

Presidential Election IN INDIA

Under the Constitution of India, there shall always be a President of India (See Article 52 of the Constitution). He holds the highest elective office in the country and is elected in accordance with the provisions of the Constitution and the Presidential and vice-Presidential Elections Act, 1952. The said Act is supplemented by the provisions of the Presidential and Vice-Presidential Elections Rules, 1974, and the said Act under Rules form a complete Code regulating all aspects of conduct of elections to the Office of the President. The President holds office for a period of five years from the date on which he enters upon his office .

In the context of the above election, some questions which may be frequently asked (FAQs) and replies thereto are given below to remove any doubts and confusion which may be arising in the minds of the intending candidates, electors and the general public:

Who elects the President of India: The President is elected by an Electoral College, which consists of the elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of all the States and also of NCT of Delhi and the Union Territory of Puducherry. [Article 54 of the Constitution of India]

What is the term of the office of the President : The President shall hold office for a term of 5 years from the date on which he enters upon his office. He shall, however, continue to hold office notwithstanding the expiry of his term, until his successor enters upon his office. [Article 56 of the Constitution of India]

When is the election of the Office of President of India held : Under the provisions of sub-section (3) of Section 4 of the Presidential and Vice-Presidential Elections Act, 1952, the notification calling the election to the office of the President can be issued by the Election Commission on any day within the period of sixty days before the expiry of the term of office of the outgoing President. The election schedule shall be so fixed, that the President-elect is able to enter upon his office on the day following the expiry of the term of the outgoing President.

Who conducts the election to the Office of President of India : Under Article 324 of the Constitution of India, the authority to conduct elections to the Office of President is vested in the Election Commission of India.

What electoral system/process is followed for the election to the office of the President : As per Article 55(3) of the Constitution of India, the election of the President shall be held in accordance with the system of proportional representation by means of single transferable vote and the voting at such election shall be by secret ballot.

What are the Qualifications required by a candidate to contest the election to the Office of the President of India : Under Article 58, a candidate should fulfill the following eligibility conditions to contest the election to the Office of President: -

1. Must be a citizen of India,
2. Must have completed 35 years of age,
3. Must be eligible to be a member of the Lok Sabha,
4. Should not be holding 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, the candidate may be holding the office of President or Vice-President or Governor of any State or Ministers of the Union or any State and shall be eligible to contest election.

what are the conditions to be fulfilled by a candidate for his nomination to be valid : A nomination paper of a candidate for the election has to be made in the prescribed form (Form 2 appended to the Presidential and Vice-Presidential Elections Rules, 1974) and it has to be subscribed by at least fifty electors as proposers and at least fifty electors as seconders.

- The nomination paper duly completed in all respects has to be presented to the Returning Officer, between 11AM and 3PM on any day other than on a public holiday appointed for the purpose by the Election Commission, either by the candidate himself or by any of his proposers or seconders. Here DzElectorsdz mean elected MPs and elected MLAs who are electors for Presidential Election.
- The Security Deposit for the election, of Rs.15000/- should also be deposited either in cash with the Returning Officer or a receipt showing that the amount has been deposited by the candidate or on his behalf in the Reserve Bank of India or in a Government Treasury should be furnished along with the nomination paper.
- The candidate is also required to furnish a certified copy of the entry showing his name in the current electoral roll for the Parliamentary Constituency in which the candidate is registered as an elector. [see Sections 5B and 5C of the President and Vice-President Elections Act, 1952]

Who is appointed the Returning Officer/Assistant Returning Officer for the election to the Office of President of India : By convention, the Secretary General, Lok Sabha or the Secretary General, Rajya Sabha is appointed as the Returning Officer, by rotation. Two other senior officers of the Lok Sabha/ 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, are also appointed as the Assistant Returning Officers. The Election Commission of India makes such appointments.

[For the Presidential Election, 2017 the Secretary General Lok Sabha is the Returning Officer]

Can a Candidate submit more than one nomination paper? What would be the security deposit to be made by such candidate : Yes. A candidate can file a maximum of four nomination papers. However, he is required to make only one security deposit in this regard. [see Section 5B (6) and 5C of the President and Vice-President Elections Act, 1952]

Can an elector propose or second the nomination of more than one candidate at a Presidential election : No. An elector can propose or second the name of only one candidate at a Presidential election. If he subscribes as proposer or seconder, the nomination papers of more than one candidate, his signature shall be deemed operative only on the nomination paper first delivered to the Returning Officer. [see Section 5B(5) of the President and Vice-President Elections Act, 1952]

Who scrutinizes the nomination papers filed by the candidates and who can be present at the time of such scrutiny : All nomination papers received by the Returning Officer during the period specified for the purpose by the Election Commission are scrutinized by the Returning Officer himself on the date fixed by the Election Commission under Sub-Section (1) of Section 4 of the Presidential and Vice-Presidential Elections Act, 1952. At the time of such scrutiny, the candidates, one proposer or one seconder of each candidate and one other person duly authorized, in writing, by each candidate shall be entitled to be present, and they shall be given all reasonable facilities for examining the nomination papers of the candidates and raise objections in regard to those nomination papers.

What are the grounds for rejection of the nomination of a candidate in the Presidential election : A nomination paper may be rejected by the Returning Officer on the following grounds under Section 5E of the Presidential and Vice-Presidential Elections Act, 1952: -

1. On the date of scrutiny of nominations, the candidate is not eligible for election as President under the Constitution; or
2. if any of the proposers or seconders is not qualified to subscribe a nomination paper, i.e., he is not an elector at the election; or
3. if it is not subscribed by the required number of proposers and/or seconders; or
4. if the signature of the candidate or any of the proposers or seconders is not genuine or has been obtained by fraud; or
5. if the nomination paper is not presented in person by the candidate or any of his proposers or seconders or if it is not delivered to the Returning Officer, within the hours and dates prescribed for the purpose or at the place appointed for the purpose, or the candidate has failed to make the required security deposit in the prescribed manner

However, a candidate's nomination shall not be rejected, if he has submitted another set of nomination papers, which are without any irregularity or defect. A candidate's nomination shall not be rejected on the ground of any defect that is not of substantial character.

Where is the poll for election to the Office of President held : A Room in the Parliament House in New Delhi and a room in the Secretariat building of State Legislative Assemblies in each state, including NCT of Delhi and UT of Puducherry are generally fixed as places of poll, by the Election Commission. [see Rule 7 of the Presidential and Vice-Presidential Elections Rules, 1974]

Can the electors choose their place of voting : Yes. While normally Members of Parliament vote in New Delhi and the members of the State Legislative Assemblies, including the members of the Legislative Assemblies of NCT of Delhi and UT of Puducherry vote at the place fixed in each State/UT capital, facilities are provided by the Election Commission for any MP to vote in the capital of State and similarly an MLA may vote at the polling booth set up in the Parliament House, if he is in Delhi on the date of poll.

- However, the MP or MLA who opts to vote in a place other than the place where the member is designated to vote is required to intimate the same to the Commission well in advance (ten days) for making necessary arrangements.
- In exceptional circumstances, MPs and MLAs may be permitted by the Commission to vote at other State Capitals also.

What is the colour and form of ballot papers used in the election to the office of the President : The Election Commission has directed that the ballot papers should be printed in 2 (two) colours- in green for use by Members of Parliament and in pink for use by the Members of the State Legislative Assemblies. The ballot papers are printed with two columns-first column containing the names of the candidates and the second column for marking preferences by the elector for each such candidate. The ballot papers are printed in Hindi and English for use by MPs and in the official language(s) of the State and in English for use by the MLAs of the State concerned. [see Rule 10 of the Presidential and Vice-Presidential Elections Rules, 1974]

Is the value of vote of each elector the same: No. The value of votes of MLAs would differ from State to State as the value of each such vote is calculated by the process explained below. However, the value of votes of all MPs is the same.

How is the value of votes of members of the Electoral College calculated : The value of votes of electors is basically determined on the basis of population of the States in accordance with the manner laid down in Article 55(2) of the Constitution.

- The Constitution (Eighty-fourth Amendment) Act, 2001 provides that until the population figures for the first census to be taken after the year 2026 have been published, the population of the States for the purposes of calculation of value of the votes for the Presidential Election shall mean the population as ascertained at the 1971 census.
- The value of the vote of each member of a State Legislative Assembly included in the Electoral College is calculated by dividing the population of the State concerned (as per 1971 Census) by

the total number of elected members of the Assembly, and then further dividing the quotient by 1000.

- If the remainder, while so dividing is 500 or more, then the value is increased by 313. Total Value of votes of all members of each State Assembly is worked out by multiplying the number of elective seats in the Assembly by the number of votes for each member in the respective State.
- The total value of votes of all the States worked out as above in respect of each State and added together is divided by the total number of elected members of Parliament (Lok Sabha 543+Rajya Sabha 233) to get the value of votes of each Member of Parliament.

VALUE OF VOTES OF ELECTED MEMBERS OF THE STATE LEGISLATIVE ASSEMBLIES AND BOTH HOUSES OF PARLIAMENT AS PER PROVISIONS OF ARTICLE 55(2) OF THE CONSTITUTION OF INDIA

(A) VALUE OF EACH VOTE OF MEMBERS OF PARLIAMENT

TOTAL MEMBERS

LOK SABHA (543) + RAJYA SABHA (233) = 776

5,49,495

VALUE OF EACH VOTE = $\frac{5,49,495}{776} = 708$

(B) TOTAL VALUE OF VOTES OF

776 MEMBERS OF PARLIAMENT = 708 X 776 = 5,49,408

(C) TOTAL ELECTORS FOR THE

PRESIDENTIAL ELECTION = MLAs (4120) + M.Ps (776) = 4896

(D) TOTAL VALUE OF VOTES OF 4896 ELECTORS FOR

THE PRESIDENTIAL ELECTION 2017 = 5,49,495 + 5,49,408 = 10,98,903

What is the manner/procedure for recording votes at an election to the office of President : In accordance with the system of proportional representation by means of single transferable vote, every

elector can mark as many preferences, as there are candidates contesting the election. These preferences for the candidates are to be marked by the elector, by placing the figures 1,2,3, 4, 5 and so on, against the names of the candidates, in the order of preference, in the space provided in column 2 of the ballot paper. The preferences can be indicated in international form of Indian numerals or in the form used in any Indian language or in Roman form but the preferences cannot be indicated in words like one, two, first preference second preference etc. [see Rule 17 of the Presidential and Vice-Presidential Rules, 1974].

Is it compulsory for an elector at a Presidential election to mark his preference for all candidates : No. Only the marking of first preference is compulsory for a ballot paper to be valid. Marking other preferences is optional.

Are the provisions of the Anti-Defection Law applicable in Presidential elections : No. Members of the Electoral College can vote according to their wish and are not bound by any party whips. The voting is by secret ballot. Therefore, Party whip does not apply in this election.

Are Nominated Members of either Houses of Parliament or a State Legislative Assembly eligible to vote at the election to the Office of President : No. Only elected members of both Houses of Parliament and of the State Legislative Assemblies are members of the Electoral College for Presidential Election. Therefore, nominated members cannot vote in this election. [see Article 54 of the Constitution.]

Can an elector at a Presidential election exercise his vote by proxy : No.

Whether provisions of NOTA are applicable : No.

Can a disabled or illiterate elector in a Presidential election take the help of a companion to record his vote : No. Unlike in Parliamentary and Assembly election, an elector cannot take the help of a companion. He can take only the assistance of the Presiding Officer to record his vote, if he is unable to read the ballot paper or to record his vote by reason of his illiteracy or blindness or any physical or other disabilities. The Presiding Officer is obliged under the rule to record the vote according to the wishes of the elector and keep such vote secret. [see Rule 19 of the Presidential and Vice-Presidential Rules, 1974].

How can an elector who is under preventive detention during the period of Presidential election cast his vote : An elector under preventive detention can cast his vote through postal ballot, which will be sent to him by the Election Commission on the place of his detention. [see Rule 26 of the Presidential and Vice-Presidential Rules, 1974].

Is the winner in a Presidential election elected on the basis of obtaining simple majority? Or by securing a specified quota of votes : As the Presidential election is held in accordance with the system of proportional representation by means of the single transferable vote, every elector has as many preferences as candidates contesting the elections. The winning candidate has to secure the required

quota of votes to be declared elected, i.e., 50% of valid votes polled +1. [see the schedule of the Presidential and Vice-Presidential Rules, 1974].

What are the grounds for rejection of the ballot papers : The Returning Officer shall reject a ballot paper as invalid on which:

1. The figure 1 is not marked; or
2. The figure 1 is marked against the name of more than one candidate or is marked in a manner which renders it doubtful as to which candidate it is intended to apply; or
3. The figure 1 and some other figure is marked against the name of the same candidate; or
4. Any mark is made by which the elector may be identified.

A ballot paper will also be invalidated if the preference is marked in words like one, two, three or first preference, second preference, third preference, etc., instead of in figures 1, 2, 3 etc. A postal ballot may be rejected if the signature of the elector on the declaration and the attestation form received with the ballot paper is not duly attested by the authority specified in such form (who is normally the officer-in-charge of the jail or the place of detention). [see rule 31 of the Presidential and Vice-Presidential Rules, 1974].

What is the procedure of counting in a Presidential election? How is the quota of votes to be secured by the winning candidate determined : After the valid ballot papers are segregated from the invalid ones, the valid ballot papers are distributed among the contesting candidates on the basis of first preference marked on each of them for those candidates.

- The value of votes which each contesting candidate gets in this process is ascertained by multiplying the number of ballot papers on which the first preference is marked for him, by the value of vote which each ballot paper of a member (MP or MLA) represents as indicated on the ballot paper itself.
- The total votes secured by each contesting candidate are then ascertained by adding together the value of votes secured by him from the Members of Parliament and the Members of the State Legislative Assemblies. This is the first round of counting.
- For ascertaining the quota sufficient to secure the return of a candidate, the value of votes credited to each contesting candidate in the first round of counting is added up to determine the total value of valid votes polled at the election.
- Such total value of valid votes is then divided by two, and one is added to the quotient so obtained, ignoring the remainder, if any. The number so determined, is the quota, which a candidate should secure to be declared elected.
- If the total value of the votes credited to any candidate at the first count, is equal to, or greater than, the quota sufficient to secure the return of a candidate, that candidate is declared elected by the Returning Officer.

- If, however, after the first round of counting, no candidate secures the requisite quota, then the counting proceeds on the basis of a process of elimination and exclusion, whereby the candidate credited with the lowest number of votes is excluded and all his ballot papers are distributed among the remaining (continuing) candidates on the basis of the second preferences marked, if any, thereon.
- The value of such transferred ballot papers will be the same as the value at which the excluded candidate received them. The ballot papers on which second preference is not marked is treated as exhausted ballot papers and shall not be further counted, even if the third or subsequent preferences are marked thereon.
- If no candidate secures the requisite quota even at this stage after distribution of votes of the excluded candidate then the process of counting will continue on the same basis of elimination and exclusion of the candidate with lowest vote till a candidate secures the required quota of votes.
- In case, even after the exclusion of the candidates receiving the lowest number of votes, no candidate secures the requisite quota and ultimately one candidate remains as the lone continuing candidate, he is declared elected even if he has failed to secure the quota sufficient to secure the return of a candidate. [see the schedule to the Presidential and Vice-Presidential Rules, 1974].

Where is the counting of votes in a Presidential election held : The counting of votes is done in the office of the Returning officer at New Delhi.

When is the security deposit of a candidate in a Presidential Election forfeited : The Security 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. The security deposit is returned by ECI. [see Section 20A of the Presidential and Vice-Presidential Act, 1952].

Can the result of the election to the Office of President be challenged? If so, what is the proper procedure for doing so : Yes. An election to the Office of the President can be called in question by means of an election petition presented to the Supreme Court after the election is over.

Such election petition should be presented by a candidate or twenty or more electors joined together as petitioners, and may be presented at any time after the date of publication of the declaration containing the name of the returned candidate at the election under Section 12 (of the Presidential and Vice-Presidential Elections Act, 1952), but not later than 30 days from the date of such publication. Subject to these provisions, the Supreme Court, under Article 145 of the Constitution, may regulate the form, manner and the procedures connected with such election petitions. [see Sections 13 to 20 of the Presidential and Vice-Presidential Act, 1952].

Executive power of the Union -

(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall-

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(b) prevent Parliament from conferring by law functions on authorities other than the President.

Election of President - 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.

[Explanation.-In this article and in article 55, State includes the National Capital Territory of Delhi and the Union territory of Pondicherry.]

Manner of election of President -

(1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

(2) For the purpose of 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 of 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 sub-clause (a) shall be further increased by one;

(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 sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

_47[Explanation.-In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.]

Term of office of President -

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

Provided that-

- (a) the President may, by writing under his hand addressed to the Vice-President, resign his office;
 - (b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61;
 - (c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.
- (2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

Eligibility for re-election - A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

Qualifications for election as President -

- (1) No person shall be eligible for election as 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 House of the People.

(2) A person shall not be eligible for election as 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_48*** of any State or is a Minister either for the Union or for any State.

Conditions of President's office -

(1) The 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 President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also 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.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

Oath or affirmation by the President -

Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the

senior-most Judge of the Supreme Court available, 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 faithfully execute the office of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

Procedure for impeachment of the President -

(1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless-

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

Time of holding election to fill vacancy in the office of 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 President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

Source- Election commission of india