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Article 61: Procedure for Impeachment of the President

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Article 61: Procedure for Impeachment of the President

Since 1950, no Indian President has faced impeachment. Art. 61 is the reason it is so rare.

The bar is set high on purpose. A one-fourth notice, then a two-thirds vote, twice over.



President Pratibha Patil addressing a workshop at Rashtrapati Bhavan. Photo: President's Secretariat, GODL-India, via Wikimedia Commons.

Art. 61, at a glance

- **Presidents impeached since 1950:** none.
- **Notice:** signed by 1/4th of a House, at least 14 days before the vote.
- **Vote:** 2/3rds of total membership, twice.
- **Who can start:** either House.

Impeachment: the only way to remove a President mid-term. **Total membership:** all seats in a House, vacant or not. **Quasi-judicial:** part political, part judicial. The President can defend.

The Ground and the Steps

What is the ground for impeachment?

Art. 61 sits in Part V. It sets out the only way to remove a sitting President.

The one ground is “violation of the Constitution”. The Constitution never defines the phrase.

Art. 56(1)(b) says the same thing from the other side. The President may be removed for this ground by impeachment under Art. 61.

Sources: indiankanoon.org

What are the steps?

There are four steps.

– **Notice:** at least fourteen days’ notice in writing, signed by at least one-fourth of the total members of the House.

– **Charge:** the House passes the resolution by at least two-thirds of its total membership.

– **Investigation:** the other House looks into the charge, or has it looked into. The President may appear and be represented.

– **Verdict:** if that House also passes a two-thirds resolution that the charge is sustained, the President is removed from the date of that resolution.

Sources: indiankanoon.org

Remember: Charge in one House. Investigation in the other. Two-thirds of total membership both times.

> **Quick check 1.** Only the Lok Sabha can prefer a charge of impeachment against the President. *(True or False?)* See answer ↓

Why the Bar Is So High

Why count total membership?

Removing a head of state should need wide agreement, not a narrow party majority.

The vote is of total membership, not of members present and voting. Empty seats and absentees count against the motion.

This is stricter than most amendments, which need two-thirds of members present and voting.

Two such votes are needed, one in each House. So removal needs two-thirds twice over.

Sources: indiankanoon.org

Quick check 2. Impeachment of the President needs two-thirds of members present and voting. *(True or False?)* See answer ↓

Has any President been impeached?

No. Because of this, Art. 61 rarely makes headlines.

Still, the rules matter. The high bar deters frivolous or purely political attempts.

It marks removal of the President as an extraordinary last resort.

Sources: indiankanoon.org

Think it through: why does the Constitution count total membership and not just those present?

Show the answer

Absentees and empty seats then work against the motion. The President can be removed only when a real, wide majority of the whole House agrees.

Who Votes

Do State Assemblies take part?

No. Only Parliament votes on impeachment. State Legislative Assembly members play no role.

The election of the President under Art. 54 is different. Its electoral college has the elected members of both Houses and of the State Assemblies.

So remember the pair. Art. 54 elects. Art. 61 removes.

Sources: indiankanoon.org

Do nominated members vote?

Yes. Art. 61 speaks of the total membership of the House, so nominated members take part in impeachment.

They do not vote in the election, because Art. 54 counts only elected members.

Sources: indiankanoon.org

Unlike a Money Bill, which must start in the Lok Sabha, an impeachment charge can start in either House.

Remember: Election = Parliament plus State Assemblies. Impeachment = Parliament only.

Why is it called quasi-judicial?

The House that investigates works almost like a court. The President can be heard there, through a lawyer if needed.

Because the process decides a grave charge, it copies court procedure.

So impeachment is part political and part judicial. Think of the investigating House as a jury.

Sources: indiankanoon.org

> **Quick check 3.** State Assembly members vote in a presidential impeachment. *(True or False?)* See answer ↓

After Removal

What happens to the office?

The Vice-President acts as President until a new President enters office (Art. 65).

An election to fill the vacancy must be held soon, and no later than six months after it arises (Art. 62).

The new President then serves the full five-year term.

Sources: indiankanoon.org

Can courts try a sitting President?

Art. 361 shields the President from courts for acts done in office. No criminal case can be started or continued during the term.

There is one exception. A court, tribunal or body that a House sets up to look into an Art. 61 charge may review the President's conduct.

So immunity does not block impeachment.

Sources: indiankanoon.org

How does a President resign?

Art. 56 says the President resigns in writing to the Vice-President.

The Vice-President then tells the Speaker of the House of the People at once.

Resignation is not impeachment. It needs no vote.

Sources: indiankanoon.org

Traps Examiners Set

Trap	Correct fact
Lok Sabha only	Either House may start the charge
Present and voting	Total membership
Resign to the Speaker or CJI	Resign to the Vice-President (Art. 56)
CAG removed like the President	CAG is removed like a Supreme Court Judge (Art. 148)
Art. 59, 62 or 63	Impeachment is Art. 61
Art. 361	Immunity, a different matter

> **Quick check 4.** The President resigns by writing to the Speaker of the Lok Sabha. *(True or False?)* See answer ↓

Must Know

- Ground: **violation of the Constitution**.
- Notice: **one-fourth** of total members, at least **14 days**.
- Vote: **two-thirds** of total membership, in both Houses.

Good to Know

- Either House can **start** the charge. The other **investigates**.
- The President has a **right to be heard**.
- A new President is elected within **six months**.

Great to Know

- Art. 361 immunity **does not** block an Art. 61 inquiry.
- The **Vice-President** acts as President meanwhile (Art. 65).
- State Assembly members **do not vote**.

Previous Year Questions

Asked before

PYQ 1 · UPSC CSP 2022, Q15

Which of the following is/are the exclusive power(s) of Lok Sabha?

(a) 1 and 2
(b) 2 only
(c) 1 and 3
(d) 3 only

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PYQ 2 · UPSC CDS (II) 2020, Q21

Which one among the following statements pertaining to the President's term of office is not correct?

(a) The President holds office for a term of five years

(b) The President may be removed from the office by way of impeachment

(c) The President may resign before the expiration of his/her term by writing to the Speaker of the Lok Sabha

(d) The President shall, notwithstanding the expiration of his/her term, continue to hold office until his/her successor enters upon his/her office

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Asked before

PYQ 3 · UPSC CDS (II) 2019, Q99

Which of the following statements as per the Constitution of India are not correct? 1. The President tenders his resignation to the Chief Justice of India. 2. The Vice-President tenders his resignation to the President of India. 3. The Comptroller and Auditor General of India is removed from his office in the like manner as the President of India. 4. A Judge of the Supreme Court can resign his office by writing under his hand addressed to the Chief Justice of India. Select the correct answer using the code given below.

(a) 1 and 2 only
(b) 3 and 4 only
(c) 1, 2 and 3
(d) 1, 3 and 4

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Which Article covers the procedure for impeachment of the President? Art. 61. See this question.

Quick Q&A

- Impeachment Article? Art. 61.
- Ground? Violation of the Constitution.
- Notice? 1/4th of total members, 14 days.
- Majority? 2/3rds of total membership, twice.
- Who votes? Parliament only.

Practice MCQs

1. The only ground for impeaching the President under Art. 61 is:

A. Proved misbehaviour

B. Violation of the Constitution

C. Loss of the confidence of Parliament

D. Incapacity

See answer ↓

2. A notice to move an impeachment resolution must be signed by at least what share of the House?

A. Thirty members

B. One-half of total members

C. One-tenth of members present

D. One-fourth of total members

See answer ↓

3. Impeachment of the President needs a resolution passed by at least two-thirds of:

A. Members present

B. Members present and voting

C. The Lok Sabha only

D. The total membership of the House

See answer ↓

4. After one House prefers a charge, the other House:

A. Asks the Election Commission

B. Sends it to the Supreme Court

C. Votes at once

D. Investigates it, and the President may appear

See answer ↓

5. To whom does the President address a resignation under Art. 56?

A. The Speaker

B. The Prime Minister

C. The Chief Justice of India

D. The Vice-President

See answer ↓

6. Who votes in a presidential impeachment?

A. Only the Rajya Sabha

B. Only the Lok Sabha

C. Members of both Houses of Parliament

D. Elected members of Parliament and State Assemblies

See answer ↓

Answer Key

1. **B.**
   Art. 61(1) and Art. 56(1)(b) name this one ground.
   ↑ Q1
2. **D.**
   Art. 61(2)(a) needs one-fourth of the total number of members and fourteen days' notice.
   ↑ Q2
3. **D.**
   Art. 61(2)(b) and 61(4) both speak of total membership.
   ↑ Q3
4. **D.**
   Art. 61(3) says so.
   ↑ Q4
5. **D.**
   Art. 56(1)(a) names the Vice-President, who tells the Speaker.
   ↑ Q5
6. **C.**
   Art. 61 gives the role to the two Houses of Parliament alone.
   ↑ Q6

Quick-check answers

1. **False.** Either House may prefer the charge. ↑ 1
2. **False.** It needs two-thirds of total membership. ↑ 2
3. **False.** Only Parliament votes. ↑ 3
4. **False.** The letter goes to the Vice-President. ↑ 4

Previous year answers

1. **(b) 2 only** No-confidence motions are genuinely Lok Sabha-exclusive. Ratifying an Emergency proclamation needs both Houses, and impeachment can start in either House — neither is Lok Sabha-exclusive.

2. **(c) The President may resign before the expiration of his/her term by writing to the Speaker of the Lok Sabha** Under Article 56(1)(c), the President resigns by writing to the Vice-President, not the Speaker of the Lok Sabha.
3. **(d) 1, 3 and 4** The President resigns to the Vice-President (Article 56), not the Chief Justice. The CAG is removed in the same manner as a Supreme Court judge (Article 148), not the President. A Supreme Court judge resigns by writing to the President (Article 124), not the Chief Justice. Only statement 2 is correct.

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