

## PRESIDENT OF INDIA - ARTICLE 52-62

Indian President is the head of the state and he is also called the first citizen of India.

He is a part of Union Executive, provisions of which are dealt with Article 52-78 including articles related to President (Article 52-62.)

### President of India

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### Who is President of India?

Indian President is the head of the state. He is the first citizen of India and is a symbol of solidarity, unity and integrity of the nation. **He is a part of Union Executive along with Vice-President, Prime Minister, Council of Ministers and Attorney-General of India.**

### How is President elected?

There is no direct election for the Indian President. An electoral college elects him. The electoral college responsible for President's elections comprises **elected members of:**

1. Lok Sabha and Rajya Sabha
2. Legislative Assemblies of the states (Legislative Councils have no role)
3. Legislative Assemblies of the Union Territories of Delhi and Puducherry

### Note:

- Value of the vote of an MLA is given below:

<p style="text-align: center;">Value of the vote of an MLA</p> $= \frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{1000}$
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- Value of the vote of MP is given below:

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$$\text{Value of the vote of an MP} = \frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of Parliament}}$$

### Who does not take part in the President's elections?

The following group of people are not involved in electing the President of India:

1. Nominated Members of Lok Sabha (2) and Rajya Sabha (12)
2. Nominated Members of State Legislative Assemblies
3. Members of Legislative Councils (Both elected and nominated) in bicameral legislatures
4. Nominated Members of union territories of Delhi and Puducherry

### What is the term of President's office?

Once President is elected, he holds office for five years. He sits in the office even after the completion of five years given no new election have taken place or no new President has been elected till then. He can also be re-elected and there is no cap on his re-election.

### Questions related to President's elections for UPSC

The facts are given in a question-answer format in the table below:

<b>What is the principle of election used in the President's election?</b>	Proportional Representation with means of a single transferable vote
<b>How does voting take place in the election of Indian President?</b>	It is a secret ballot system of voting
<b>What is a quota of votes in President's elections?</b>	$\text{Electoral quota} = \frac{\text{Total number of valid votes polled}}{1+1} + 1$
<b>How is the Supreme Court (SC) involved in the President's election?</b>	<p>Any dispute related to his election is taken up by SC. SC's decision is final.</p> <p><b>Note:</b> After the election of President is declared null and void, the acts done by the President in his office remain valid even after his removal.</p>

### What are the qualifications of President?

A candidate has to meet some qualifications to be elected as the president. Those qualifications of the President are:

1. He should be an Indian Citizen
2. His age should be a minimum of 35 years
3. He should qualify the conditions to be elected as a member of the Lok Sabha
4. He should not hold any office of profit under the central government, state government, or any public authority

### What are the conditions of the President's office?

There are a few conditions for the candidate running for the President's elections:

1. He cannot be a member of Lok Sabha and Rajya Sabha. If he has been a member of either of the house, he should vacate the seat on his first day as President in the office
2. He should not hold any office of profit
3. For his residence, Rashtrapati Bhavan is provided to him without the payment of rent
4. Parliament decides his emoluments, allowances and privileges

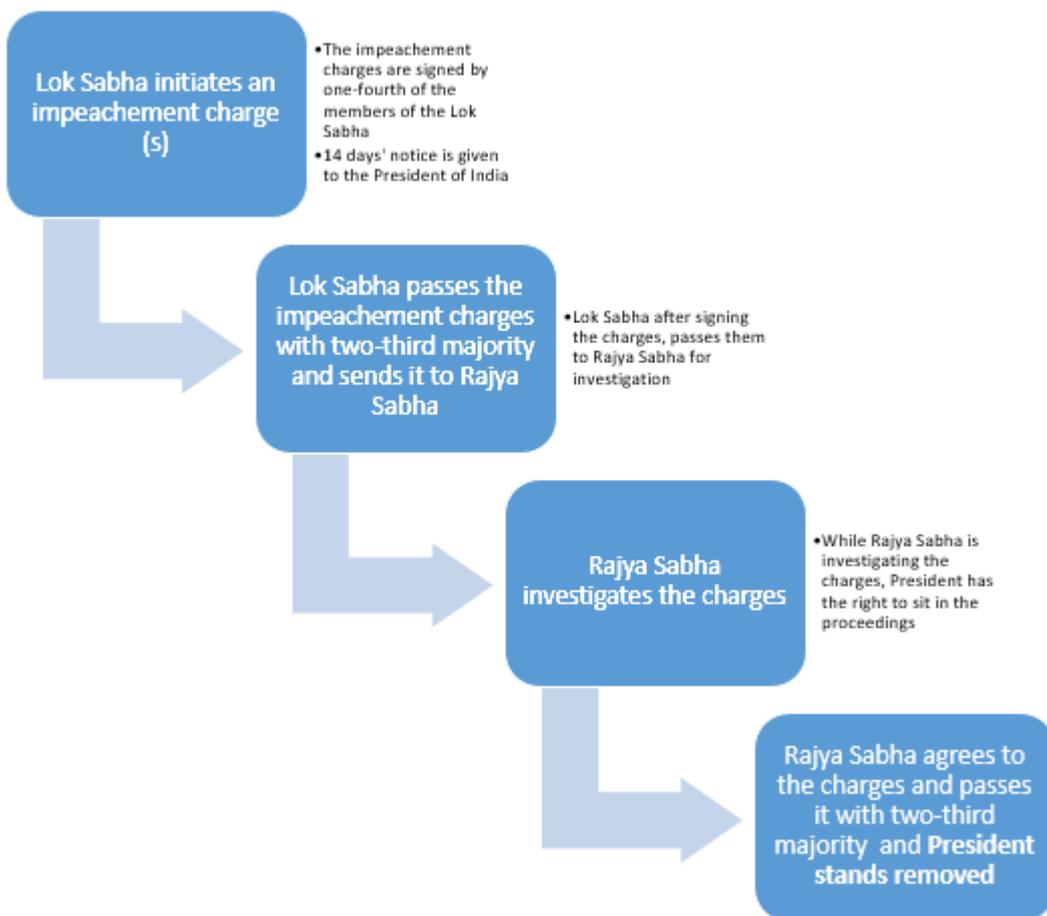
5. Parliament cannot diminish his emoluments and allowances during his term of office
6. He is given immunity from any criminal proceedings, even in respect of his personal acts
7. Arrest or imprisonment of President cannot take place. Only civil proceedings can be initiated for his personal acts that too after giving two months' of prior notice.

### What is the procedure for impeachment of a President?

The only condition for the initiation of impeachment of Indian president is the '**violation of the constitution.**'

**Note:** Indian Constitution contains no definition of 'violation of constitution.'

The impeachment process of President is given below. (We have taken Lok Sabha as the first house to initiate the impeachment charges, however, Rajya Sabha too can initiate the impeachment charges against President and in that case, it will pass the resolution and send the charges to Lok Sabha which will investigate and pass it if it finds those charges valid.)



### Can the President's office be vacant?

Yes, his office can be vacant in the following ways:

1. When President of India completes his term of five years in the office
2. If the President resigns by putting forward his resignation to the **Vice-President** of India
3. If Lok Sabha/Rajya Sabha initiates an impeachment charge and they stand valid, he is removed
4. If he dies in the office
5. If Supreme Court declares his election invalid

### What are the powers and functions of President of India?

#### Executive Powers of President

1. For every executive action that the Indian government takes, is to be taken in his name
2. He may/may not make rules to simplify the transaction of business of the central government
3. He appoints the **attorney general of India** and determines his remuneration

4. He appoints the following people:
  1. Comptroller and Auditor General of India (CAG)
  2. Chief Election Commissioner and other Election Commissioners
  3. Chairman and members of the Union Public Service Commission
  4. State Governors
  5. Finance Commission of India chairman and members
5. He seeks administrative information from Union government
6. He requires PM to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council
7. He appoints National Commissions of:
  1. Scheduled Castes
  2. Scheduled Tribes
  3. Other Backward Classes
8. He appoints inter-state council
9. He appoints administrators of union territories
10. He can declare any area as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas

#### Legislative Powers of President

1. He summons or prorogues Parliament and dissolve the Lok Sabha
2. He summons a joint sitting of Lok Sabha and Rajya Sabha in case of deadlock
3. He addresses the Indian Parliament at the commencement of the first session after every general election
4. He appoints speaker, deputy speaker of Lok Sabha and chairman/deputy chairman of Rajya Sabha when the seats fall vacant (to know the difference between Lok Sabha and Rajya Sabha)
5. He nominates 12 members of the Rajya Sabha
6. He can nominate two members to the Lok Sabha from the Anglo-Indian Community
7. He consults Election Commission of India on questions of disqualifications of MPs.
8. He recommends/ permits the introduction of certain types of bills (to read on how a bill is passed in Indian Parliament).
9. He promulgates ordinances
10. He lays the following reports before the Parliament:
  1. Comptroller and Auditor General
  2. Union Public Service Commission
  3. Finance Commission, etc.

#### Financial Powers of President

1. To introduce the money bill, his prior recommendation is a must
2. He causes Union Budget to be laid before the Parliament
3. To make a demand for grants, his recommendation is a pre-requisite
4. Contingency Fund of India is under his control
5. He constitutes the Finance Commission every five year

#### Judicial Powers of President

1. Appointment of Chief Justice and Supreme Court/High Court Judges are on him
2. He takes advises from Supreme Court however, those advise are not binding on him
3. He has **pardoning power**: Under article 72, he has been conferred with power to grant pardon against punishment for an offence against union law, punishment by a martial court or death sentence.

**Note:** Pardoning powers of the president includes the following types:

- **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

#### Diplomatic Powers of President

1. International Treaties and agreements that are approved by the Parliament are negotiated and concluded in his name
2. He is the representative of India in international forums and affairs

#### Military Powers of President

He is the commander of defence forces of India. He appoints:

1. chief of the Army
2. chief of the Navy, and
3. chief of the Air Force

#### Emergency Powers of President

He deals with three types of emergencies given in the Indian Constitution:

1. National Emergency (Article 352)
2. President's Rule (Article 356 & 365); and
3. Financial Emergency (Article 360)

#### What is the Ordinance Making Power of the President?

Article 123 deals with the ordinance making power of the President. President has many legislative powers and this power is one of them. President promulgates an ordinance on the recommendation of the union cabinet.

#### What is the Veto Power of the President?

When a bill is introduced in the Parliament, Parliament can pass the bill and before the bill becomes an act, it has to be presented to the Indian President for his approval. It is on President of India to either reject the bill, return the bill or withhold his assent to the bill. The choice of the President over the bill is called his veto power. Veto Power of the President of India is guided by Article 111 of the Indian Constitution.

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#### What are the three types of Veto?

The three types of Vetoes are:

1. Absolute Veto
2. Suspensive Veto
3. Pocket Veto

#### Types of Veto

Absolute Veto	Suspensive Veto	Pocket Veto
The power of the President to withhold the assent to the bill is termed as his absolute veto	The power of the President to return the bill to the Parliament with or without consideration is called suspensive veto	The power of the President to not act upon the bill is termed as a pocket veto

#### Absolute Veto of the President

The facts about the absolute veto power of the Indian President are given below:

- When the President exercises his absolute veto, a bill never sees the day of the light. The bill ends even after passed by the Indian Parliament and does not become an act.
- President uses his absolute veto in the following two cases:

- When the bill passed by the Parliament is a **Private Member Bill**
- When the cabinet resigns before President could give his assent to the bill. The new cabinet may advise the President to not give his assent to the bill passed by the old cabinet.

**Note:** In India, the President has exercised his absolute veto before. In 1954, it was exercised by Dr. Rajendra Prasad as a President and later in 1991, it was used by the then President R Venkataraman.

### Suspensive Veto of the President

The facts about the suspensive veto power of the Indian President are given below:

- President uses his suspensive veto when he returns the bill to the Indian Parliament for its reconsideration.
  - **Note:** If the Parliament resend the bill with or without amendment to the Indian President, he has to approve the bill without using any of his veto powers.
- His suspensive veto can be over-ridden by the repassage of the bill by the Indian Parliament
  - **Note:** With respect to state bills, state legislature has no power to override the suspensive veto of President. Governor can withhold the bill for the President's consideration and even if state legislature resends the bill to governor and governor to President, he still can withhold his assent.
- When the Parliament resends the bill to the President, it has to follow only the ordinary majority in the houses and not the higher majority.)
- President cannot exercise his suspensive veto in relation to **Money Bill**.

### Pocket Veto of the President

The facts about the suspensive veto power of the Indian President are given below:

- The bill is kept pending by the President for an indefinite period when he exercises his pocket veto.
- He neither rejects the bill nor returns the bill for reconsideration.
- Constitution does not give any time-limit to President within which he has to act upon the bill. Therefore, the President uses his pocket veto where he doesn't have to act upon the bill.
- Unlike the American President who has to resend the bill within 10 days, the Indian President has no such time-rule.

### Note:

- The Indian President has exercised this veto power before. In 1986, President Zail Singh exercised this pocket veto.
- President has no veto power when it comes to the constitutional amendment bills.

### Summary of Veto Powers of President for UPSC

The table below gives the summary of President's veto powers:

Types of Bills	President's Actions
With regard to Ordinary Bills	President can: <ul style="list-style-type: none"> <li>● Ratify</li> <li>● Return</li> <li>● Reject</li> </ul>
With regard to Money Bills	President can: <ul style="list-style-type: none"> <li>● Ratify</li> <li>● Reject</li> </ul> President cannot: <ul style="list-style-type: none"> <li>● Return</li> </ul>
With regard to the Constitutional Amendment Bills (Know about the <b>important amendments in the constitution</b> here.)	President can: <ul style="list-style-type: none"> <li>● Ratify</li> </ul> President cannot:

- Reject
- Return

**NOTE: Ordinance Making Power of President & Governor:**

An ordinance is a law that is promulgated by the President of India only when the Indian parliament is not in session. President promulgates an ordinance on the recommendation of the union cabinet. Similarly, Governor of Indian states can also initiate ordinances only when a legislative assembly is not in session when it is a unicameral legislature and when legislative assembly along with legislative council both are not in session when it is the bicameral legislature.

**What is the meaning of Ordinance?**

Ordinances are like a law but not enacted by the Parliament but rather promulgated by President of India when Lok Sabha and Rajya Sabha or either of those is not in session. Union Cabinet’s recommendation is a must for an ordinance to be promulgated. Using ordinances, immediate legislative actions can be taken.

**Note:** For an ordinance to exist, it should be approved by the Parliament within six weeks of it being introduced. Parliament is required to sit within 6 weeks from when Ordinance was introduced.

**What is Ordinance Making Power of Executive?**

**Ordinance Making Power of President**

Article 123 deals with the ordinance making power of the President. President has many legislative powers and this power is one of them.

Details about President’s ordinance making power is given in the table below:

**President’s Ordinance Making Power**

He can only promulgate the ordinance under these circumstances:

- When both the houses or either of the house is not in session
- Circumstances occur where the President thinks it necessary to act without waiting for houses to assemble

An ordinance can be retrospective in nature

An ordinance rolled out when both the houses are in session is void in nature

The Parliament has to approve the ordinance within six weeks from its reassembly

Acts, done and completed under the ordinance before it lapses, remains fully active

Unlike the Indian Constitution, most of the democratic constitution of the world don’t give such ordinance making power to their President

It has no connection with the President’s power to proclaim a national emergency

The power of ordinance making is not to be taken as a substitute for the legislative power. Only under special circumstances, ordinances can be rolled out

President’s power to roll out ordinance is justiciable on the ground of malafide

**What are the limitations of ordinance making power of President?**

There are the following limitations:

1. President can promulgate an ordinance only when both the houses are not in session or only one house is in session.
2. For an ordinance to be promulgated, such circumstances should be there which deem it necessary for President to legislate through the ordinance

**Note:** Cooper Case 2011: Supreme Court held that the President's action can be put under judicial review with respect to ordinances. 38th Amendment Act termed President's ordinance making power final and conclusive and beyond judicial review; however, 44th Amendment to Indian Constitution reversed it and made President's satisfaction to bring ordinance justiciable.

1. Ordinances can be introduced only on those subjects on which the Indian Parliament can make laws.
2. Ordinances can not take away any rights of citizens that are guaranteed by the Fundamental Rights of the Indian Constitution.
3. Ordinance ceases to exist if parliament takes no action within six weeks from its reassembly
4. Ordinance also stands void if both the houses pass a resolution disapproving the ordinance

**Note:** The maximum life of an ordinance can be six months and six weeks.

#### Comparison between Ordinance Making Power of President and Governor

Article 213 deals with the power of Governor to legislate through ordinances. His power of ordinance making is quite similar to the President's power. The comparisons between these two w.r.t. Ordinance making is given below:

Ordinance Making Power of President	Ordinance Making Power of Governor
He can promulgate ordinance when either Lok Sabha or Rajya Sabha is not in session or if both are not in session	He can promulgate ordinance when the Legislative Assembly is not in session in case of unicameral legislature or when both Legislative assembly and council are not in session in case of a bicameral legislature
He can roll-out an ordinance for only those matters on which Parliament (Lok Sabha & Rajya Sabha) can make laws	He can roll-out an ordinance for only those matters on which state legislature can make laws
His ordinances have the same effect on policies as parliament's acts will have	His ordinances have the same effect on policies as state's acts will have. If his ordinance legislates on matters which state government has no power on, the ordinance stands null and void
The ordinance introduced by him can be withdrawn anytime	The ordinance introduced by him can be withdrawn anytime
His power to promulgate ordinance is not a discretionary power. Council of Ministers' (headed by PM) advice is a pre-requisite	His power to promulgate ordinance is not a discretionary power. Council of Ministers' (headed by CM) advice is a pre-requisite
No instructions are needed by President's when he promulgates an ordinance	President's instructions on the following three cases are must: <ul style="list-style-type: none"> <li>• If a bill containing the same provisions would have required the previous sanction of the President for its introduction into the state legislature</li> <li>• If he would have deemed it necessary to reserve a bill</li> </ul>

containing the same provisions for the consideration of the President

- If an act of the state legislature containing the same provisions would have been invalid without receiving the President's assent

**NOTE : Privileges of the President:**

1. The President is **not answerable to any court of law** for the exercise of his functions.
2. The President can **neither be arrested nor any criminal proceedings** can be instituted against him in any court of law during his tenure.
3. The President cannot be asked to be present in any court of law during his tenure.
4. A **prior notice of two months time** is to be served **before instituting a civil case** against him.