

President

Art 52 to 78, Part V – Union Executive

Election – Art. 55

- Not directly by people
- Electoral college: elected MPs, elected MLAs of states, elected MLAs of UTs PY & DL
- NO part to Dissolved Assembly MLAs
- Uniformity in the representation of states
- Parity between states & Union

Value of an MLA vote =

$$\frac{\text{Total Pop. State}}{\text{Total elected MLAs of state}} \times 1000$$

Value of an MP vote =

$$\frac{\text{Total value of votes of all MLAs of all states}}{\text{Total elected MPs}}$$

Governor – independent Constitutional Office – Canadian Model

Art 153 to 167, Part VI – State Executive

7th Amendment same person Governor for 2 or more states

Appointment – Art 155

By President

why appointed post?

1. Compatible with Parliamentary system in state
2. Avoid CM & Governor conflict
3. Nominal Head position & save costs
4. Have neutral & impartial head
5. To maintain Centre's control
6. To maintain leadership in the state
7. To avoid second rate man of CM

President Election

Governor

- **System of proportional representation by means of single transferable vote – for absolute majority – misnomer: voting for 1 seats instead of 2 or more seats & NO single vote...plural votes**
- **Voting by secrete ballot**
- **Must secure a fixed quota vote**
- **Electoral quota=**
Total number of valid votes polled + 1
1+1=2
- **Voter can indicate preference 1, 2, 3...**

Presidential Election

Governor

1st phase-1st preference counted
→ candidate secured quota:
elected

otherwise, the process of transfer of votes

Candidates securing least number of 1st preference votes are cancelled and his 2nd preference votes are transferred to the first preference votes of other candidates

process continues till a candidate secure required quota

Doubts & Dispute: S. Court & it's final

Vacancy in electoral college – Not challengeable

Election of a person as President as declared void – NOT invalidate the acts done by him/her

Indirect: in harmony with Parliamentary

Direct: is costly – no need for symbolic head

President

Qualification – Art. 58

Indian Citizen, 35, qualified for Lok Sabha MP, NOT hold office of Profit

Nomination – 50 electors proposers, 50 electors seconders, deposit: 15,000, 1/6th votes to secure his deposit

Oath – by CJI, senior most judge – Art. 60

- ✓ **Faithfully execute the office**
- ✓ **PPD [Preserve, Protect, Defend] Constitution & Law**
- ✓ **Devote to well-being of India**
- **Acting President also**

Qualification

Indian Citizen, 35 + by convention 1. An Outsider 2. Consultation with CM

Oath – by CJ of H. Court, senior most judge – 159

- ✓ **Faithfully execute the office**
- ✓ **PPD [Preserve, Protect, Defend] Constitution & Law**
- ✓ **Devote to well-being of State**
- **Person discharging Governor's function also**



Conditions of President's Office

- ✓ **NOT MP or MLA**
- ✓ **NOT hold office of profit**
- ✓ **Entitled official residence**
- ✓ **EAP [Emoluments, Allowances & Privileges]**
- ✓ **Cannot Diminishable**
- ✓ **During the term – immune from criminal proceedings even in respect of personal acts**
- ✓ **Cannot be arrested/imprisoned**
- ✓ **Civil proceedings after 2 months notice**
- **Acting President also**

Conditions of Governor's Office

- ✓ **NOT MP or MLA**
- ✓ **NOT hold office of profit**
- ✓ **Entitled official residence**
- ✓ **EAP [Emoluments, Allowances & Privileges]**
- ✓ **Cannot Diminishable**
- ✓ **During the term – immune from criminal proceedings even in respect of personal acts**
- ✓ **Cannot be arrested/imprisoned**
- ✓ **Civil proceedings after 2 months notice**
- **Same person Governor of 2 or more states Emoluments & Allowances shared by states in proportion determined by President**

Term

5 years, Resign – to VP, Impeachment, Eligible for re-election, any number [in US 2 times]

Impeachment

- ✓ **If violation of Constitution – phrase not defined**
- ✓ **Initiated by either house**
- ✓ **Charges signed by 1/4th members of that house**
- ✓ **14 days notice**
- ✓ **2/3rd majority of total membership of that house to pass a resolution**
- ✓ **Resolution investigated by the other house**
- ✓ **President has right to appear and to represent such investigation**
- ✓ **If charges sustained and resolution passed by 2/3rd majority of total membership of that house, from that date President stands removed**

Term

5 years, but, pleasure of President, Resign – to President, hold office until successor assumes charge

NO interregnum – President make provision- CJoH. Court

Impeachment

Quasi-judicial process

Nominated MPs participate

MLAs NOT participate

Vacancy in President's Office

- ✓ **Expiry of term – election to be held before that, in delay, outgoing president continues**
- ✓ **Resignation, Impeachment, Death – election should be within 6 months, in between VP will act as President – New President full term**
- ✓ **President unable to act [illness, absence] - VP will act as President, if vacancy in VP, CJI or senior most judge**
- ✓ **disqualification to hold office/election declared void**

Executive

- ✓ **GoI formally acts**
- ✓ **Make rules to execute orders**
- ✓ **Make rules to transaction of business & allocation of such business**
- ✓ **Appointments: PM, Ministers, Attorney Gen. India, CAG, CEC, Governors...**
- ✓ **Removal: SPSC members**
- ✓ **Seek Information related to administration & proposal for legislation from PM**
- ✓ **Require PM to submit minister's decision but not considered by council**
- ✓ **Appoint commissions for SCs, STs & OBC, Inter-state council**
- ✓ **UTs , Scheduled & Tribal Areas administration**

Executive

- ✓ **GoS formally acts**
- ✓ **Make rules to execute orders**
- ✓ **Make rules to transaction of business & allocation of such business**
- ✓ **Appointments: CM, Ministers, Tribal welfare Minister in some states, Advocate General, SEC, VC, SPSC...**
- ✓ **Seek Information related to administration & proposal for legislation from CM**
- ✓ **Require CM to submit minister's decision but not considered by council**
- ✓ **Recommend Emergency to President – 356**
- ✓ **Chancellor of Universities**

President

Legislative

- ✓ **Integral part of Parliament**
- ✓ **Summon/Prorogue parliament**
- ✓ **Dissolve Lok Sabha**
- ✓ **Summon Joint sitting of both houses**
- ✓ **Address Parliament on 1st session after each general election and 1st session of every year**
- ✓ **Send messages to Parliament regarding a bill or otherwise**
- ✓ **Appoint any member to preside the proceedings of Lok Sabha/Rajya Sabha when Speaker/Chairman & Dy. Speaker/Dy. Chairman fall vacant**
- ✓ **Nominates 12 to R.Sabha & 2 to L.Sabha**
- ✓ **Decides disqualification of MPs in consultation with E.C.**
- ✓ **Certain bills require prior recommendation**
- ✓ **Assent required a bill to become Act**
- ✓ **Sometimes state bill also requires his /her assent when reserved**
- ✓ **Promulgate Ordinance when Parliament is not in session, approval within 6 weeks of reassembly**
- ✓ **Reports of CAG, UPSC, Fin. Com., laid in the Parliament**
- ✓ **Regulations for A&N, Lakshadweep, D&NH, D&D for Governance**

Governor

Legislative

- ✓ **Integral part of State Legislature**
- ✓ **Summon/Prorogue State Legislature**
- ✓ **Dissolve State Assembly**
- ✓ **Address State Legislature on 1st session after each general election and 1st session of every year**
- ✓ **Send messages to State Legislature regarding a bill or otherwise**
- ✓ **Appoint any member to preside the proceedings of Assembly/Council when Speaker/Chairman & Dy. Speaker/Dy. Chairman fall vacant**
- ✓ **Nominates 1/6th to Council & 1 to Assembly – including Co-operative Movement**
- ✓ **Decides disqualification of members of State Legislature in consultation with E.C.**
- ✓ **Assent required a bill to become Act**
- ✓ **Sometimes state bill reserved for Presidential assent – DPSP, Art 31A etc & Obligatory if bill endangers position of High Court**
- ✓ **Promulgate Ordinance when State Legislature is not in session, approval within 6 weeks of reassembly**
- ✓ **Reports of CAG, State Fin. Com., laid in the State Legislature**

Financial

**Prior recommendation for Money Bills
Annual Financial Statement laid in the
Parliament**

**Demand for Grant only by his
recommendation**

**Advances out of Contingency Fund of India
to meet unforeseen expenditure**

Constitutes Fin. Com

Judicial

**Appoints all judges of S. Court and H.
Courts**

**Seek advice from S. Court on any
question of law or fact, Advice NOT
binding – Art 143**

Pardoning Power

Diplomatic

**International treaties & agreements
negotiated and concluded on behalf of
President, subject to Parliament approval**

Military

Supreme Commander of Defence Forces

**Declare war & conclude peace subject
to Parliament approval**

Emergency Powers

Financial

**Prior recommendation for Money
Bills**

**Annual Financial Statement laid
in the State Legislature**

**Demand for Grant only by his
recommendation**

**Advances out of Contingency
Fund of State to meet unforeseen
expenditure**

**Constitutes Fin. Com to review
financial position of Local Gov.
Bodies**

Judicial

**Consulted by President in H.
Court judges appointment**

**Appointment, Postings,
Promotion of District Judges in
consultation with H. Court – Art
.233**

**Appoint persons to judicial
service in consultation with H.
Court and SPSC – art. 234**

Pardoning Power

President

Bill to Act by President's assent

3 alternatives (Art. 111) –

1. Assent
2. Withhold
3. Return – 1 time

Money bill – assent or withhold, no return (For Parliament & State Legislature)

Veto Power – to prevent hasty ill-considered legislation or to prevent unconstitutional legislation- 3 types

Absolute Veto – withhold his assent, Bill Not become Act

Usually applied on private members' bills & Gov. bills when cabinet resigns, President R.Prasad & President R. Venkataraman used

Suspensive Veto – asking reconsideration of both houses, overridden by simple majority, NOT applicable for money bill

Pocket Veto – neither ratifies nor reject nor return, keeping bill for indefinite period [in US President has to return bill in 10 days], President Zail Singh applied on Post Office bill- freedom of Press

➤ **NO qualified veto for Indian President – overriding by higher majority**

CCE-PDPU

<http://www.pdpu.ac.in/>

Bill to Act by Governor's assent

4 alternatives (Art. 200)

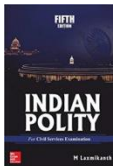
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1. Assent
2. Withhold
3. Return – 1 time
4. Presidential consideration – after that No role for Governor- after reconsideration also no need to assent

Money bill – assent or withhold, reserve for President

VenkataKrishnan

Source: Laxmikanth



President

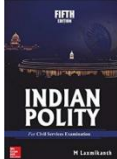
Ordinance – Making: Art 123

- ✓ **Recess of Parliament**
 - ✓ **Same force & effect of an Act**
 - ✓ **Subject to 4 limitations**
 - 1. **When both the houses not in session or either of houses not in session - ordinance not a parallel power of legislation**
 - 2. **Existence of satisfactory circumstances – Cooper case, decision of President to issue ordinance can be questioned in court**
 - 3. **Coextensive with Parliament’s law making power except duration**
 - 4. **Laid before Parliament after its reassembly, if approved Act, otherwise ceases to operate after 6 weeks, maximum 6 months & 6 weeks, ceases to operate also acts done valid**
- ✓ **President can withdraw anytime**
 - ✓ **Only on the advice of council of ministers**
 - ✓ **Can be retrospective**
 - ✓ **Modify/repeal an act of Parliament**
 - ✓ **Alter/amend Tax**
 - ✓ **Can issue ordinance if NO war/aggression/armed rebellion**
 - ✓ **Rules of Lok Sabha requires explanatory note necessitated ordinance when seeking to introduce a bill on that**
 - ✓ **Re-promulgation possible – but successive re-promulgation without an attempt to pass bill is Constitutional violation & liable to struck down – D C Wadhwa Case**

Governor

Ordinance – Making: Art 213

- ✓ **In some cases instruction from President required**
 - ✓ **Recess of State Legislature**
 - ✓ **Same force & effect of an Act**
 - ✓ **Subject to 4 limitations**
 - 1. **When both the houses not in session or either of houses not in session - ordinance not a parallel power of legislation**
 - 2. **Existence of satisfactory circumstances –**
 - 3. **Coextensive with law making power of State Legislature except duration**
 - 4. **Laid before State Legislature after its reassembly, if approved Act, otherwise ceases to operate after 6 weeks, maximum 6 months & 6 weeks, ceases to operate also acts done valid**
- ✓ **Can withdraw anytime**
 - ✓ **Only on the advice of council of ministers**
 - ✓ **Can be retrospective**
 - ✓ **Modify/repeal an act of State Legislature**
 - ✓ **Alter/amend Tax**



Pardoning – Art. 72

- ✓ **In all cases of**
- ❖ **Against Union law**
- ❖ **Court Martial**
- ❖ **Sentence of Death**
- ✓ **Independent of judiciary**
- ✓ **An executive power – NOT court of appeal**
- ✓ **To correct judicial error**
- ✓ **To get relief from harsh sentence**
- Pardon: completely absolve the convict**
- Commutation : lighter form punishment**
- Remission: reducing period without changing character**
- Respite: lesser one on special fact**
- Reprive: stay**

Pardoning – Art. 161

- ✓ **In all cases of**
- ❖ **Against state law**
- Cannot pardon a death sentence but suspend, remit, commute a death sentence**
- ✓ **Independent of judiciary**
- ✓ **An executive power – NOT court of appeal**
- ✓ **To correct judicial error**
- ✓ **To get relief from harsh sentence**
- Pardon: completely absolve the convict**
- Commutation : lighter form punishment**
- Remission: reducing period without changing character**
- Respite: lesser one on special fact**
- Reprive: stay**

Art 72. Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.—(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

- *(a) in all cases where the punishment or sentence is by a Court Martial;*

- *(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;*

- *(c) in all cases where the sentence is a sentence of death.*

- *(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.*

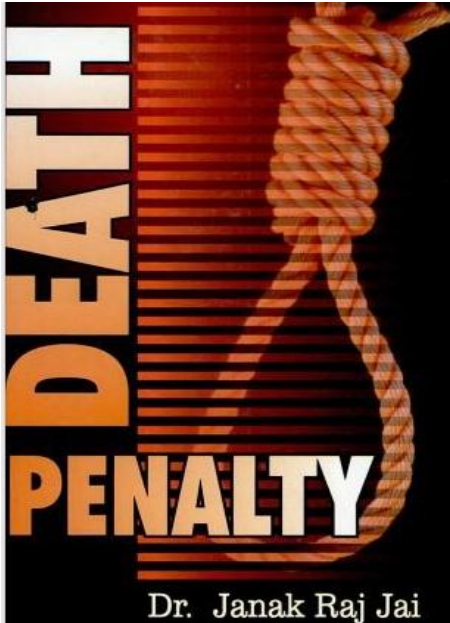
- *(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.*

[Empty box]

The imposition of

death penalty cannot be remitted under any circumstances.

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Principles related to Pardoning given by S. Court

- **No right to oral hearing**
- **Examine the evidence and take different view**
- **On the advice of Union Cabinet**
- **Not bound to give reason**
- **Relief for petitioner from an evident mistake**
- **Subject to Judicial Review**
- **Stay not possible if rejection of early petition**

Constitutional Position of President

Art. 53

Art. 74 – PM led CoMs to advise

Art. 75 – Council of Ministers [CoMs] responsibility to Lok Sabha

42nd A. Act advise bound but, 44th 1 time reconsideration

Constitutional Position of Governor

Art. 154

Art. 163 - CM to advise

Art. 164 – Council of Ministers responsibility to State Assembly

Not bound by CoMs advice

NO constitutional discretion

But situational discretion

1. PM appointment –

No party clear majority/ PM dies in office and no successor

2. Dismissal of CoMs - cannot prove confidence of House of People

3. Dissolution of House of People if CoMs lost Majority

Constitutional Discretion

Bill reservation to President

Recommendation to impose President's rule

As administrator of UT

Determining royalty amount on Minerals: AS, ME, T & MI

Seeking information from CM

Situational Discretion

CM appointment – No party clear majority/ CM dies in office and no successor

Dismissal of CoMs - cannot prove confidence of Assembly

Dissolution of Assembly if CoMs lost Majority

➤ **Special responsibilities to discharge on President's direction and act on discretion though consultation with CoMs...for some states like MH, GJ, AS, MA, NL, ArP, KA**

2. If a person holds office of profit under the Government of India or any State, he shall not be eligible for election as President. However, the office of President, Vice-President, Governor or Ministers of Union or States shall not be considered as office of profit.

(Art. 58)

a money bill. The president is bound to give his assent to money bills and Constitutional amendment bills passed by the Parliament. A money bill cannot be sent back by the president to the Parliament for reconsideration.

 UPKAR'S
DELHI
ASSISTANT
PUBLIC
PROSECUTORS
RECRUITMENT TEST

By
Abhinav Mishra

**The Pearson Legal Refresher
for Judicial Services Examinations**

Second Edition

A. P. BHARDWAJ