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NAAC ACCREDITED 'A' GRADE

Topic: Election of the President of India

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## **ELECTION OF THE PRESIDENT OF INDIA**

The Indian Constitution has adopted the Westminster model of government which places the Head of the State (President) and the Head of the Government (Prime Minister) in the categories of, what Walter Bagehot said about his English system of government, the 'dignified' and 'efficient' executives respectively. Yet, the real position of the President has been the source of many Constitutional debates. However, the framers of our Constitution had very clearly pointed out that the President shall act as the distinguished, formal, constitutional head of the Indian Republic, bound by the aid and advice of his Council of Ministers, headed by the Prime Minister, who acts as the real executive of the government.

The method of Presidential election has also made it clear that our President represents the Indian State and not its people. A system of indirect election to the office of the President was envisaged by the framers of the Indian Constitution, so that no conflict could arise in the future regarding the authority of the President and the Prime Minister of the country.

**Qualifications:** According to Article 58 of the Constitution, a candidate for the office of the President must possess the following qualifications:

- a) He must be a citizen of India.
- b) He must be above 35 years of age.
- c) He must possess all qualifications prescribes for election as a Member of the Lok Sabha.
- d) He must not hold any office of profit under the Government of India or any state government or any local authority under the control of the Central or State Government.
- e) He must not be a member of either House of Parliament or of any State legislature. In case a member of the Union or State legislature is elected for this office, his seat in the legislature shall be deemed to have been vacated from the date on which he assumes his office as the President of India.

**Procedure of Election:** The Procedure of Presidential elections is contained in Articles 54 and 55. Article 54 provides for the creation of an electoral college consisting of all elected MLAs and MPs. Thus, it tells us who elects the President of India. Article 55 provides for the actual process to be followed in electing the President. It provides for the formula of uniformity in the scale of representation of different states as far as practicable, by incorporating the method of proportional representation with the Single Transferable Vote system. The whole procedure of the Presidential election may be discussed as follows

- 1) The value of the vote of each elected member of a State Legislative Assembly is first calculated, following a simple formula. The total population of a state (according to the 1971 Census) is divided by the total number of elected MLAs of the state. The quotient thus arrived at is to be further divided by 1000 and the figure of 1 is added to the second quotient in case the remainder is more than 500. Its formula may be put as under:

$$\begin{aligned} \text{Total Number of Votes of an Elected MLA} &= \\ &= \frac{\text{Population of State/Total number of elected MLAs of the State Legislature}}{\div 1000} \end{aligned}$$

- 2) Each elected MP shall have such number of votes as may be obtained by dividing the total number of votes assigned to all elected MLAs of the country by the total strength of the elected MPs. The figure of 1 is to be added to the quotient in case the remainder is more than half the strength of the total strength of the MPs. Its formula may be put as under:

$$\begin{aligned} \text{Total number of votes of an elected MP} &= \\ &= \frac{\text{Total Number of Votes assigned to all elected MLAs}}{\div \text{Total number of elected MPs}} \end{aligned}$$

- 3) It is provided that the election of the President shall be held with a secret ballot and according to the system of proportional representation with single transferable vote. The voter shall be given a ballot paper with the names and party symbols of the candidate on the left side and with blank columns on the right. The voter has to fill up the right blank column by showing his preferences for the candidates. The voters shall place the figures of 1, 2, 3 etc. in the blank columns to show his order of preference for the candidates.
- 4) After the polling is over, the counting of votes shall take place. First, all the invalid ballot papers are rejected and the electoral quota is calculated following the Hare System.

$$\text{Electoral Quota} = \{(\text{Total Number of Valid Votes}) \div (1 + 1)\} + 1$$

- 5) Thereafter, counting will begin. In case a Presidential candidate secures valid vote up to the figure of the electoral quota in the first round itself, he will be declared elected. Otherwise, the candidate having secured the least number of first preference votes shall be eliminated from the competition and the second preference votes of his ballots will get transferred and added to the already secured first preference votes of the remaining candidates. This process will go on until one candidate reaches the electoral quota and is elected as the President of India.
- According to Article 71 (1), all doubts and disputes related to the election of the President shall be looked into by the Supreme Court.
  - According to Article 71 (2), if the election of a person is declared void by the Supreme Court, then whatever act has been done by the President in the

exercise of his official duties shall not be invalid till the date of such declaration by the Supreme Court.

- According to Article 71 (3), the Parliament may enact a law to regulate any matter relating to the election of the President. The Parliament had, long ago, enacted the Presidential and Vice-Presidential Elections Act in 1952.
- Under Article 71 (4), the election of the President cannot be called in question on the ground that there is a vacancy in the Electoral College electing him. The Supreme Court even gave the ruling that even if any state legislative assembly is dissolved under Article 356, that scenario would be no bar to holding the election of the President.

**Tenure of the President:** According to Article 56 (1), the President shall hold office for a term of five years, from the date on which he assumes his office. However,

- a) He may resign his office by writing under his hand, addressed to the Vice-President. If the President resigns by addressing to the Vice-President, according to Article 56 (2), the Vice-President must immediately communicate it to the Speaker of the Lok Sabha.
- b) On grounds of violation of the Constitution, he may be removed from his office by the process of impeachment as laid down in Article 61.
- c) Even after the expiry of his term, he shall continue holding his office until his successor takes over his office.

Under Article 57, a person who holds or has held office as the President shall be eligible to be re-elected to that office. However, the Constitution is silent on how many times he may be re-elected.

**Impeachment of the President:**

Under Article 56 (1) (b), the President may be removed from his office only for the violation of the Constitution. The impeachment process as laid down in Article 61 provides that:

- a) Any House of Parliament can prefer against the President a charge of the 'violation of the Constitution'.
- b) At least 14 days' notice in writing signed by at least 1/4<sup>th</sup> of the total strength of the House indicating their intention to move such a resolution of impeachment has to be issued.
- c) This resolution must be passed by a majority of not less than 2/3<sup>rd</sup> of the total membership of the House.
- d) When such a charge is preferred by either House of the Parliament, the other House shall investigate the charge or cause the charge to be investigated.
- e) At this stage the President shall have the right to appear personally or through his nominee in order to be represented at such an investigation with a view to offer his defence.

- f) After the investigation, a resolution is passed by a majority of at least 2/3<sup>rd</sup>s of the total membership of the House in which the charge was investigated, or which caused it to be investigated, declaring that the charge preferred against the President has been sustained, such a resolution shall have the effect of removing the President from his office as from the date on which the resolution is passed.

A critical examination of the procedure for the impeachment of the President shows that it is full of loopholes.

- i. First, the phrase 'violation of the Constitution' is delightfully vague. It is not clear as to what it includes and what it excludes. It might have a political intent behind it.
- ii. Second, although the Members of the State Legislature play full part in the election of the President, they have been kept out of his impeachment process.
- iii. Also, although only the elected MPs take part in the Presidential elections, in case of the impeachment proceedings, both the elected and nominated members vote in favour of or against the resolution.
- iv. The phrase saying that the Parliament shall 'cause the charge to be investigated' is not very clear. It is ambiguous on whether the House will conduct the investigation or appoint some judicial commission for the same purpose. The whole matter may thus lead to a number of serious politico-legal complications.
- v. It is also not clear as to how much time the investigating House will give to the President for making his defence.
- vi. There is no provision of suspension of the President during the time when impeachment proceedings are going on against him.

Thus the process of removal of the Indian President is quite ambiguous and cumbersome, with several catches and loopholes which make it ineffective and almost impossible to apply in practice.