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PRESIDENTIAL ELECTION 2012

The President is the constitutional Head of the State and in the discharge of all functions, the President acts on the aid and advice of the Prime Minister and the Council of the Ministers.

The Constitution provides that the President of India shall be an integral part of Parliament but shall not be a member of either House of Parliament or of a House of the Legislature of any State. If a member of either House of Parliament or of a House of the Legislature of any State is elected the President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon the office as the President.

Though the President is a constituent part of the Parliament, the President does not sit or participate in the discussions in either of the two Houses. As part of the constitutional functions with respect to the Parliament, the President summons and prorogues the two Houses from time to time and also has the power to dissolve the Lok Sabha. At the commencement of the first Session after each General Election to the Lok Sabha and at the commencement and the first Session of Parliament each year, the President addresses members of both the Houses assembled together in the Central Hall of Parliament House.

The President, among other things, is empowered to send messages to either House, whether with respect to a Bill pending in Parliament or otherwise. Certain bills can be introduced and proceeded only after the recommendation of the President has been so obtained. Not only that, when both the Houses are not in Session and the President is satisfied that circumstances exist which render it necessary to take immediate action, the President promulgates Ordinances having the same force and effect as a law passed by the Parliament. The President's assent is essential for a Bill passed by both Houses to become a law.

The President summons the joint sitting of both the Houses in case of a disagreement between them on a Bill. The President causes to be laid, every year, before the Parliament, the Budget of the Government. Besides, the President is empowered to decide, after obtaining the opinion of the Election Commission, whether any member, duly elected, attracts any of the disqualifications laid down in the Constitution. The President's decision in this matter is final.

Interim President

Article 52 of the Constitution provides that there shall be a President of India. The Constitution of India came into force on 26 January 1950 and the first General Election was held in 1951-52. To ensure that during the intervening period, the office of the President should not remain vacant, a transitional provision was made in article 380 of the Constitution which provided that the Constituent Assembly of the Dominion of India shall elect the President of India until a President in accordance with the provisions of Constitution is elected. The Constituent Assembly unanimously elected its President, Dr. Rajendra Prasad as the interim President of India on 24 January 1950. He assumed the august office on 26 January 1950, which he continued to hold until he was elected as the first President of India and entered upon his office on 13 May 1952.

Term of Office of President

The President holds office for a term of five years from the date on which he enters upon his office. He shall, however, continue to hold office, notwithstanding that his term has expired, until his successor enters upon his office. This provision addresses the need to meet the contingency of an election not completed in time due to unforeseen circumstances.

The Constitution also requires that an election to fill a vacancy caused by the expiration of the term of the office of President has to be completed before the expiration of the term. However, if any vacancy occurs by reason of his death, resignation or removal or otherwise, the person elected to succeed him as President shall serve for the full term of five years from the date he enters upon his office.

Since President Smt. Pratibha Devisingh Patil will be completing her five year term on 24 July 2012, it is necessary that the process of Presidential Election should be completed and result declared in time so that the new President assumes office on 25 July 2012.

Acting President

The Constitution provides that in the event of occurrence of any vacancy in the office of the President by reason of his death, resignation or removal or otherwise, the Vice-President of India shall act as President until the date on which a new President elected to fill such vacancy, enters upon his office which in no case shall be later than six months from the date of occurrence of the vacancy. The Vice-President shall also discharge the functions of the President, if the latter is unable to discharge his functions owing to absence, illness or any other cause, until the date on which the President resumes his duty.

However, the Constitution does not provide for cases where a vacancy takes place in the office of the President and Vice-President simultaneously, or where the Vice-President while acting as, or discharging the functions of the President, is unable to do so. To cover such cases, the President (Discharge of Functions) Act, 1969, was enacted by the Parliament to provide that in such cases, the Chief Justice of India or, in his absence, the senior-most judge of the Supreme Court, who is available shall discharge the functions of the President until a new President is elected.

After the demise of the President, Dr. Zakir Husain in 1969, Shri V.V. Giri assumed the office of the Acting President on 3 May 1969. For the Presidential Elections of 1969, Shri V.V. Giri, who was the Acting President at that point of time, resigned from the office of the Vice-President on 20 July 1969. It was for the first time that a situation arose when both the President and the Vice-President were not in office and the Chief Justice of India, Shri M. Hidayatullah, functioned as the Acting President till the completion of the Presidential Election, at which Shri V.V. Giri got elected and assumed the office of the President on 24 August 1969.

Presidents of India

India has had fourteen Presidents in the last sixty years of the functioning of the Indian Parliament.

Dr. Rajendra Prasad
(26 January 1950—13 May 1962)

Dr. Neelam Sanjiva Reddy
(25 July 1977—25 July 1982)

Dr. Sarvepalli Radhakrishnan
(13 May 1962—13 May 1967)

Giani Zail Singh
(25 July 1982—25 July 1987)

Dr. Zakir Husain
(13 May 1967—3 May 1969)

Shri R. Venkataraman
(25 July 1987—25 July 1992)

Shri V.V. Giri
[3 May 1969—20 July 1969 (Acting)]
(24 August 1969—24 August 1974)

Dr. Shanker Dayal Sharma
(25 July 1992—25 July 1997)

Shri M. Hidayatullah
[20 July 1969—24 August 1969 (Acting)]

Shri K.R. Narayanan
(25 July 1997—25 July 2002)

Shri Fakhruddin Ali Ahmed
(24 August 1974—11 February 1977)

Dr. A.P.J. Abdul Kalam
(25 July 2002—25 July 2007)

Shri B.D. Jatti
[11 February 1977—25 July 1977 (Acting)]

Smt. Pratibha Devisingh Patil
(25 July 2007—Till date)

All the Presidents completed their full five year term except Dr. Zakir Husain and Shri Fakhruddin Ali Ahmed, who passed away while in office on 3 May 1969, and 11 February 1977, respectively.

Vacation of Office

The President may resign his office before the expiry of his term. Such resignation is to be given in writing addressed to the Vice-President of India. Any such resignation is forthwith also to be communicated by him to the Speaker of the Lok Sabha. The President may also be removed from office before the expiry of his term by impeachment.

Eligibility for Re-Election

The Constitution provides that the President, present or former, is eligible for re-election to that office. There is no legal limit to the number of terms a person can be elected as President.

Dr. Rajendra Prasad is the only President who has served two terms and that too, consecutively from 1952 to 1962.

Eligibility for Election

Article 58 of the Constitution provides that a person eligible for election as President should be a citizen of India; must have completed 35 years of age; and should be qualified for election as a member of the Lok Sabha.

Such person should not hold 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. However, 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.

Electoral College

The election to the office of the President is an indirect election by the elected representatives of Parliament and State Legislative Assemblies. Article 54 provides that the President shall be elected by the members of an electoral college consisting of: (a) the elected members of both Houses of Parliament; and (b) the elected members of the Legislative Assemblies of the States.

The Constitution (Seventieth) Amendment Act, 1992 inserted an Explanation to article 54 that "State" shall include the National Capital Territory of Delhi and the Union territory of Puducherry. Thus, for the first time, the members of the Legislative Assemblies of any Union territory participated in the Presidential Election in 1997.

The electoral college for the Presidential Election now consists of:

- (a) the elected members of both Houses of Parliament; and*
- (b) the elected members of the Legislative Assemblies of the States including the National Capital Territory of Delhi and the Union territory of Puducherry.*

The nominated members of the Rajya Sabha and the Lok Sabha and the Legislative Assemblies of the States are not entitled to vote in the election of the President. Also, the members of the Legislative Councils in the States are not included in the electoral college for the election of the President.

Landmark Judgments

Eligibility of the Disqualified Members to Vote

After the coming into force of the anti-defection law, a controversy had arisen whether an MP or MLA disqualified under the law was eligible to vote in a Presidential Election when his appeal against his disqualification was pending in a Court of law. In 1987, twenty-two members of the Punjab Legislative Assembly were disqualified by the Speaker on the grounds of defection. During the trial of their Special Leave Petition, the Supreme Court in its interim Order dated 7 May 1987 held that if any Presidential Election was to be held before the hearing of the matter, the disqualified members would be entitled to participate in the poll and cast their votes as if they had not been disqualified. On a clarification sought by the Commission, the Supreme Court by an Order dated 22 June 1987 held that participation includes proposing and seconding of nomination of candidates. The Court indicated that the votes cast by these members might be separately marked and after counting kept separately until final disposal of the case.

[Sardar Prakash Singh Badal and others Vs. Union of India JT 1987 (2) SC 397]

Vacancy in the Electoral College due to Dissolution of Assembly

The Legislative Assembly of Gujarat was dissolved by the Governor on 15 March 1974. A question arose whether in the absence of said Assembly an election to office of the President could be validly held or not. A reference was made

by the President under article 143(1) of the Constitution as to whether the election to fill the vacancy caused on the expiry of the term of office of the President on 24 August 1974 must be completed before the expiry of the term of office notwithstanding the fact that the Legislative Assembly of the State of Gujarat had been dissolved.

The Court in its opinion stated that the term of office of the President was fixed. The election to fill the vacancy caused by the expiration of the term was to be completed before the expiration of the term. The members of the electoral college mentioned in article 54 are members of both Houses of Parliament and Legislative Assemblies of the States. The essence as well as the scope of article 54 is merely to prescribe the qualifications required for electors to elect the President.

The Court stated that the Gujarat State Assembly had been dissolved. As a result of the dissolution, there were no elected members of the Legislative Assembly in that State. But, that matter would not be a ground either for preventing or holding of the election on the expiry of the term of the President or suggesting that the election to fill the vacancy caused by the expiry of the term of office of the President could be held only after the election to the Legislative Assembly of the State where the Legislative Assembly had been dissolved.

The Court held that the election to the office of the President must be held before the expiration of the term of the President, notwithstanding the fact that at the time of such election, the Legislative Assembly of a State was dissolved.

(In re. Presidential Election 1974, AIR 1974 SC 1682)

Electing the President

Article 55 of the Constitution stipulates that there shall be uniformity, as far as practicable, in the scale of representation of the different States at the election. For securing such uniformity among the States *inter-se* as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:

- (a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;
- (b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in (a) above shall be further increased by one; and
- (c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under (a) and (b) above by the total number of elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

For the purpose of calculation of value of votes, the Constitution (Eighty-fourth) Amendment Act, 2001 provides that the population of the States for the Presidential Election shall mean the population as ascertained at the 1971 census till the relevant population figures for the census to be taken after the year 2026 have been published.

Value of Vote of an MLA

The number of votes for each member of the Legislative Assembly differs from State to State as it is calculated on the basis of population of the State. The value of vote for each member in a State Legislative Assembly is calculated as follows:

Value of Vote of an MLA of Uttar Pradesh in the Presidential Election 2012

Total population of Uttar Pradesh (1971 census)	:	83,849,905
Total number of elected members of Vidhan Sabha	:	403
Number of votes for each MLA	:	$\frac{83,849,905}{403 \times 1000}$
		= 208.06 = 208

The total value of votes of all the members of each State Assembly is worked out by multiplying the number of elected members in the Assembly by the number of votes for each member, *e.g.*, $403 \times 208 = 83,824$ for Uttar Pradesh.

For the 14th Presidential Election 2012, the highest value of votes was for the MLAs of Uttar Pradesh (208) and the lowest value of votes was for the MLAs of Sikkim (7).

Value of Vote of an MP

The total value of votes of the elected MLAs of all the States added together is divided by the total number of elected members of Parliament to get the value of vote for each member of Parliament.

$$\text{Value of Vote of each MP} = \frac{\text{Total value of votes of the elected MLAs of all the States}}{\text{Total number of elected MPs}}$$

Statement showing the value of votes of elected MLAs of different States at the Presidential Election 2012*

Name of State	No. of Assembly Seats (Elective)	Population 1971 Census	Value of Votes of each MLA	Total Value of Votes for the State
Andhra Pradesh	294	43502708	148	148x294 = 43512
Arunachal Pradesh	60	467511	8	008x060 = 480
Assam	126	14625152	116	116x126 = 14616
Bihar	243	42126236	173	173x243 = 42039
Chhattisgarh	90	11637494	129	129x090 = 11610
Goa	40	795120	20	020x040 = 800
Gujarat	182	26697475	147	147x182 = 26754
Haryana	90	10036808	112	112x090 = 10080
Himachal Pradesh	68	3460434	51	051x068 = 3468
Jammu & Kashmir**	87	6300000	72	072x087 = 6264
Jharkhand	81	14227133	176	176x081 = 14256
Karnataka	224	29299014	131	131x224 = 29344
Kerala	140	21347375	152	152x140 = 21280
Madhya Pradesh	230	30016625	131	131x230 = 30130
Maharashtra	288	50412235	175	175x288 = 50400
Manipur	60	1072753	18	018x060 = 1080
Meghalaya	60	1011699	17	017x060 = 1020
Mizoram	40	332390	8	008x040 = 320
Nagaland	60	516449	9	009x060 = 540
Odisha	147	21944615	149	149x147 = 21903
Punjab	117	13551060	116	116x117 = 13572
Rajasthan	200	25765806	129	129x200 = 25800
Sikkim	32	209843	7	007x032 = 224
Tamil Nadu	234	41199168	176	176x234 = 41184
Tripura	60	1556342	26	026x060 = 1560
Uttarakhand	70	4491239	64	064x070 = 4480
Uttar Pradesh	403	83849905	208	208x403 = 83824
West Bengal	294	44312011	151	151x294 = 44394
NCT of Delhi	70	4065698	58	058x070 = 4060
Puducherry	30	471707	16	016x030 = 480
Total	4120	54,93,02,005		= 5,49,474

*Source: The Election Commission of India, New Delhi.

**Constitution (Application to the Jammu and Kashmir) Order, 1954.

Value of Votes at the Presidential Election 2012

➤ **Value of vote of each Member of Parliament**

Total number of elected MPs = Lok Sabha (543) + Rajya Sabha (233) = 776

Total value of votes of the elected MLAs of all the States = 5,49,474

Value of vote of each MP = $\frac{5,49,474}{776} = 708$

➤ **Total value of votes of 776 Members of Parliament**

$708 \times 776 = 5,49,408$

➤ **Total electors for the Presidential Election 2012**

MLAs [4120] + MPs [776] = 4896

➤ **Total value of 4896 electors for the Presidential Election 2012**

Total value of votes of 776 MPs and

Total value of votes of the elected MLAs of all the States

= $5,49,474 + 5,49,408 = 10,98,882$

System of Proportional Representation

The election of the President is held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election is held by secret ballot. The ballot paper does not contain any election symbol. There are two columns in the ballot paper. Column 1 of the ballot paper contains the heading "Name of Candidate" and column 2 contains the heading "Mark order of Preference".

Each elector has as many preferences as there are candidates. However, no ballot paper is considered invalid solely on the ground that all such preferences are not marked.

An elector while giving his vote may mark the number 1 in the space opposite the name of the candidate whom he chooses as his first preference, and may, in addition, mark as many subsequent preferences 2, 3, 4, and so on as he wishes in order of preference.

Marking is required to be done in the international form of Indian numerals or in the Roman form or in the form used in any Indian language but the preferences should not be indicated in words like one, two, three, as it will invalidate the ballot paper. A ballot paper shall also be considered invalid on which number 1 is not marked or it is marked opposite the name of more than one candidate.

Quota for Election

After calculating the total value of votes polled by each candidate, the Returning Officer totals up the value of all valid votes polled. The quota for declaring a candidate as elected is determined by dividing the total value of valid votes by 2 and adding one to the quotient, ignoring the remainder, if any.

For example, assuming the total value of valid votes polled by all candidates is 10,00,001. The quota required for getting elected is:—

$$\frac{10,00,001}{2} + 1 = 5,00,000.50 + 1 \text{ (Ignore .50)}$$

$$\text{Quota} = 5,00,000 + 1 = 5,00,001$$

After ascertaining the quota, the Returning Officer has to see whether any candidate has secured the quota for being declared as elected on the basis of the total value of first preference votes polled by him/her.

If no candidate gets the quota on the basis of first preference votes, then the Returning Officer proceeds further to second round of counting during which the candidate having the lowest value of votes of first preference is excluded and his votes are distributed among the remaining candidates according to the second preference marked on these ballot papers. The other continuing candidates receive the votes of excluded candidate at the same value at which he/she received them in the first round of counting.

The Returning Officer will go on excluding the candidates with the lowest number of votes in subsequent rounds of counting till either one of the continuing candidates gets the required quota or till only one candidate remains in the field as the continuing candidate and shall declare him/her as elected.

In the Presidential Election of 1969, the quota fixed for election was 4,18,169 votes. As no candidate secured the required quota in the first count, candidate after candidate was excluded till only two candidates, namely, Shri V.V. Giri (4,20,077 votes) and Dr. Neelam Sanjiva Reddy (4,05,427 votes) remained in the field. Shri V.V. Giri who secured the quota was declared elected by the Returning Officer.

Notification of Election

The term of office of the President of India Smt. Pratibha Devisingh Patil is up to 24 July 2012. Thus, an election is due to be held for electing a new President before 24 July 2012. Under the provisions of the Presidential and Vice-Presidential Elections Act, 1952, the notification calling the election can be issued by the Election Commission of India on or after the sixtieth day before the expiry of the term of office of the outgoing President. That is, the notification containing the programme of election to the office of the President, can be issued by the Election Commission on any day after 25 May 2012.

Returning Officer

By convention, the Secretary-General, Lok Sabha or the Secretary-General, Rajya Sabha is appointed as the Returning Officer by rotation. For the 2007 Presidential Election, the Secretary-General, Lok Sabha was appointed as the Returning Officer. Therefore, for the 2012 Presidential Election, the Secretary-General, Rajya Sabha by rotation may be appointed as the Returning Officer. Two other senior officers of the Rajya Sabha Secretariat and the Secretaries and one more senior officer of Legislative Assemblies of all States including NCT of Delhi and Union territory of Puducherry may be appointed as the Assistant Returning Officers.

Place of Poll

A room in the Parliament House in New Delhi and a room in the State Legislative Assembly Secretariats is generally fixed as place of poll. The members of Parliament normally vote in New Delhi and the members of the State Legislative Assemblies, including the members of the Legislative Assemblies of NCT of Delhi and Union territory of Puducherry, normally vote at the place fixed in each State Capital. However, facilities are provided by the Commission for any member of Parliament to vote in the capital of his State and similarly, if any member of any State Legislative Assembly unavoidably stays in Delhi on the date of poll, he is given the facility to vote at the polling booth set up in the Parliament House. However, due intimation of such intention to vote at a place other than the place where a member is designated to vote must be received in the Election Commission well in advance to make necessary arrangements.

Dispute over Election

Under article 71 of the Constitution, doubts and disputes arising out of, or in connection with, the election of President shall be inquired into and decided by the Supreme Court, whose decision shall be final.

A petition calling in question a Presidential Election may be presented to the Supreme Court by any candidate at such election, or by twenty or more electors joined together as petitioners. Any such petition may be presented at any time after the date of publication of the declaration containing the name of the returned candidate at the election but not later than thirty days from the date of such publication.

Related Laws

The Presidential and Vice-Presidential Elections Act, 1952 and the rules framed thereunder, as amended from time to time, lay down in detail the process and procedure for the election of the President and the Vice-President commencing with the appointment of the Returning Officer by the Election Commission.

The experience of the past elections to the office of the President held in 1952, 1957, 1962, 1967 and 1969 revealed that some persons often offered themselves as candidates for the highest office of President without even a remote chance of getting elected. Another matter of concern was the light-hearted manner in which persons resorted to a court of law for challenging the election to the office of the President. In order to remedy these shortcomings, the Presidential and Vice-Presidential Elections Act, 1952 was amended in 1974 and in 1997. Following are some of the important amendments in the law:

- Till 1974, only one proposer and one seconder was needed to subscribe the nomination paper of a prospective Presidential candidate and no amount was required as security deposit along with the nomination paper. In 1974, the nomination paper was required to be subscribed by at least 10 electors as proposers and 10 electors as seconders. In 1997, this number was increased to 50 proposers and 50 seconders.
- In 1974, the security deposit of ₹ 2,500 was introduced which was increased to ₹ 15,000 in 1997. However, a candidate nominated by more than one nomination paper has to make only one deposit.
- No elector shall subscribe whether as proposer or as seconder, more than one nomination paper at the same election and if he does so, his signatures shall be inoperative on any paper other than the first one delivered.
- Not more than four nomination papers can be filed by or on behalf of a candidate or received by the Returning Officer.

Return of Forfeiture of Candidate's Deposit

The deposit shall be forfeited if the candidate is not elected and the number of valid votes polled by him does not exceed one-sixth of the number of votes necessary to secure return of a candidate at such election. In other cases, the deposit will be returned to the candidate.

Presidential Elections — At a Glance

Election	No. of Candidates	Value of Vote of each Member of Parliament	Total Votes Polled
First Presidential Election, 1952	5	494	6,05,386
Second Presidential Election, 1957	3	496	4,64,370
Third Presidential Election, 1962	3	493	5,62,945
Fourth Presidential Election, 1967	17	576	8,38,048
Fifth Presidential Election, 1969	15	576	8,36,337
Sixth Presidential Election, 1974	2	723	9,54,783
Seventh Presidential Election, 1977	1	702	Elected Unopposed
Eighth Presidential Election, 1982	2	702	10,36,798
Ninth Presidential Election, 1987	3	702	10,23,921
Tenth Presidential Election, 1992	4	702	10,26,188
Eleventh Presidential Election, 1997	2	708	10,06,921
Twelfth Presidential Election, 2002	2	708	10,30,250
Thirteenth Presidential Election, 2007	2	708	9,69,422

Interesting Facts

- The Fourth Presidential Election held in 1967 had as many as 17 candidates out of which 9 candidates had 'Nil' votes. The Fifth Presidential Election held in 1969 had 15 candidates out of which 5 candidates had 'Nil' votes.
- It was for the first time in 1969 that no candidate could secure the required quota in the first count in the Presidential Election.
- In 1977, for the Seventh Presidential Election, in all 37 candidates filed their nominations. On scrutiny, the Returning Officer rejected the nominations filed by 36 candidates. Thus, only one validly nominated candidate Dr. Neelam Sanjiva Reddy, remained in the field who was declared elected unopposed. This was for the first time when a candidate was declared elected to the highest office of the President of India without a contest.
- On 25 July 2007, Smt. Pratibha Devisingh Patil created history by being the first woman who was elected to the office of the President.

Prepared by Smt. Manju Sharma, Additional Director and Smt. Urmila Sharma, Deputy Director under the supervision of Shri P.K. Misra, Joint Secretary and Smt. Renu Sadana, Director, with inputs from the Election Commission of India, for the use of Members of Parliament. It is intended to serve as a background aid. Feedback is welcome and may be sent to lca-iss@sansad.nic.in.