

The Vice President

- **Article 63** provides that there shall be a Vice President of India
- The office of vice president is the second highest office in the country
- **Article 64** provides that vice president shall be ex officio chairman of Council of States. He shall not hold any office of profit
- During any period when the vice president acts as president or this charges the functions of President under article 65 he shall not perform the duties of the office of chairman of Council of states and shall not be entitled to any salary or allowances payable to the chairman of the Council of States.
- Office Of Political Continuity

- **Election of vice president article 66**
- Article 66 provides that vice president shall be elected by the member of electoral college consisting of the members of both the houses of parliament
- The election shall be held in accordance with the system of proportional representation by means of Single Transferable Vote and secret ballot
- It is to be noted that the Electoral College for election of vice president shall consist of both elected and nominated members of parliament.
- It does not include the members of state legislative assembly
- The vice president shall not be a member of either House of Parliament or of a house of Legislature or any state.
- If a member of either of the House of Parliament or of house of Legislature or 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 the vice president's office.

- **Qualifications of election as vice president [article 66[3]]**

- Article 66(3) provides the following qualifications of the election as vice president
- He should be a citizen of India.
- He should have completed 35 years of age.
- He should be qualified for election as a member of Rajya Sabha
- He should not hold any office of profit under union government or any State government or any local authority or any other public authority.
- A person shall not be deemed to hold any office of profit by the reason only that he is the president or vice president of the union for the governor of any state or is a Minister either for Union or any state.

- **Term , resignation and removal [article 67]**

- **Article 67** provides that vice president hold office for a term of five years from the date on which he enters upon his office
- **Resignation:** He can resign from his office at any time by addressing the resignation letter to the president.
- **Removal:** He can be removed from the office before completion of office term.
- He can be removed by a resolution of Rajya Sabha passed by an absolute majority [that is a majority of total members of house] an agreed to by the Lok Sabha
- No such resolutions can be moved analyst at least 14 days advance notice has been given
- No Grounds has been mentioned in the constitution for his removal.

- The vice president can hold office beyond his term of 5 years until his successor resumes charge.[68]
 - He is also eligible for re-election to that office. He may be elected for any number of terms.
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- **Oath by the Vice-President article 69**
 - **Article 69** provide that before entering upon his office, the vice president has to make and subscribe to an oath or affirmation
 - In his of the vice president swear:
 - *True faith and allegiance to the constitution of India and to faithfully discharge the duties of his office*
 - The Oath of office to the vice president is administered by the President or some person appointed on that behalf by him.
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- **Election disputes article 71**
 - **Article 71** provides that matters related to or connected with the elections of president and the vice president
 - All doubts and disputes in connection with the election of President and Vice President are decided by Supreme Court whose decision is final.
 - The election of a person as the President or vice president cannot be challenged on the ground that the electoral college was incomplete [that is existence of any vacancy among the members of the electoral college].

- Emoluments: the constitution has not fixed any emoluments for vice president in that capacity. Hi he draws his regular salary in capacity of ex officio Chairman of Rajya Sabha.

The Prime Minister and the Council of Ministers

The Prime Minister

- **Appointment of the Prime Minister**
- Article 75 (1) provides that the Prime Minister shall be appointed by the President
- According to the conventions of the parliamentary system of government the president has to appoint the leader of the majority party in the Lok Sabha as Prime Minister
- When no party has a clear majority in Lok Sabha then the president usually appoints the leader of the largest party or coalition in Lok Sabha as prime minister and ask him to seek vote of confidence in Lok Sabha
- ***In Parliamentary form of Government the president is the head of the state while Prime Minister is the head of government***
- **Oath and the term of office**
 - Before the Prime Minister enters upon his office, The President administers to him The Oath of office and secrecy. The form of Oath of office and secrecy for prime minister is similar to that of any Union Minister.
 - **Term: article 75 [2]** to provides that the Minister shall hold office during the pleasure of the president. Therefore the term of Prime Minister is not fixed and he holds the office during the pleasure of the President.
 - However the President cannot dismiss the Prime Minister anytime. So long as the Prime Minister enjoying the majority support in Lok Sabha, he cannot be dismissed by the president.
 - If he loses the confidence of Lok Sabha, he must resign or the president can dismiss him.

- **Duties of prime minister [article 78]**

- Article 78 provides that it is the duty of prime minister
 - A. To communicate to the president all the decisions of the Council of Ministers related to the administration of the affairs of Union and proposals for legislation.
 - B. To furnish such information relating to the administration of the affairs of the union proposals for legislation as the President may call for; and
 - C. If the president so required to submit for the consideration of the Council of Ministers any matter on which a decision has been taken in by a Minister but which has not being considered by the Council.

COUNCIL OF MINISTERS

- Appointment of other ministers: the Minister shall be appointed by president on the advice of the Prime Minister **article 75[1]**
- A person who is not a member of either House of Parliament can also be appointed as minister. But within six months he must become a member of either House of Parliament; otherwise he sees is to be a Minister **article 75[5]**
- In **SP Anand versus H.D. Deve Gowda 1997** Supreme Court held that a person who is not a member of either House of the Parliament can be appointed by the prime minister for 6 months.
- Article 74 and 75 broadly deal with principles of Parliamentary form of Government post of do it has not been set out in detail

- **Council of Ministers to aid and advise president [article 74]**
- **Article 74[1]** provides that there shall be a Council of Ministers with the prime minister at the head to Aid and advise the President who shall in exercise of his function, act in accordance with such advice.[PM- Primus inter pares]
- The president may require the Council of Ministers to consider such advice, either generally or otherwise, and the president shall act in accordance with the advice standard after such reconsideration [**provision to article 74[1]**] added by the 44th constitutional amendment.
- The 42nd Constitutional Amendment 1976 has amended article 74 [1] and has made the advice binding on the president.
- The question whether any, and if so what, advice was attended by ministers to president shall not be inquired in any court room. Article 74(2)
- In **UN Rao versus Indira Gandhi 1971** the Supreme Court has held that article 74[1] is mandatory and the president cannot exercise the executive power without aid and advice to the Council of Ministers. Even after The dissolution of Lok Sabha the Council of Ministers does not cease to hold their office.
- In **Ram Jawaya Kapur Vs State Of Punjab 1955** the Supreme Court held that the president has been made a formal or a constitutional head of the executive and the real executive powers are vested in the Council of Ministers.

- **Principle of collective responsibility and individual responsibility**

Collective responsibility

- Principle of collective responsibility is a Hallmark of Parliamentary form of Government. In India it is important in **article 75[3]** e of the constitution.
- This provides that the Council of Ministers shall be collectively responsible to the house of people.

- When the Lok Sabha passes on no confidence motion against the Council of Ministers, all the ministers have to resign.

Individual responsibility

- Article 75 also contains the principle of individual responsibility.
- Article 75 [2] states that ministers hold office during the pleasure of president.
- Each member is responsible for the works and functioning of his ministries and department. The president can remove a Minister even at a time when the Council of Ministers enjoys the confidence of the Lok Sabha. The president removes a Minister only on the advice of the prime minister.

- **Size of Council of Ministers**

- **Article 75[1 A] Provides** that the total number of ministers, including the prime minister in the Council of Ministers shall not exceed 15% of the total number of members of the house of the people.
- The clause was inserted by the **91st constitutional amendment 2003**
- At the top of all these ministers stands Prime Minister the supreme governing authority of the country.

Attorney General for India

- **Article 76** provides for the office of Attorney General for India. He is appointed by the president.
- **Qualification:** he must be a person qualified to be appointed as a judge of Supreme Court **[article 76]**
- **Tenure:** the attorney-general shall hold office during the pleasure of president. **[Article 76[4]].**
- He is the highest law officer of the country

Duties of attorney general

- It shall be the duty of Attorney General to give advice to the Government of India upon such legal matters, and to perform such other duties of legal character as may be assigned from time to time by the president. **[article 76[2]].**
- He will also discharge functions conferred on him by or under the constitution or any other law for the time being in force. **[Article 76[2]].**
- In the performance of his duties he shall have the right to audience in all courts in territory of India **[article 76[3]]**