

Unit 13. The Vice-President Of India (Articles 63-73)



Part V of the Constitution of India under Chapter I (Executive) also discusses about the office of the Vice-President of India. The Vice-President of India is the second highest constitutional office in the country. He serves for a five-year term, but can continue to be in office, irrespective of the expiry of the term, until the successor assumes office. Let's see the articles 63-73 which deal with the qualifications, election and removal of Vice-President of India.

Article 63 : The Vice-President Of India

There shall be a Vice-President of India.

Article 64 : The Vice-President to be ex-officio Chairman of the Council of States

The Vice-President shall be ex-officio Chairman of the Council of States and shall not hold any other office of profit:

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97.

Article 65 : The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President

(1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may

be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

Article 66 : Election of Vice-President

(1) The Vice-President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament in accordance with the system of proportional representation by means of a single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he –

(a) is a citizen of India;

(b) has completed the age of thirty-five years; and

(c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation: For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

Article 67 : Term of office of Vice-President

The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that – (a) A Vice-President may, by writing under his hand addressed to the President, resign his office;

(b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;

(c) A Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Article 68 : Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy

(1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

Article 69 : Oath or affirmation by the Vice-President

Every Vice-President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say – “I, A.B., do swear in the name of God /solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will discharge the duty upon which I am about to enter.”

Article 70 : Discharge of President’s functions in other contingencies

Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

Article 71 : Matters relating to, or connected with, the election of a President or Vice-President

(1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

Article 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 persons convicted of any offence – (a) in all cases where the punishment of 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.

Article 73 : Extent of executive power of the Union*

(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

(a) to the matters with respect to which Parliament has power to make laws; and
 (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

Info-Bits related with the Vice-President of India

The office of the Vice-President of India is special because of multiple reasons. It would be interesting to explore the constitutional provisions related to VP of India. Try, if you can find the answers of the following questions, yourself.

1. Can Vice-President of India continue to be in office irrespective of the expiry of his term of 5 years?
2. Who performs the duties of the Vice-President, when a vacancy occurs in the office of the Vice-President of India, before the expiry of his term?
3. Who performs the duties of the Vice-President, when a vacancy occurs in the office of the Vice-President of India, when the Vice-President acts as the President of India?
4. Who performs the Vice-President's function as the Chairperson of the Council of States (Rajya Sabha) when a vacancy occurs in the office of the Vice-President of India?
5. Salary for Vice-President for his role as Vice-President of India?
6. Salary for Vice-President for his role as ex-officio Chairperson of the Council of States (Rajya Sabha)?
7. Salary for Vice-President when Vice-President acts as President of India?
8. Can nominated members participate in the election and removal process of Vice President?
9. Vice-President is neither an elected nor nominated member of Rajya Sabha. But being the chairman of Rajya Sabha, can he cast vote?
10. How can the Vice-President of India removed from his office?

Answers:

1. Can Vice-President of India continue to be in office irrespective of the expiry of his term of 5 years? **Ans : Yes. Until the successor assumes office.**
2. Who performs the duties of the Vice-President, when a vacancy occurs in the office of the Vice-President of India, before the expiry of his term? **Ans : Constitution is silent on this matter.**
3. Who performs the duties of the Vice-President, when a vacancy occurs in the office of the Vice-President of India, when the Vice-President acts as the President of India? **Ans : Constitution is silent on this matter.**
4. Who performs the Vice-President's function as the Chairperson of the Council of States (Rajya Sabha) when a vacancy occurs in the office of the Vice-President of

India? **Ans : Deputy Chairperson of the Rajya Sabha, or any other member of the Rajya Sabha authorised by the President of India.**

5. Salary for Vice-President for his role as Vice-President of India? **Ans : No salary for the role as Vice-President. Salary is for the role as ex-officio Chairperson of the Council of States (Rajya Sabha).**
6. Salary for Vice-President for his role as ex-officio Chairperson of the Council of States (Rajya Sabha)? **Ans : Rs.1.25 lakhs.**
7. Salary for Vice-President when Vice-President acts as President of India? **Ans : He will get salary of Indian President, ie Rs.1.5 lakh. But he will stop getting the salary of ex-officio chairman of Rajya Sabha.**
8. Can nominated members participate in the election and removal process of Vice President? **Ans: Yes. (NB: For Presidential election nominated members cannot participate.)**
9. Vice-President is neither an elected nor nominated member of Rajya Sabha. But being the chairman of Rajya Sabha, can he cast vote? **Ans : Yes. The Chairman has a casting vote in the case of an equality of votes.**
10. How can the Vice-President of India removed from his office? **Ans : Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.**

Removal of Vice-President of India : Must Check

Aspirants are requested to note a mistake which you might find in many textbooks on Indian Polity, under the topic 'Removal of the Vice-President of India'. I have seen textbooks mentioning that removal of Vice-President needs absolute majority (half of the total strength of the house). But this cannot be right.

Let's check once again what is mentioned in Constitution, Article 67(b).

*A Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the **then members of the Council** and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.*

Let's see what is the importance of the word "then" here. Suppose the present strength of Rajya Sabha is 245 seats. And if 45 seats are vacant, then the strength of the house gets reduced to 200. So a majority of all the **then members of the Council** means that removal of Vice-President needs the approval of 101 Rajya Sabha MPs.

As shown above, this majority is not Absolute Majority (Total Strength of the House), but Effective Majority (Total Strength of the House – Vacancies). Whether the phrase "a majority of all the **then members of the Council**" can be interpreted as Simple Majority (Majority among those who are present and voting) is a matter of debate. But anyways, the removal does not need absolute majority or special majority. It can be said that resolution for removal of Vice-President requires an effective majority in Rajya Sabha and a simple majority in Lok Sabha.

NB: President's impeachment resolution requires special majority (2/3rd of total strength of the house) at both houses to get itself passed.



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