Collective Responsibility and Individual Responsibility**

- Basic principle of parliamentary or cabinet form of government is principle of collective responsibility.
- COMs is collectively responsible to Lok Sabha for the policies and decisions of the government, even though a decision taken may pertain to a single ministry
- Once a decision is taken by the cabinet, it becomes joint decision of COMs. If a minister does not agree with the decision of cabinet, he has no option but to resign from COMs.
- If a decision of a particular ministry on a political matter is defeated in Lok Sabha, it is not the ministry who resigns, but the whole COMs resigns, But if a minister has implemented a decision without the approval of cabinet and it is defeated in Lok Sabha, minister concerned only has to resign, not the whole cabinet.

All ministers are individually responsible to the President. Ministers hold office during the pleasure of the President and can be removed from COMs by the President at any time but only on the advice of PM. Hence, this power is mainly exercised by the PM.

### **# Attorney General**

#### **ATTORNEY GENERAL**

- The Attorney General (AG) of India is a part of the Union Executive. AG is the **highest law officer in the country**.
- **Article 76** of the Constitution provides for the office of AG of India.

#### **Appointment and Eligibility:**

- AG is appointed by the President on the advice of the government.
- He must be a person who is qualified to be appointed a judge of the Supreme Court.
- Term of the Office: Not fixed by the Constitution. (Holds office during the pleasure of the President); May quit office by resigning to the President

- Removal: Procedures and grounds for the removal of AG are not stated in the Constitution. He holds office during the pleasure of the President (may be removed by the President at any time).
- Duties and Functions:
  - To give advice to the Government of India upon legal matters referred by the President and to perform other duties of legal character assigned by the President.
  - To appear on behalf of the Government of India (GoI) in all cases in the Supreme Court or in any case in any High Court in which the GoI is concerned.
  - To represent the GoI in any reference made by the President to the Supreme Court under Article 143 (Power of the President to consult the Supreme Court) of the Constitution.
  - To discharge the functions conferred on her/him by the Constitution or any other law.
- Rights and Limitations:
  - Has the right to speak and to take part in the proceedings of both the Houses of Parliament or their joint sitting and any committee of the Parliament of which s/he may be named a member, but without a right to vote.
  - Enjoys all the privileges and immunities that are available to a MP.
  - Does not fall in the category of government servants. Not debarred from private legal practice.
  - However, he should not advise or hold a brief against the Government of India.
- Solicitor General of India and Additional Solicitor General of India assist the AG in fulfillment of the official responsibilities.
- Corresponding Office in the States: **Advocate General** (Article 165).