ELECTION TO THE OFFICE OF VICE-PRESIDENT OF INDIA

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ELECTION TO THE OFFICE OF VICE-PRESIDENT OF INDIA

Frequently Asked Questions

Under the Constitution of India, there shall be a Vice-President of India (See Article 63 of the Constitution). 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/she 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.

He/She holds the second 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 and Rules form a complete Code regulating all aspects of conduct of elections to the Office of the Vice-President. The Vice-President holds office for a period of five years from the date on which he enters upon his office and, accordingly, an election is due to be held this year (2022) to elect the new Vice-President before the expiration of the term of the incumbent Vice-President of India, Shri M. Venkaiah Naidu, on 10th August, 2022.

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:

1. Who elects the Vice-President of India?

Answer: The Vice-President is elected by an Electoral College, which consists of the members of the Lok Sabha and Rajya Sabha (both elected and nominated members) [Article 66 of the Constitution of India].

2. What is the term of the office of the Vice-President?

Answer: The Vice-President shall hold office for a term of 5 years from the date on which he/she enters upon his/her office. However, notwithstanding the expiration of his/her term, he/she shall continue to hold office, until his/her successor enters upon his/her office. In the case of death, removal or resignation of the Vice-President, the Constitution does not provide
any method of succession, apart from a fresh election. However, in such event, the Deputy Chairman can function as the Chairman of the Rajya Sabha. [*Article 67 of the Constitution of India*]

3. **When is the election of the Office of Vice-President of India held?**

   **Answer:** Under the provisions of sub-section (3) of section 4 of the Presidential and Vice-Presidential Elections Act, 1952, the notification under sub-section (1) of section 4 of the said Act calling the election can be issued by the Election Commission on or after the sixtieth day before the expiry of the term of office of the outgoing Vice-President. The election schedule shall be so fixed that the Vice-President elect is able to enter upon the office on the day following the expiry of the term of the outgoing Vice-president.

4. **What is the legal framework for the election to the office of Vice-President of India?**

   **Answer:** Election to the office of Vice-President of India is governed by the provisions contained in Articles 66 to 68 of the Constitution of India and the Presidential and Vice-Presidential Elections Act, 1952 and the Rules made thereunder.

5. **Who conducts the election to the Office of Vice-President of India?**

   **Answer:** Under Article 324 of the Constitution of India, the authority to conduct elections to the Office of Vice-President is vested in the Election Commission of India.

6. **What electoral system/process is adopted for the election to the office of the Vice-President?**

   **Answer:** As per Article 66(1) of the Constitution of India, the election of the Vice-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.

7. **What are the Qualifications required by a candidate to contest the election to the Office of the Vice-President of India?**

   **Answer:** A candidate should satisfy the following requirements to contest the election to the Office of Vice-President:

   1. Must be a citizen of India.
2. Must have completed 35 years of age (on the date of scrutiny of nomination).
3. Must be eligible to be a member of the Rajya Sabha.
4. Must 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.

{The offices of President and Vice-President, Governor of any State and Ministers of Union or State are not deemed to be office of profit for this purpose. [Article 66(3) of the Constitution of India]}

8. Apart from the above what are the conditions to be fulfilled by a candidate for his/her nomination to be valid?

Answer: Nomination paper of a candidate for the election in the prescribed form (Form 3 appended to the Presidential and Vice-Presidential Elections Rules, 1974) has to be subscribed by at least twenty electors as proposers and at least another twenty electors as seconders and has to be presented to the Returning Officer, between 11 A.M. and 3 P.M on any day appointed for the purpose by the Election Commission, either by the candidate himself/herself or by any of his/her proposers or seconders.

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/her 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/her name in the current electoral roll for the Parliamentary Constituency in which the candidate is registered as an elector. [see Section 5B (1(b)) and 5C of the President and Vice-President Elections Act, 1952]

9. Who is appointed the Returning Officer/Assistant Returning Officer for the election to the Office of Vice-President of India? Who makes such appointment?

Answer: 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 are appointed as the Assistant Returning Officers. The Election Commission of India makes such appointments. {For the current (2022) election to
the Office of Vice-President, the Secretary General, Lok Sabha has been appointed as the Returning Officer)

10. Can a Candidate submit more than one nomination paper? What would be the security deposit to be made by such candidate?

Answer: Yes. A candidate can present a maximum of four nomination papers. However, he/she 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]

11. Can an elector propose or second the nomination of more than one candidate at a Vice-Presidential election?

Answer: No. An elector can propose or second the name of only one candidate at a Vice-Presidential election. If he/she subscribes as proposer or seconder, the nomination papers of more than one candidate, his/her 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]

12. What are the grounds for rejection of the nomination of a candidate in the Vice-Presidential election?

Answer: A nomination paper may be rejected on the following grounds:

1. On the date of scrutiny of nominations, the candidate is not eligible for election as Vice-President under the Constitution; or

2. if any of the proposers or seconders is not qualified to subscribe a nomination paper i.e. he/she 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/her proposers or seconders or if it is not delivered to the Returning Officer, by the prescribed date and within the hours 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/she 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. [see Section 5E (3) of the President and Vice-President Elections Act, 1952]

13. What is the colour and form of ballot papers used in the election to the office of the Vice-President?

Answer: Ballot papers for Vice-Presidential elections are printed in white colour. The ballot papers are printed with two columns-first column containing the names of the candidates and, the second column, for making preference by the elector for each such candidate. The ballot papers are printed in Hindi and English. [see Rule 10 of the Presidential and Vice-Presidential Elections Rules, 1974]

14. Where is the election to the Office of Vice-President held?

Answer: A Room in the Parliament House in New Delhi is generally fixed as the place of poll.

15. How is the value of votes of members of the Electoral College calculated?

Answer: Unlike the Presidential election (where the value of votes cast by the Members of Parliament and of the various State Legislative Assemblies is different), the value of every vote cast in the Vice-Presidential election has the same value i.e. 1(one).

16. What is the manner/procedure for recording votes at an election to the office of Vice-President?

Answer: 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 preference 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 can not be indicated in words like 'one', 'two', 'first preference', 'second preference', etc. [see Rule 17 of the Presidential and Vice-Presidential Rules, 1974].
17. Are the provisions of the Anti-Defection Law applicable in Vice-Presidential Elections?

**Answer:** No. Members of the Electoral College can vote according to their choice/wish and are not bound by any party whip. The voting is by secret ballot.

18. Are Nominated Members of either House of Parliament eligible to vote at the election to the Office of Vice-President?

**Answer:** Yes. All members of both Houses of Parliament including Nominated members are members of the Electoral College. Therefore, nominated members can vote.

19. Can an elector at a Vice-Presidential election exercise his vote by proxy?

**Answer:** No.

20. Can a disabled or illiterate elector in a Vice-Presidential election take the help of a companion to record his/her vote?

**Answer:** No. Unlike in Parliamentary and Assembly election, an elector cannot take the help of a companion. He/She can take only the assistance of the Presiding Officer to record his/her vote, if he/she is unable to read the ballot paper or to record his/her vote by reason of his/her 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].

21. Can an elector vote by post at the Vice-Presidential election for any reason, like illness, business occupation, etc.?

**Answer:** No. Only a voter under preventive detention can vote by post.

22. How can an elector who is under preventive detention during the period of Vice-Presidential election cast his vote?

**Answer:** An elector under preventive detention can cast his/her vote through postal ballot. For that purpose, the government concerned will intimate his/her name, his/her place of detention and other relevant particulars to the Commission and the Commission will send
the postal ballot paper to the elector concerned. [see Rule 26 of the Presidential and Vice-
Presidential Rules, 1974].

23. Is the winner in a Vice-Presidential election elected on the basis of obtaining simple majority? Or by securing a specified quota of votes?
Answer: As the Vice-Presidential election is held in accordance with the system of proportional representation by means of single transferable vote, every elector has as many preferences as candidate contesting the elections. The winning candidate has to secure the required quota of votes to be declared elected, is 50% of the valid votes cast +(plus) 1. [see the schedule of the Presidential and Vice-Presidential Rules, 1974].

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

25. What are the grounds for rejection of the ballot papers?
Answer: 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.
5. A ballot paper may be invalidated if the preferences are marked in words, like, one, two, three or first preference, second preference, third preference, etc. instead of in figures 1, 2, 3 etc.
6. A postal ballot (of an elector under preventive detention) 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].
26. What is the procedure of counting in a Vice-Presidential election? How is the quota of votes to be secured by the winning candidate determined?

Answer: 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 one each of them for those candidates. The number of votes which each contesting candidate gets in this process is ascertained. The total number of valid votes secured by all contesting candidates is then ascertained by adding together the number of votes secured by each of them. This is the first round of counting.

For ascertaining the quota sufficient to secure the return of a candidate, the total number of valid votes cast at the election as ascertained in the first round of counting 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, he/she 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/her ballot papers are distributed among the remaining (continuing) candidates on the basis of the second preferences marked thereon. The ballot papers on which second preference is not marked are 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, then the process of counting will continue on the same basis of elimination and exclusion, 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/she has failed to secure the quota sufficient to secure the return of a candidate.
At an election where there are only two contesting candidates, the result of election will be known after the first round of counting itself. The candidate who has secured more number of votes than the other candidate shall be declared elected, as he has obviously secured the quota, i.e. 50% of valid votes cast plus one. [see the schedule to the Presidential and Vice-Presidential Rules, 1974].

27. Where and when is the counting of votes in a Vice-Presidential election held?
Answer: As the poll for Vice-Presidential election is taken only at one place at the Parliament Houses in New Delhi, the counting of votes is normally taken up on the day of poll itself in the same room in which the poll is taken.

28. When is the security deposit of a candidate in a Vice-Presidential Election forfeited?
Answer: The Security deposit shall be forfeited if the candidate is not elected and the number of valid votes polled by him/her 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. [see Section 20A of the Presidential and Vice-Presidential Act, 1952].

29. Can the results of the election to the Office of Vice-President be challenged? If so, what is the proper procedure for doing so?
Answer: Yes. An election to the Office of the Vice-President can be called in question by means of an election petition presented to the Supreme Court. Such election petition should be presented by a candidate or ten or more electors joined together, 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. The grounds on which an election may be challenged are specified in sub-section (1) of section 18 and section 19 of the Presidential and Vice-Presidential Elections Act, 1952. [see Sections 13 to 20 of the Presidential and Vice-Presidential Act, 1952].
30. Can Nominations be filed on 2nd and 4th Saturday (which is a bank holiday) and a gazette holiday?

**Answer:** No, as per section 2(ff) of the Presidential and Vice-Presidential Elections Act, 1952, “public holiday” means any day which is a public holiday for the purposes of section 25 of the Negotiable Instruments Act, 1881 (26 of 1881). Both are public holidays under the Negotiable Instrument Act, 1881. Therefore, the Returning Officer should not receive any nomination paper on 2nd and 4th Saturday (which is a bank holiday) and a gazette holiday.

31. Whether at the time of presentation of a nomination paper by a candidate for the Vice-Presidential Election could be accompanied by any person. If so, how many persons may accompany a candidate and whether such persons could include important leaders (even if they are not members of the Electoral College) and members of families of the candidates. Whether electronic and print media could be allowed to take photographs of the candidates and the Returning Officer while presenting/receiving the nomination papers, particularly, Lok Sabha TV, Rajya Sabha TV and ANI.

**Answer:** The Presidential and Vice-Presidential Elections Act, 1952 does not specify any limit on the number and category of persons who can accompany a candidate at the time of presentation of nomination paper to the Returning Officer. The filing of nomination paper for the Vice-Presidential Election being an immensely important event, the Commission has decided not to impose any limit on the number of persons permitted to accompany the candidate at the time of presenting of nomination paper to the Returning Officer. However, the Returning Officer may allow as many persons, including electronic and print media as can be managed in his chamber where he sits to receive nomination paper.

32. Whether the subscription by a proposer/seconder be treated as valid or invalid for those who have subscribed the Nomination Paper of a candidate, being part of the Electoral College in capacity of elected/nominated MP, at the time of filing nomination, however ceases to be an elector for Vice-Presidential Election before the date of scrutiny of nominations?
Answer: As far as subscription of a proposer/seconder is concerned, his/her status as an elector for the Vice-Presidential Election on the date of filing of Nomination by the candidate shall be operative i.e. his/her subscription shall be deemed valid only if he/she is a member of the electoral college on the date of filing of Nomination by the candidate concerned.

33. If the election of a Member of Parliament is set aside by any order of Hon'ble High Court but limited stay(with no voting rights) is granted by the Hon'ble Supreme Court on the said order, whether the said MP is eligible to cast vote in Vice-Presidential Election?

Answer: In such cases, the MP/MLA in question does not have the right to vote in Vice-Presidenti al Election.