

President of India

Qualifications for Office of the President:

A person who offers himself as candidate for the high Office of President of India should be:

- (i) A natural citizen of India.
- (ii) Should have completed 35 years of age.
- (iii) Should hold such other qualifications as are essential for eligibility as member of the Lok Sabha.
- (iv) Should not hold any office of profit in India or abroad i.e., he should not receive any salary from the Consolidated Fund of India.
- v) Should not be a member of any state legislature or Parliament. If he is so at the time of his election, it will be presumed that he has vacated his seat as a parliamentarian/legislator after his assuming charge as the President of the Republic of India.

Election and Removal of the President:

The Constitution of India has provided that India shall be a Republic with parliamentary form of government. Accordingly, the President of the Republic, as the head of the state, is elected by the representatives of the people returned to Parliament and the State legislatures. His normal term of office is five years, though he can be removed earlier by impeachment process.

He also can seek re-election for one more term. He is aided and advised by the Council of Ministers, headed by Prime Minister. Being head of parliamentary form of government, the President who is head of the state, is supposed to be only de jure head, whereas real power and authority is vested in the Prime Minister and his Council of Ministers.

In India, the President enjoys certain powers during normal times, whereas he has a different set of powers during emergency, both internal and external, which far more increase than what these are during normal times.

The Constitution fathers had various alternatives before them for electing the President of the Republic. However, methods of direct and indirect election focused their attention. They preferred the latter over the former because it was felt that since the President was going to be nominal head of the state, in case he was directly elected by the people, he will not be satisfied by remaining merely as nominal head of the State.

It was also felt that India being a vast country with vast majority of illiterate citizens, it will not be proper to burden them with the responsibility of electing a person for such a high office. Another argument advanced was that election will mean much of hustle and bustle and mud slinging on the candidate for Presidency which was most undesirable and likely to bring the President low in the eyes of the people.

Moreover, there could be the possibility of clashes between directly elected President and Prime Minister for supremacy, which nation could ill afford.

Removal of President:

It is provided in the Constitution that for the purpose of election of the President, Election Commission shall fix a date and also nominate a returning officer. The President elect is required to take an oath affirming his loyalty to the Constitution of India, before occupying this high office.

The President is elected for a period of five years, unless removed earlier by way of impeachment. He can, however, seek re-election immediately after the expiry of his term.

The President can be removed only by an impeachment process. His impeachment is to be approved by both the Houses of Parliament separately specifying the charges for his removal. According to the procedure laid down in the constitution 1/4 of the total members of House can give at least 14 days notice in advance of their intention to impeach the President.

The charges, if approved by 2/3 majority will be referred to the other House for investigation. If the investigating House also approves the charges, with 2/3 majority, the President shall stand impeached and will vacate his office, on the date on which such a resolution is passed. It will thus be observed that the procedure for the removal of the President has been deliberately kept complicated.

So far no President in India has been impeached. It was, however, in 1979 that there was a threat to impeach the President. In that year Janata Party headed by Morarji Desai was in power, when defections took place in the party.

Prime Minister Desai finding his party in minority tendered resignation of his Council of Ministers. Subsequently he also resigned from the leadership of Parliamentary party. The party elected Jagjivan Ram as his successor.

Meanwhile President invited leader of the opposition, Y.B.Chavan to form government. He, however, regretted his inability and promised his party's support to Chaudhary Charan Singh, whom President invited to form government. Chaudhary Charan Singh formed his government with the help of Congress (I).

But on the opening day of the Lok Sabha session Congress (I) withdrew its support and the Prime Minister resigned without facing the Lok Sabha. Janata Party leader, Jagjivan Ram staked his claim to form government, but in his best judgment the President decided to dissolve the Lok Sabha and to hold fresh elections in the country.

This was resented by the party, whose leadership threatened that if returned to power, the President would be impeached though this was not made an election issue. Since the party did not come to power, therefore, the matter ended there.

At one point of time when Giani Zail Singh threatened to dismiss Rajiv Government, when the Prime Minister still enjoyed confidence of the majority party in the Lok Sabha, some Congress men also threatened of impeaching him, but the situation did not arise.

Problems of Impeachment Procedure: But procedure for impeachment as laid down in the constitution has its problems. The constitution provides that the President can be removed on charges of violation of the constitution. A question arises as to which kind or type of 'violation of the constitution'. Does it mean not summoning the Parliament or not accepting the advice of a Minister or Prime Minister or Council of Ministers or what? All this has been kept vague.

In the Constituent Assembly a proposal was made that in addition to violation of constitution, treason and acceptance of bribery should be made two other causes responsible for the impeachment of the President. But general feeling was that term violation of constitution was in itself quite wide and comprehensive and needed no elaboration. But in the process this term itself has not been defined.

Then another point of criticism is that India is a federal polity in which both the centre and states are equal partners. This principle has been adopted in the election of the President where principle of parity has been observed and the state legislatures have been given equal number of votes with the members of Parliament. But the principle has been completely ignored in the removal process.

The members of state legislatures have been given no hand in the removal of President i.e., in the process of impeachment, which can be started and processed only in the Parliament without involving state legislature.

Under the Constitution of India, the President is fully empowered to dissolve the Lok Sabha and adjourn the Rajya Sabha sine die. If the President finds that the winds are against him and he is likely to be impeached, he may dissolve the Lok Sabha and thus take the risk of facing the new House.

This will provide him an opportunity to delay proceedings against him and the new House may not be as hostile to him as the dissolved one. In addition, he may also use his personal position and prestige for influencing the voters and try to arrive at some agreement with some political parties, whom he may try to favour, if saved from impeachment process.

Not only this, but in such a situation impeachment of President will become an election issue and the problem will shift from Parliament House to the streets of the country, which is not good and healthy. Electorates can be influenced by the personality and office of the President.

In fact, this single factor is fraught with many problems. The very personality of the President will be discussed in the streets, which the constitution makers wanted to avoid by providing indirect system of his election. He will be compelled to hobnob with political parties which will make him a party man rather than symbol of national unity, which constitution fathers wanted him to be.

Moreover, in case a political party which wants to remove him from office is returned to power, but not with 2/3 majority needed for his removal, will find a hostile President and this situation can result in many political problems of far-reaching constitutional significance.

In addition, he will be favourably inclined to favour those parties which saved him from impeachment and thus the President can create a situation of political instability for the party in power. He will obviously be interested to install a person of his own liking as Prime Minister.

The President is to be removed only when an impeachment motion against him is to be carried by two-thirds majority. It is very difficult to believe that President will take a bold step of violating any provision of the constitution without enjoying the support of even one-third MPs.

Then another interesting feature of the impeachment process is that in our constitution it is provided that in the election of the President only elected members of the Parliament are entitled to participate. In that there is no provision for nominated members. But in the removal process i.e., impeachment of the President both the elected as well as nominated members are entitled to participate.

It is not clear how in one process nominated members are allowed to participate, while in other they are not. In all fairness to them it can be said that when they are full-fledged members of Parliament they should have been allowed to participate in both the processes i.e., election and removal.

A President who takes a bold step of violating any provision of constitution, takes that in a calculated manner. Being the head of the state and holding such an important position if he takes risk obviously he has certain motives. His successful impeachment will mean his failure in his ambitions and removal from the high office of the President.

But beyond that the constitution does not provide as to what other disqualifications he will have as a citizen of India. It is not clear whether such a person can be voter, can again hold any elected position or office or can he again contest for Presidential office at the appropriate time favourable to him.

The constitution has provided that the President shall be given an opportunity to present his case before the Parliament, but again there is an ambiguity. There is no mention about the time which he will be given to explain his case and the notice which will be given to him to prepare his case.

A hostile House can create a situation in which though all formalities are completed, yet he is not given fair opportunity to present his case. Moreover, the President will be required to face a hostile House. In case he is not given sufficient time the very purpose of giving him the opportunity will be defeated.

When the House sits to try the President, and begins impeachment proceedings it sits as court of law. During the course of impeachment many legal complications are bound to arise and the House may find it difficult to solve these in the same manner as these are solved, appreciated and understood by the judiciary.

Moreover, what is the basic idea of providing the opportunity? Is it to provide an opportunity to the head of the state to clarify his stand? But in these days when everything is viewed from party viewpoint, in spite of President's clarifying his stand the chances are that the M.P.s will vote on party lines unless there is floor crossing.

Even the sound arguments of the President under impeachment are not likely to cut ice in the face of party whip.

The constitution has given exclusive power to the President to summon the Lok Sabha. There is no other authority to exercise this power in the country. The President after sensing the mood of the Parliament may not summon it and delay that to the extent possible. Usually as the time passes, with that passions subside and calm and coolness comes.

The sympathies from the party to the President can shift. In case in the meantime the party interested in impeaching commits some political blunder or fails on any social, economic and political front, then the cause of the President against that of the party or parties interested in impeachment may become strong.

Still another important aspect to be taken into account is that in the constitution there is no provision that during the course of impeachment the President shall stand removed. He will be removed only when he has been successfully impeached. In other words, during impeachment he can use his position, office and power of patronage to win over and influence the members of Parliament.

It is another issue to which extent he succeeds; he can do and thus win favour of some MPs.

Since no President in India has so far been impeached, therefore, all these issues are of academic discussion and when a case of actual impeachment arises, many of these problems are bound to arise and get solved. The Parliament, however, may make an exercise to enact a law of impeachment before it is too late and complicated problems arise at the nick of time which may create a situation of crisis.

It may, however, not lead one to understand the President can be removed only by impeachment. He can resign on his own because of his ill health or he may leave his office if he feels that he cannot harmoniously work with his Council of Ministers or when he feels that a situation has arisen when an impeachment motion will be successfully carried against him.

Salary and Allowances of President:

The President is the first citizen of India and has been given certain privileges and immunities to enable him to discharge his constitutional obligations most efficiently and to the best of his capacity and ability. Presently the monthly salary of the President is Rs.5,00,000/- He is also to be paid such other allowances which the Parliament may determine from time to time.

It is, however, provided that his emoluments and other privileges will not be changed to his disadvantage during his tenure as President. He will also be given a rent free, well furnished residence. Rashtrapati Bhawan is now the official residence of the President. Since it is desired that after retirement he should not serve anywhere, he is paid and provided other facilities essential for his smooth life and living a retired life. He is paid an annual pension of rupees 1.5 Lac and some amount for the maintenance of his office.

The constitution has provided that during the term of his office, his salary and allowances and other service conditions will not be changed to his disadvantage. It is, of course, open to him to voluntarily surrender any part of his salary. In fact, in India, several Presidents have been surrendered some part of their salary for some noble cause.

The salary , allowances, etc., to be paid to the President and retired President(s) are governed by Presidents Emoluments and Pension Act, 1951. The Act was further amended in December, 1993. The amending Bill clarified that at present a retired President is entitled to the use of a furnished residence without payment of rent, a telephone and a motor car free of charge and secretarial staff consisting of a Private Secretary, a Personal Assistant and a peon.

He is, however, not entitled to free travel except for travel undertaken by him for medical attendance. The Bill provided that a retired President may be provided the facility of free-travel. Accordingly the amended Act now provides that a retired President shall be entitled to travel free anywhere in India, accompanied by one person, by the highest class by air, rail or steamer.

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