# The Legislative Department

## ARTICLE VI

**LEGISLATIVE DEPARTMENT**

*The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representative, except to the extent reserved to the people by the provision on initiative and referendum (Sec. 1).*

**NATURE OF LEGISLATIVE POWER**

Legislative power is the authority to *make laws and to alter and repeal them*. As vested by the Constitution in Congress, it is a *derivative* and *delegated* power (*Bernas, 676*).

**CLASSIFICATIONS OF LEGISLATIVE POWER [O De CO]**

1. **O**riginal – possessed by the people in their sovereign capacity;
2. **De**legated – possessed by Congress and other legislative bodies by virtue of the Constitution;
3. **C**onstituent – power to amend or revise the Constitution;
4. **O**rdinary – power to pass ordinary laws (*Bernas, 210-211*).

**NOTE:** The Court does not pass upon questions of wisdom, justice or expediency of legislation. The wisdom of the legislature is something that the Court cannot inquire into as it would be in derogation of the principle of separation of powers (*Defenso-Santiago, 130*).

**NOTE:** As long as laws do not violate any Constitutional provision, the courts merely interpret and apply them regardless of whether or not they are wise or salutary (*Id.*).

**LIMITS ON THE LEGISLATIVE POWER OF CONGRESS**

1. **Substantive** – limitations on the content of laws. *E.g., no law shall be passed establishing state religion*;
2. **Procedural** – limitations on the manner of passing laws. *E.g., generally a bill must go through three readings on three separate days*;
3. **Express** – provided in some provisions of the Declaration of Principles and State Policies (Art. II), the provisions of the Bill of Rights (Art. III), provisions on initiative and referendum clause of Art. VI, Secs. 1 & 32, and the autonomy provisions of Art. X;
4. **Implied** – found in the evident purpose which was in view and the circumstances and historical events which led to the enactment of the particular provisions as a part of organic law.

**NOTE:** Once a law is enacted and approved, the legislative function is deemed accomplished and complete. The legislative function may spring back to Congress relative to the same law only if the body deems it proper to review amend and revise the law, but certainly not to approve, review, revise and amend the implementing rules and regulations of the statute (*Defensor-Santiago, 133*).

**PRESIDENT'S ORDINANCE POWER [PAGE Me²]**

1. **Proclamations** – acts of the President *fixing a date or declaring a status or condition* of public moment or interest, upon the existence of which the *operation of specific law or regulation is made to depend*;
2. **Administrative Orders** – acts of the President which *relate to particular aspect of governmental operations* in pursuance of his duties as *administrative head*;
3. **General or Special Orders** – *acts and commands* of the President in his capacity as *Commander-in-Chief* of the AFP;
4. **Executive Orders** – acts of the President *providing for rules of a general or permanent character* in *implementation or execution of constitutional or statutory powers*;
5. **Memorandum Orders** – acts of the President on *matters of administrative detail or of subordinate or temporary interest which only concern a particular officer or office* of the government;
6. **Memorandum Circular** – acts of the President on matters relating to *internal administration, which the President desires to bring to the attention* of all or some of the departments, agencies bureaus or offices of the Government, *for information or compliance* (*Chapter 2, Book 3, Administrative Code of 1987*).

**NOTE:** The President cannot issue decrees – laws which are of the same category and binding force as statutes because they were issued by the President in the exercise of his legislative (*Defensor-Santiago, 135*).

**NOTE:** Proc. No. 1017 was unconstitutional insofar as it granted Pres. Arroyo the authority to promulgate decrees. Neither Martial Law nor a state of rebellion nor a state of emergency can justify President's Arroyo's exercise of legislative power by issuing decrees. Legislative power, through which extraordinary measures are exercised, remains in Congress even in times of crisis (*David v Arroyo, 489 SCRA 160 [2006]*).

**COROLLARIES OF LEGISLATIVE POWER**

1. *Congress cannot pass irrepealable laws*. Since Congress' powers are plenary, and limited only by the Constitution, any attempt to limit the powers of future Congresses via an irrepealable law is not allowed;
2. Congress, as a general rule, *cannot delegate its legislative power*. Since the people have already delegated legislative power to Congress, the latter cannot delegate it any further. *Potestas delegate non delegari potest*, what has been delegated cannot be delegated. EXCEPT (*see discussion on delegation of powers*).

**PROSPECTIVE APPLICATION OF STATUTES**

**General Rule**

Law have no retroactive effect. In case of doubt, the doubt must be resolved against the retrospective effect (*Defensor-Santiago, 135*).

**Exceptions**

1. When the law itself so expressly provides;
2. In case of remedial statutes;
3. In case of curative statutes;

4. In case of laws interpreting others;
5. In case of laws creating new rights (*Phil. Society for the Prevention of Cruelty to Animals v COA, 534 SCRA 112 [2007]*).

**UNCONSTITUTIONALITY OF LAW**

To declare law as unconstitutional, the repugnancy of that law to the Constitution must be *clear and unequivocal*, for even if a law is aimed at the attainment of some public good, no infringement of constitutional rights is allowed (*Defensor-Santiago, 136*).

In case of conflict with the Constitution, the Constitution must always prevail over the law (*Id.*).

**NOTE:** When the effect of law is unconstitutional, it is void. A statute may be declared unconstitutional because it is not within the legislative power to enat; or it creates or establishes methods or forms that infringe constitutional principles; or its purpose or effect violates the Constitution or its basic principles (*Tawang Multi-Purpose Coop. v La Trinidad Water District, 646 SCRA 21 [2011]*).

**SEPARABILITY CLAUSE**

**General Rule**

Where part of a statute is void as repugnant to the Constitution, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced (*Defensor-Santiago, 137*).

**Note:** The valid portion must be so far independent of the invalid portion that is fair to presume that the legislature would have enacted it by itself if it had supposed that it could not constitutionally enact the other (*Id.*).

**Exception**

When the parts of a statute are so mutually dependent and connected, as conditions, considerations, inducement, or compensations for each other, as to warrant a belief that the legislature intended the as a whole, the nullity of one part will vitiate the rest (*Id.*).

**IMPLIED REPEAL**

Where a statute of later date clearly reveals the intention of the legislature to abrogate a prior act on the subject, that intention must be given effect (*Id.*). *Two kinds*:

1. Where the provisions in the two acts on the same subject matter are irreconcilably contradictory, the latter act, to the extent of the conflict, constitutions an implied repeal of the earlier one;
2. If the latter act covers the whole subject of the earlier one and is clearly intended as a substitute (*Id.*).

**NOTE:** When both laws may have the same subject matter, if there is no intent to repeal the earlier enactment every effort at a reasonable construction must be made to reconcile the statutes, so that both can be given effect (*Id.*).

**NOTE:** Implied repeals are not favored and will not be so declared unless the intent of the legislators is manifest (*Id.*).

**GENERAL LAW vs SPECIAL LAW**

**General Rule**

A subsequent general law does not repeal a prior special law on the same subject matter – *Generalia specialibus non derogant* (*Id,*).

**Exception**

Unless it clearly appears that the legislature has intended by the general act to modify or repeal the earlier special law (*id.*).

**Note:** The special act and the general law must stand together, one as the law of the particular subject of the other as the law of general application (*Heirs of Aurelio Reyes v Garilao, 605 SCRA 294 [2009]*).

**ADVANTAGES OF BICAMERALISM**

1. Allows for a body with a national perspective to check the parochial tendency of representatives elected by district;
2. Allows for more careful study of legislation;
3. Makes the legislature less susceptible to control by the Executive;
4. Serves as training ground for national leaders.

**PEOPLE'S LEGISLATIVE POWER THROUGH INITIATIVE AND REFERENDUM**

The power of the people to propose amendments to the Constitution or to propose and enact legislation through an election called for the purpose (*Sec. 3, par. a, RA 6735*). This is the original legislative power of the people.

**CLASSES OF INITIATIVE**

1. **Initiative on the Constitution** – petition proposing amendment to the Constitution**;**
2. **Initiative on Statutes** – petition proposing to enact a national legislation**;**
3. **Initiative on Local Legislation** – petition proposing to enact a regional, provincial, city, municipal or barangay law, resolution, or ordinance (*Id.*).

**LOCAL INITIATIVE**

Not less than 2,000 registered votes in case of autonomous regions, 1,000 in case of provinces and cities, 100 in case of municipalities, and 50 in case of barangays, may file a petition with the Regional or local legislative body, respectively, proposing the adoption, enactment, repeal, or amendment, of any law, ordinance or resolution (*Sec. 13, RA 6735*).

**LIMITATIONS ON LOCAL INITIATIVE**

1. Power of local initiative shall not be exercised more than once a year;
2. Initiative shall extend only to subjects or matters which are within the legal powers of the local legislative bodies to enact;
3. If at any time, before the initiative is held, the local legislative body should adopt *in toto* the proposition presented, the initiative shall be cancelled (*Sec. 15, RA 6735*).

**LIMITATION ON LOCAL LEGISLATIVE BODY *vis-à-vis* LOCAL INITIATIVE**

Any proposition or ordinance approved through an initiative and referendum shall not be repealed, modified or amended by the *Sanggunian* within 6 months from the date of approval thereof, and may be amended, modified or repealed within 3 years thereafter b a vote of ¾ of all its members. In case of barangay, the period shall be 18 months after approval (*Sec. 125, Local Gov. Code*).

**INDIRECT INITIATIVE**

Exercise of initiative by the people through a proposition sent to the Congress or the local legislative body for action (*Sec. 3, par. b, RA 6735*).

**REFERENDUM**

Power of the electorate to approve or reject legislation through an election called for that purpose (*Id. par. c*).

**CLASSES OF REFERENDUM (*Id.*)**

1. **Referendum on Statutes** – petition to approve or reject an act or law or part thereof, passed by Congress;
2. **Referendum on local laws** – legal process whereby the registered voters of the local government units may approve, amend or reject any ordinance enacted by the *Sanggunian* (*Sec. 126, LGC*).

**THE FOLLOWING CANNOT BE THE SUBJECT OF AN INITIATIVE OR REFERENDUM PETITION**

1. No petition embracing more than one subject shall be submitted to the electorate;
2. Statutes involving emergency measure, the enactment of which is specifically vested in Congress by the Constitution, cannot be subject to referendum, until 90 days after their effectivity (*Sec. 10, RA 6735*).

| INITIATIVE | REFERENDUM |
|---|---|
| The power of the people to propose bills and laws, and to enact or reject them at the polls independent of the legislative assembly. | The right reserved to the people to adopt or reject any act or measure which has been passed by a legislative body and which in most cases would, without action on the part of electors, become a law. |

*SBMA v COMELEC, GR No. 125416 [26.09.1996]*

**PRESIDENT'S LEGISLATIVE POWER DURING MARTIAL LAW AND UNDER A REVOLUTIONARY GOVERNMENT**

The legislative powers of then Pres. Marcos were derived from his martial law powers and from Art. XVII, Sec. 3(2) of the 1973 Constitution (*Aquino, Jr. v COMELEC, GR No. L-40004 [31.01.75]*). President Marcos also had legislative powers pursuant to the No. 6 of the 1976 Amendments.

**NOTE:** The presidential exercise of legislative powers in time of martial law is not conceded valid. That sun clear authority of the President is saddled on Sec. 3 (pars. 1 & 2) of the Transitory Provisions which provides that "The incumbent President of the Philippines shall initially convene the interim National Assembly and shall preside over its sessions until the interim Speaker shall have been elected…" and "All proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, binding, and effective even after lifting of martial law or the ratification of this Constitution… (*Sanidad v COMELEC, GR No. L-44640 [12.10.76]*).

**NOTE:** The extraordinariness of then Pres. Marcos' power not only enabled him to supply for the legislature when the latter, in the judgment of the President, "failed or was unable to act on any matter" that may need immediate action, but it also enabled the President to undo what the legislature might have done not to his satisfaction (*Bernas, 684*).

**NOTE:** After the so-called bloodless revolution of Feb. 1986, Pres. Aquino took the reigns of power under a revolutionary government. On 24 Mar. 1986, she issued her historic Proc. No. 3, promulgating the Provisional Constitution, or more popularly referred to as the Freedom Constitution. Under Art. II, Sec. 1 of the Freedom Constitution, the President shall continue to exercise legislative power until a legislature is elected and convened under a new constitution (*Municipality of San Juan v CA, GR No. 125183 [29.09.97]*).

**NOTE:** Under the 1987 Constitution, however, all general legislative powers are vested expressly in Congress, and that the President can only exercise legislative powers through valid delegation by Congress, *e.g., tariff powers and emergency powers*.

**PRESIDENT'S LEGISLATIVE POWER DURING MARTIAL LAW UNDER THE 1987 CONSTITUTION**

Under the 1987 Constitution, a state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civilian courts are able to function nor automatically suspend the privilege of the writ (*Art. VII, Sec. 18, par. 4*). The 1987 Constitution rejects *Aquino, Jr. v COMELEC* which gave plenary power to the President as martial law administrator (*Bernas, 920*).

## COMPOSITIONS, QUALIFICATIONS AND TERMS OF OFFICE

**SENATE**

**A. Composition:** 24 senators elected at large by the qualified voters of the Philippines (*Sec. 2*).

**B. Qualifications [V-N3RY] (*Vagina Entry*)**

1. Registered voter;
2. Natural-born citizen of the Philippines – those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship (*Sec. 3.*);

   **Note:** A natural-born citizen who loses his citizenship by naturalization in another country but later is repatriated recovers his status of being a natural-born citizen and therefore is qualified to be a member of Congress (*Bengzon v HRET, GR No. 142840 [07.05.2001]*).

   **May a person of dual citizenship run for Senate?**

   Yes, such person may run. The law disallows dual allegiance, which is inimical to national interest,

and not dual citizenship. When a person has dual citizenship, he is a citizen of two different countries by virtue of two different laws governing in said countries and such is involuntary. Dual allegiance, on the other hand, refers to a situation in which a person simultaneously owes, by some positive act, loyalty to two or more states and is a result of an individual's volition. For example, X has Filipino parents and was born in the US. By virtue of *jus sanguinis* (by blood), he is a citizen of the Philippines, but since he was born in the US, he is also considered as a citizen there because the US follows *jus soli* (by place of birth). What the Constitution abhors is a situation wherein, a Filipino citizen has made an oath of allegiance with a foreign country and has become a citizen of such country, yet, maintain his or her Filipino citizenship (*see Mercado v Manzano, GR No. 135083 [26.05.99]*).

3. At least 35 years of age on the day of the election;

   **Note:** The age qualification must be possessed on the day of the election, *i.e.,* when the polls are opened and the votes are cast, and not on the day of the proclamation of winners by the board of canvassers. This nullifies the ruling in *Espinosa v Aquino*, SET Electoral Case No. 9 (*Cruz, 188*).

4. Able to read and write;
5. Resident of the Philippines for not less than 2 years immediately preceding the day of the election (*Sec. 3*).

   **Theory of Legal Impossibility**

   The theory that it would be legally impossible to impose the 1 year residency requirement in a newly created political (*Aquino v COMELDC, GR No. 120265 [18.09.95]*).

   A new political district is not created out of thin air. It is carved out from part of a real and existing geographic area. Thus, people who actually lived in the old municipality prior to the creation of the new legislative district can fulfill the 1 year residency (*Id.*).

**NOTE:** The Congress cannot provide for additional qualifications because the list of qualifications provided in the Constitution is exclusive. *Expressio unius est exclusio alterius*, the express mention of one thing excludes all the others.

**"AS MAY BE PROVIDED BY LAW"**

The phrase "as may be provided by law" under Sec. 3 of Art. VI does not refer to the composition. It refers to the manner on how the election shall be held or the mechanics for electing the Senators at large, within the limits provided by the Constitution. Hence, it is only through constitutional amendment that the number of Senators can be changed.

**RESIDENCE**

It is the place where one habitually resides and to which, when he is absent, he has the intention of returning. It imparts not only intention to reside in a fixed place but also personal presence in that place adopted with conduct indicative of such intention (*Suarez, 478*).

**NOTE:** For purposes of election laws, the term "residence" is synonymous with "domicile" which imports not only intention to reside in a fixed place but also personal presence in that place coupled with conduct indicative of such intention (*Gallego v Verra, GR No. L-48641 [24.11.41]*).

**NOTE:** While "residence is domicile" in election laws, "domicile is <u>not</u> residence" because domicile requires the fact of presence coupled with his intention to remain (*animus manendi*) or intention to return when absent (*animus revertendi*) (*Romualdez-Marcos v COMELEC, GR No. 119976 [18.09.95]*).

**DOMICILE BY ORIGIN**

- Minor follows domicile of parents;
- Wife does not automatically gain husband's domicile;
- Domicile of origin is lost only when there is:
  - Actual removal or change of domicile;
  - *Bona fide* intention of abandoning the former residence and establishing a new one;
  - Acts which corresponds with the purpose (*Id.*).

**REQUISITES IN ACQUIRING DOMICILE BY CHOICE**

1. *Animus Manendi* – residence or bodily presence in the new locality and an intention to remain therein;
2. *Animus Non Revertendi* – intention to abandon the old domicile (*Domingo v COMELEC, GR No. 134015 [19.07.99]*).

   **Note:** An intention to abandon cannot legally be inferred from his act of establishing a home elsewhere or otherwise conducting his activities therein, in the absence of clear showing that he has decided to adopt a new residence (*Lim v Pelaez, House Electoral Tribunal Case No. 36*).

**TWO CONCLUSIONS MAY BE DRAWN**

1. If a person retains his domicile of origin, for purposes of the residence requirement for representatives, the one-year period is irrelevant because by legal fiction, whenever he may be, he is a resident of his domicile or origin;
2. If a person re-establishes a previously abandoned domicile or acquire a new one, the one-year requirement must be satisfied (*Romualdez-Marcos v COMELEC, GR No. 119976 [18.09.95]*).

**COMELEC CANNOT ENLARGE THE CONSTITUTIONAL REQUIREMENTS**

The court struck down as unconstitutional Sec. 36 (g) of RA 9165 (*Comprehensive Dangerous Drugs Act of 2002*). Sec. 36 (g), as sought to be implemented by the assailed COMELEC resolution, effective enlarges the qualification requirements enumerated in Sec. 3, Art. VI of the Constitution. As couched, it unmistakably requires a candidate for senator to be certified illegal-drug clean, obviously as a pre-condition to the validity of a certificate of candicy for senator or, with life effect, a condition *sine qua non* to be voted upon and, if proper, be proclaimed as senator-elect. The COMELEC resolution completes the chain with the proviso that "[n]o person elected to any public office shall enter upon the duties of his office ntil he has undergone mandatory drug test" (*Pimentel, Jr. v COMELEC, GR No 161658 [03.11.2008]*).

**C. TERMS OF OFFICE**

6 years commencing at noon on the 30th day of June next following their election (*Sec. 4; Art. XVII, Sec. 2, par. 2*).

**SYNCHRONIZED TERMS OF OFFICE**

Of the Senators elected in the elections in 1992, the first twelve obtaining the highest number of votes shall serve for six years and the remaining twelve for three years (*Art. XVIII, Sec. 2, par. 2*).

**D. TERM LIMITS**

No Senator shall serve for more than 2 consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected (*Sec. 4*).

**HOUSE OF REPRESENTATIVES**

**A. Composition**

Not more than 250 members, unless otherwise fixed by law, consisting of:

1. *District Representatives* – elected from legislative districts apportioned among the provinces, cities and the Metropolitan Manila (*Sec. 5, par. 1*);
2. *Party-list Representatives* – shall constitute 20% of the total number of the members of the House of Representatives including those under the party-list (*Sec. 11, RA 7941; Sec. 5, par. 2*).
    a. Parties, organizations, and coalitions must obtain at least 2% of all votes cast to obtain a party-list seat;
    b. Those garnering more than 2% are entitled to additional seats in proportion to their total number of votes, but may not have more than 3 seats (*BANAT v COMELEC, GR No. 179271 [08.07.2009]*).

**Four step seat distribution for party list**

a. The 20% allocation – the combined number of all party-list congressmen shall not exceed 20% of the total membership of the HRep, including those elected under the party-list;
b. 2% threshold – only those parties garnering a minimum of 2% of the total valid votes cast for the party-list system are "qualified" to have a seat in the HRep;
c. 3 seat limit – each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of 3 seats; that is, one "qualifying" and 2 additional seats;
d. Proportional representation – the additional seats which a qualified party is entitled to shall be computed in proportion to their total number of votes (*Id.*).

**NOTE:** The COMELEC may not issue implementing rules and regulations that provide a ground for the substitution of a party-list nominee not written in RA 7941, the Party-List System Act (*Lokin, Jr. v COMELEC, GR Nos. 179431-32 [22.07.2010]*).

**NOTE:** The Constitution does not preclude the HRep from increasing its membership by passing a law, other than a general reapportionment law. Thus, a law converting a municipality into a highly urbanized city automatically creates a new legislative district, and consequently increases the membership of the HRep (*Mariano v COMELEC, GR No. 118577 [07.03.95]*).

**DISTRICT REPRESENTATIVES**

**Rules of apportionment of legislative districts**

1. Under the constitution
    a. Legislative districts shall be made in accordance with the number of respective inhabitants on the basis of a uniform progressive ratio (*Sec. 5, par. 1*);
    b. Each city with not less than 250,000 inhabitants, is entitled to at least 1 representative (*Sec. 5, par. 3*);
    c. Each province, irrespective of the number of inhabitants, is entitled to at least 1 representative (*Id.*);
    d. Each legislative district must be contiguous, compact and adjacent (*Id.*);
    e. Reapportionment of legislative districts by Congress within 3 years following the return of every census (*Sec. 5, par. 4*).

**Gerrymandering**

It is the formation of one legislative district out of separate territories for the purpose of favoring a candidate or a party. It is not allowed (*Bernas, 226*) because each legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory (*Navarro v Ermita, GR No 180050 [10.02.2010]*).

2. **Jurisprudence**

There is no specific provision in the Constitution that fixes the 250,000 minimum population that must compose every legislative district. Plainly read, Sec. 5(3) requires a 250,000 minimum population only for a *city* to be entitled to a representative, but not so for a province (*Aquino v COMELEC, GR No. 189793 [07.04.2010]*).

**Note:** The 250,000 minimum population requirement for cities only applies to its *initial* legislative district. In other words, while Sec. 5(3) requires a city to have a minimum population of 250,000 to be entitled to a representative, it does not have to increase its population by another 250,000 to be entitled to additional district (*Id.*).

**Note:** There is no reason why the above principle, which involves the creation of an additional district within a city, should not be applied to additional districts in provinces. Indeed, if an additional legislative district created within a city is not required to represent a population of at least 250,000 in order to be valid, neither should such be needed for an additional district in a province, considering moreover that a province is entitled to an initial seat by the mere fact of its creation and regardless of its population (*Id.*).

**Note:** Representative districts are created by law. The ARMM Regional Assembly may not create a representative district. Nor may it create a province because a province automatically gets one representative district (*Sema v COMELEC, GR No. 177597 [16.07.2008]*).

**Note:** The creation of a legislative districts does not need confirmation by plebiscite if it does not involve the creation of a local government unit (*Bagabuyo v COMELEC, GR No. 176970 [08.12.2008]*).

**HOW ARE LEGISLATIVE DISTRICTS CREATED**

They are created by law. The ARMM Regional Assembly may not create a representative district. Nor may it create a province because a province automatically gets one representative district (*Sema v COMELEC, GR No. 177597 [16.07.2008]*).

**NOTE:** The creation of legislative districts does not need confirmation by plebiscite if it does not involve the creation of a local government unit (*Bagabuyo v COMELEC, GR No. 176970 [08.12.2008]*).

**B. Qualifications**

- **District Representatives [N25 RAW V1]**
  1. **N**atural-born citizen of the Philippines;
  2. At least **25** years of age on the day of the election;
  3. Able to **r**ead **a**nd **w**rite;
  4. A registered **v**oter in the district in which he shall be elected;
  5. A resident thereof for a period of not less than **1** year immediately preceding the day of the election (*Sec. 6*).

- **Party-list Representatives [N25 RAW V1M]**
  1. **N**atural-born citizen of the Philippines;
  2. At least **25** years of age on the day of the election;

     **Note:** In case of youth sector, he must be at least 25 but not more than 30 years old on the day of election (*Sec. 9, RA 7941*).

  3. Able to **r**ead **a**nd **w**rite;
  4. A registered **v**oter;
  5. A resident thereof for a period of not less than **1** year immediately preceding the day of the election (*Sec. 6*);
  6. A *bona fide* **m**ember of the party or organization which he seeks to represent for at least 90 days preceding the day of the election.

**NOTE:** The qualifications are exclusive under the principle of *expressio unios est exclusio alterius* (express mention of one persons, thing or consequence implies the exclusion of all the others), with the result that it is not competent for the Congress to provide by mere legislation for additional qualifications no matter how relevant they may be (*Cruz, 215*).

**NOTE:** The qualifications prescribed to become a member of the Congress are continuing requirement, *i.e.,* they must be possessed for the entire duration of the member's incumbency (*Id.*).

**PARTY-LIST REPRESENTATIVES**

**Reason for introduction of the party list system**

It is hoped that the system will democratize political power by encouraging the growth of a multi-party system while at the same time giving power to those who traditionally do not win in elections (*Bernas, 220*).

**GUIDELINES IN DETERMINING QUALIFIED PARTY LIST**

1. The parties or organizations must represent the marginalized and underrepresented in Sec. 5, RA 7941;
2. Political parties who wish to participate must comply with this policy;
3. The religious sector may not be represented;
4. The party or organization must not be disqualified under Sec. 6, RA 7941;
5. The party or organization must not be an adjunct of or a project organized or an entity funded or assisted by the government;
6. Its nominees must likewise comply with the requirements of the law;
7. The nominee must likewise be able to contribute to the formulation and enactment of legislation that will benefit the nation (*Ang Bagong Bayani v COMELEC, GR No. 147589 [26.06.2001]*).

**DISQUALIFIED PARTIES OR ORGANIZATIONS**

1. Religious sect or denomination, organization or association organized for religious purposes;
2. Advocates violence or unlawful means to seek its goal;
3. A foreign party or organization;
4. Receiving support from any foreign government, political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
5. Violates or fails to comply with laws, rules or regulations relating to elections;
6. Declares untruthful statements in its petition;
7. Ceased to exist for at least 1 year;
8. Fails to participate in the least 2 preceding elections or fails to obtain at least 2% of the votes cast under the party list system in the 2 preceding elections for the constituency in which it has registered (*Id.*).

**New Parameters for Party-list Elections** (*Atong Paglaum v COMELEC, GR No 203766 [02.04.2013]*)

1. Three different groups may participate in the party-list system;
   a. National parties and organizations;
   b. Regional parties and organizations;
   c. Sectoral parties and organizations;

2. National parties or organizations are regional parties or organizations do <u>*not*</u> need to organize along sectoral lines and do not need to represent any marginalized and underrepresented sector;

3. Political parties can participate in party-list election provided they register under the party-list system and do not filed candidates in legislative district elections;

**Note:** A political party, whether major or not, that fields candidates in legislative district elections can participate in party-list elections only through its sectoral wing that can separately register under the party-list system. The sectoral wing is by itself an independent sectoral party, and is linked to a political party through a coalition.

4. Purely sectoral parties or organizations may either be "marginalized and underrepresented" or "lacking in well-defined political constituencies." It is enough that their principal advocacy pertains to the special interest and concerns of their sector.
    a. Marginalized and underrepresented sectors: [**LaP FUHIVO**]
        i. **La**bor;
        ii. **P**easant;
        iii. **F**isher fold;
        iv. **U**rban poor;
        v. **H**andicapped;
        vi. **I**ndigenous cultural communities;
        vii. **V**eterans;
        viii. **O**verseas workers.

    b. Sectors that lack well-defined political constituencies [**PYWE**]:
        i. **P**rofessionals;
        ii. **Y**outh;
        iii. **W**omen;
        iv. **E**lderly.

5. The rule on nominees and members coming from the sector they intend to represent applies ONLY to the sectoral parties or organizations. It is enough that a *majority of the members of the sectoral parties or organization must belong to the marginalized and underrepresented sector* they represent. The same is true for those who lack well-defined political constituencies.
    a. The nominees of sectoral parties or organizations must either:
        i. Belong to their respective sectors;
        ii. Must have a track record of advocacy for their respective sectors.
    b. The nominees of national or regional parties or organization must be *bona fide* members of such parties or organizations.

6. National, regional and sectoral parties and organizations shall not be disqualified if some of the nominees are disqualified, provided that they have at least one nominees who remains qualified.

**NOTE:** The party-list is not synonymous with that of the sectoral representation. The framers of the 1987 Constitution did not intend to leave out non-sectoral parties in the party-list system and exclusively limit it to sectoral groups. The framers intended the sectoral parties to constitute a part, but not the entirety, of the party-list system (*Atong Paglaum v COMELEC, GR No 203766 [02.04.2013]*).

**NOTE:** The COMELEC determines whether a party is qualified to participate in the party list system. Qualification is a question of fact and therefore is not subject to review by *certiorari* (*VC Cadangen v COMELEC, GR No. 177179 [05.06.2009]*).

**C. TERMS OF OFFICE**

3 years, commencing at noon on the 30th day of June next following their election (*Sec. 7*).

**NOTE:** Sec. 67, Art. IX of the Omnibus Election Code (BP Blg. 881), says that any "elective official whether national or local running for any office other than the one he is holding in a permanent capacity except for the Pres and the VP shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy." *This is no longer in effect* having been repealed by the Fair Election Law (*Quinto v COMELEC, GR No. 189698 [01.12.2009]*).

**TERM v TENURE**

Term is the period which an official is entitled to hold office. Tenure is the period during which the official actually holds the office. Tenure can be shortened, *e.g.,* by death or removal; but term is changed only by amendment (*Dimaporo v Mitra, Jr., GR No. 96859 [15.10.91]*).

**D. TERM LIMITS**

No member of the HRep shall serve for more than 3 consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected (*Sec. 7, par. 2*).

| DISTRICT REPRESENTATIVES | PARTY-LIST REPRESENTATIVES |
|---|---|
| ***As to election/selection*** | |
| Elected according to legislative district by the constituents of such district; | Elected nationally, with party-list organizations garnering at least 2% of all the votes cast for the party-list system entitled to 1 seat, which is increased according to proportional representation, but is in no way to exceed 3 seats per organization; |
| ***As to residency requirement*** | |
| Must be a resident of his legislative district for at least 1 year immediately before the election; | No special residency requirement ; |
| ***As to manner of candidate's election*** | |
| Elected personally, *i.e.,* by name; | Voted upon by party or organization. It is only when a party is entitled to representation that it designates who will sit as representative; |
| ***As to effect of change of affiliation during the term*** | |
| Does not lost seat if he/she changes party or affiliation; | If he/she changes party or affiliation, he/she loses his seat in which case he/she will be substituted by another qualified person in the party |

| | |
|---|---|
| | or organization based on the list submitted to the COMELEC; |
| ***As to manner of filling vacancies*** | |
| Special election may be held provided that the vacancy takes place at least 1 year before the next election; | A substitution will be made within the party, based on the list submitted to the COMELEC; |
| ***As to effect of losing in the previous election*** | |
| Not prevented from running again as a district representative; | A party-list representative cannot sit if he ran and lost in the previous election; |
| ***As to effect of change of affiliation prior to election*** | |
| A change in affiliation within months prior to election does not prevent a district representative form running under his new party. | A change in affiliation within 6 months prior to election prohibits the party-list representative from sitting as representative under his new party or organization. |

**ELECTIONS**

1. **Regular –** second Monday of May, every three years (*Sec. 8*).

   **Note:** For the Senate, half of the membership is elected every three years on even date in line with the synchronized terms of office (*see Art. XVIII, Sec. 2, par. 2*).

2. **Special –** in case of vacancy in Congress, but the person elected shall serve only for the unexpired term (*Sec 9*).

   **No special election will be called if vacancy occurs:**
   a. At least 6 months before the next regular election for members of the Senate;
   b. At least 1 year before the next regular election for members of the HRep (*Sec. 1, RA 6645*).

   **Note:** The particular chamber of Congress where vacancy occurs must pass either a resolution if Congress is in session or the Senate President or the Speaker must sign a certificate, if Congress is not in session:
   a. Declaring the existence of the vacancy; and
   b. Calling for a special election to be held within 45 to 90 days from the date of the resolution or certificate (*Sec. 1, RA 6645*).

   **Note:** In a special election to fill a vacancy, the rule is that a statute that expressly provides that an election to fill a vacancy shall be held at the next general elections fixes the date at which the special election is to be held and operates as the call for that election. Consequently, an election held at the time thus prescribed is not invalidated by the fact that the body charged by law with the duty of calling the election failed to do so. This is because the right and duty to hold the election emanate from the statute and not from any call for the election by some authority and the law thus charges voters with knowledge of the time and place of the election (*Tolentino v COMELEC, GR No. 148334 [21.01.2004]*).

**NOTE:** In case there is a vacancy in the Senate or HRep, the special election to fill the vacancy is *not* mandatory. The matter is left to the discretion of Congress; hence, "in the manner prescribed by law" (*see Sec. 9*). But if there should be a special election, the person elected shall serve only for the unexpired term (*Bernas, 229*).

**SALARIES, PRIVILEGES AND DISQUALIFICATIONS**

**A. SALARIES**

The salaries of Senators and Members of the HRep shall be determined by law. No increase in said compensation shall take effect until after the expiration of the full term of all the members of the Congress approving such increase (*Sec. 10*).

**PURPOSE OF DELAYED EFFECT OF INCREASED SALARY**

To place a legal bar to the legislators yielding to the natural temptation to increase their salaries (*Philconsa v Mathay, 18 SCRA 300 [1966]*).

**NOTE:** There is no prohibition against the receipt of allowances by the members of the Congress; the salary of the members of the Congress does not include "*per diem* and other emoluments and allowances" (*Bernas, 231*). The deletion of this rule in the present provision is an implied permission for the Congress to vote allowances in favor of its members (*Cruz, 226*).

**NOTE:** After Congress passes a law increasing the salary of its members, special elections are held to fill a vacancy in three congressional districts. In this case, the newly elected members will *not* receive the increased salary for they would be serving within the term of the members who approved the salaries (*Bernas, 231*).

**B. PRIVILEGES**

1. **Privilege from arrest –** a Senator or Member of the HRep shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest while the Congress is in session (*Sec. 11*), whether regular or special and whether or not the legislator is actually attending session or not. Hence, it is not available while Congress is in recess (*Bernas, 232*).

   **Reason:** To ensure representation of the constituents of the members of the Congress by preventing attempts to keep him from attending its sessions (*Cruz, 228*).

   **Note:** Under the 1987 Constitution, a legislator is privileged from arrest even for a criminal offense provided that the offense was not punishable by a penalty of more than 6 years imprisonment (*Bernas, 232*).

   **Note:** Session covers the entire period form its initial convening until its final adjournment (*Cruz, 228-229*). Hence, the privilege from arrest is not available while Congress is in recess (*Bernas, 232*).

**Reason for exclusion of recess**

Since the purpose of the privilege is to protect the legislator against harassment which will keep him away from legislative sessions, there is no point in extending the privilege to the period when the Congress is not in session (*Id.*).

**Note:** Members of the Congress are not exempt from detention for crime. They may be arrested, even when the House is in session, for crimes punishable by a penalty of more than 6 years (*People v Jalosjos, GR Nos. 132875-76 [03.02.2000]*).

2. **Privilege of speech and debate –** no Member shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any commitment hereof (*Sec. 11*).

**Reason:** To enable the legislator to express views bearing upon the public interest without fear or accountability outside the halls of the legislature for his inability to support his statements with the usual evidence required in the court of Justice (*Cruz, 228*).

**Scope of privilege of speech and debate**

a. Absolute protection against suits for libel and not against forums made in the Congress itself (*Osmeña v Pendatum, GR No. L-17144 [*28.10.60*]*);

   **Note:** The member of Congress is subjected to disciplinary action by the Congress itself (*Chavez v JBC, GR No. 202242 [16.04.2013]*).

b. The protection includes utterances made in the performance of official functions, such as speeches delivered, statements made, votes cast, bill introduces and other acts done while performing his official duties (*Jimenez v Cabangbang, 17 SCRA 826 [1966]*).

**Note:** *It is not required that the Congress be in session when the utterance is made*. What is essential is that the utterance must constitute legislative action, *i.e.*, it must be *part of the deliberative and communicative process* by which legislators participate in committee or congressional proceedings in the consideration of *proposed legislation or of other matters* which the Constitution has placed within the jurisdiction of the Congress (*Antonino v Valencia, 57 SCRA 70 [1974]*).

**Note:** In the statements of Sen. Defensor-Santiago given in a Senate privilege speech saying that she would "spit on the face of CJ Artemio Panganiban" and that the Court is a "Supreme Court of idiots," the Court sustained the privilege of speech of Senator Santiago over her duties as member of the bar. The Court said, "we, however, would be remiss in our duty if we let the Senator's offensive and disrespectful language that definitely tended to denigrate the institution pass by. It is imperative on our part to re-instill in Senator/Atty. Santiago her duty to respect the courts of justice, especially this Tribunal, and remind her anew that the parliamentary non-accountability thus granted to members of Congress is not to protect them against prosecutions for their own benefit, but to enable them as the people's representatives, to perform the functions of their office without fear of being made responsible before the courts or other forums outside the congressional hall, it is intended to protect members of the Congress against government pressure and intimidation aimed at influencing the decision-making prerogatives of Congress and its members" (*Pobre v Santiago, A.C. 7399 [25.08.2009]*).

**REQUIREMENT TO AVAIL THE PRIVILEGE OF SPEECH AND DEBATE**

a. That the remarks must be made while the legislature or the legislative committee is functioning, *i.e.,* in session;
b. They must actually be made in connection with the discharge of official duties (*Cruz, 229*).

**Privilege extends to agents**

The privilege of speech and debate extends to the agents of the members of the Congress provided that the agency consists precisely in assisting the legislator in the performance of legislative action (*Bernas, 234*).

**Privilege of speech is not absolute**

*Each House of the Congress can discipline its members for disorderly conduct or behavior*. What constitutes disorderly behavior is entirely up to Congress to define. Although a member of Congress shall not be held liable in any other place for any speech or debate in the Congress or in any committee thereof, such immunity, although absolute in its protection of the member of Congress against suits for libel, does not shield the member against the disciplinary authority of the Congress (*Osmeña v Pendatun, 109 Phil. 863 [1960]*).

**Note:** The phrase "in any other place" in Sec. 11 of Art. VI means that a member of the legislature cannot be made liable in places other than Congress. Hence, it is only in Congress that its members can be punished.

**NOTE:** The two abovementioned privileges are not available while Congress is in recess (*Bernas, 232*).

**DISCLOSURE AND CONFLICT OF INTEREST**

All Members of the Senate and the HRep shall, *upon assumption of office, make a full disclosure of their financial and business interests*. They shall notify the House concerned of a potential conflict of interest that may arise from the filing of a proposed legislation of which they are authors (*Sec. 12*).

**C. DISQUALIFICATIONS AND INHIBITIONS**

1. **Incompatible office –** no Senator or Member of the HRep may hold any other office or employment in the Government, or any subdivision, agency or instrumentality thereof, including GOCCs or their

subsidiaries during his term without forfeiting his seat (*Sec. 13*)**;**

**Reason:** To prevent owing loyalty to other offices. One cannot serve two masters at the same time.

**Note:** Forfeiture is automatic upon assumption of such other office incompatible with his seat in Congress (*Quinto v COMELEC, GR No. 189698 [01.12.2009]*).

**Note:** No forfeiture shall take place if the member of Congress hold the other government office in an *ex officio* capacity, *e.g.,* membership in the JBC (*Liban v Gordon, GR No. 175352 [15.06.2009]*).

2. **Forbidden office –** neither shall he be appointed to any office which may have been created or the emoluments thereof increased during the term for which he was elected (*Sec. 13*)**;** Said member of Congress cannot assumed such office even after finishing his term. The prohibition is absolute in case of forbidden offices.

**Purpose:** To prevent trafficking in public office. These are offices that would ensure a senator to a public office after the termination of his tenure.

**Note:** The ban against appointment to the office created or the emolument thereof increased shall, however, last only for the duration of the term for which the member of Congress was elected (*Nachura, 262*).

**Note:** The speech which is considered privileged is one which is made inside the halls of Congress.

3. **Parliamentary inhibitions and disqualifications**
   a. Shall not personally appear as counsel before any court of justice or before the Electoral Tribunals or quasi-judicial and other administrative bodies (*Sec. 14*);

      **Reason:** To forestall any undue influence, deliberately or not, upon the body where he is appearing (*Cruz, 237-238*).

      **Note:** The prohibition applies to a Senator or Member of the HRep who appears "in intervention" in one's own interest after purchasing shares of stock of a corporation which was a party to a suit (*Puyat v de Guzman, GR No. L-51122 [25.03.82]*).

      **Exception**

      The law firm to which the Senator or Member of the HRep is a partner is not prohibited (*Bernas, 733-734*).

   b. Shall not, directly or indirectly, be interested financial in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including GOCC or its subsidiary, during his term of office (*Sec. 14*).

      **Reason:** To prevent abuses from being committed by the members of the Congress to the prejudice of the public welfare and particularly of legitimate contractors with the government who otherwise might be placed at a disadvantageous position vis-à-vis legislator (*Cruz, 239*).

      **Note:** The prohibited contracts are those that involve a financial investment or business or which the member of the Congress expects to derive profit or gain (*De Leon, 250*).

      **Note:** Shall not intervene in any matter before office of the Government of his pecuniary benefit or where he may be called upon to act on account of his office (*Id.*), *i.e.,* Congressman expediting the collection of a civil servant's retirement check for a stipulated fee (*Cruz, 239*).

**Note:** As to the Members of the Congress, there is no general prohibition as to the practice of their professions.

**SESSIONS, QUORUM, DISCIPLINE OF MEMBERS AND JOURNAL OF PROCEEDINGS**

1. **Regular Sessions**

   Convene once every year on the 4th Monday of July, unless a different date is fixed by law until 30 days before the start of new regular session. The 30-day period is the minimum period of recess and may be lengthened by Congress in its discretion. It is exclusive of Saturdays, Sundays, and legal holidays (*Sec. 15*).

2. **Special Sessions**
   a. Called by the President (*Id.*);
   b. To call a special election due to vacancies in the offices of the President and Vice President at 10am on the 3rd day after the vacancies (*Art. VII, Sec. 10*);
   c. To decide on the disability of the President because a majority of all the members of cabinet have "disputed" his assertion that he is able to discharge the powers and duties of his office (*Art. VII, Sec. 11, par. 3*);
   d. To revoke or extend the Presidential Proclamation of Martial Law or suspension of the privilege of the writ of *habeas corpus* (*Art. VII, Sec. 8*).

| REGULAR SESSION | SPECIAL SESSION |
|---|---|
| The power of the Congress is not circumscribed except by limitations. | The Congress may consider "general legislation or only such subject as the President may designate. |

*Cruz, 241*

**ELECTION OF SENATE PRESIDENT, SPEAKER OF THE HOUSE, AND OTHER OFFICERS**

The Senate President or Speaker of the HRep is elected through a majority vote of all its respective Members, and such other officers as may deem necessary (*Sec. 16, par. 1*).

**JURISDICTION OF THE COURT IN CASES REGARDING THE ELECTION OF OFFICERS**

The Court has jurisdiction. It is well within the power and jurisdiction of the Court to inquire whether the Senate or its officials committed a violation of the Constitution or gravely abused their discretion in the exercise of their functions and prerogatives (*Santiago v Guingona, Jr., GR No. 134577 [18.11.98]*)

**NOTE:** The provision under Art. VI, Sec. 16, par. 1 is *explicit on the manner of electing a Senate President and a House Speaker, but silent on the manner of selecting the other officers in both chambers of Congress*. The method of choosing who will be the other officers must be *prescribed by the Senate itself*. The Rules of the Senate neither provide for the positions of majority and minority leaders nor prescribe the manner of creating such offices or of choosing the holders thereof. Such offices exist by tradition and long practice. Absence of constitutional or statutory guidelines or specific rules, the *Court is devoid of any basis upon which to determine the legality of the acts of the Senate*. On the grounds of separation of powers, *courts may not intervene in the internal affairs of the legislature* (*Id.*).

**QUORUM**

Majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel attendance of absent Members in such manner and under such penalties as such House may provide (*Sec. 16, par. 2*).

It is any number sufficient to transact business (*Javallana v Tayo*).

**NOTE:** The basis of determining the existence of a quorum in the Senate shall be the total number of Senators *who are in the country and within the coercive jurisdiction of the Senate* (*Avelino v Cuenco, GR No. L-2821 [04.03.49]*).

**NOTE:** "Majority of all members of Congress" means majority of the entire composition of Congress regardless of the number of members present or absent during the time the question is brought to the floor as long as there is quorum, *i.e.*, 50% +1 of the Senate and 50% +1 of the HRep (*Senate v Ermita, GR No. 169777 [20.04.2006]*).

**JOINT SESSIONS**

**Voting Separately**

1. Choosing the President (*Art. VII, Sec. 4*);
2. Determine President's disability (*Art. VII, Sec. 11*);
3. Confirming nomination of Vice-President (*Art. VII, Sec. 9*);
4. Declaring existence of a state of war (*Art. VII, Sec. 23*);
5. Proposing consti. amendments (*Art. XVII, Sec. 1*).

**Voting Jointly**

1. To revoke or extend proclamation suspending the privilege of writ of *habeas corpus* (*Art. VII, Sec.18*);
2. To revoke or extend declaration of martial law (*Art. VII, Sec. 18*).

**DISCIPLINE OF MEMBERS**

Each house may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of 2/3 of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed 60 days (*Sec. 16, par. 3*).

**"DISORDERLY BEHAVIOR"**

The interpretation of the phrase "disorderly behavior is the prerogative of the House concerned and cannot be judicially reviewed (*Osmeña v Pendatum, GR No. L-17144 [*28.10.60*]*).

**JURISDICTION OF THE COURT IN DISCIPLINE OF MEMBERS**

The Court has no jurisdiction in the disciplinary action taken by Congress against its member because each House is the sole judge of what disorderly behavior is (*Id.*).

**NOTE:** Members of Congress may also be suspended by the *Sandiganbayan* or by the *Office of the Ombudsman* (*Santiago v Sandiganbayan, GR No. 128055 [18.04.2001]*).

**NOTE:** Both Houses of Congress have established a Code of Conduct to which their respective Ethics committee exercises jurisdiction.

**NOTE:** Senate expelled Senator Alejandrino for disorderly conduct for assaulting Senator de Vera during one of their debates in session. Senate adopted a resolution depriving Senator Alejandrino of all the prerogatives, privileges and emoluments of his office for the period of one year.

The Court held that the *resolution was illegal since it amounted to expulsion* and it would *deprive the electoral district of representation without any means to fill the vacancy*. The Senate had no authority to suspend an appointed Senator like Senator Alejandrino (*Alejandrino v. Quezon*).

**JOURNAL AND RECORD OF PROCEEDINGS**

Each House shall keep a Journal of the proceedings, and from time to time publish the same, excepting such part as may, in its judgment, affect national security; and the yeas and nays on any question shall, at the request of 1/5 of the Members present, be entered in the Journal. Each House shall also keep a Record of proceedings (*Sec. 16, par. 4*).

**JOURNAL**

It is a resumé of minutes of what transpired during the legislative session.

It is a record of what is done and passed in a legislative assembly. It does not include those which may affect national security, in the judgment of each House of Congress.

The Journal is regarded as conclusive with respect to matters that are required by the Constitution to be recorded therein. With respect to other matters, in the absence of evidence to the contrary, the Journals have also been accorded conclusive effects (*Arroyo v De Venecia, GR No. 127255 [14.08.97]*).

**PURPOSE OF THE REQUIREMENT OF JOURNAL**

1. To *insure publicity of the proceedings* of the legislature, and a correspondent responsibility of the members to their respective constituents;
2. To *provide proof of what actually transpired* in the legislature (*Bernas, 238-239*).

**RECORD**

Word for word transcript of the proceedings taken during the session.

**MATTERS MANDATED BY THE CONSTITUTION TO BE ENTERED INTO THE JOURNAL**

1. Yeas and Nays on third and final reading of a bill (*Art. VI, Sec. 26, par. 2*);
2. Veto message of the President (*Art. VI, Sec. 27, par. 1*);
3. Yeas and Nays on the re-passing of a bill vetoed by the President (*Id.*);
4. Yeas and Nays on any question at the request of 1/5 of members present (*Art. VI, Sec. 16, par. 4*);
5. The vote of each member of the House of Representatives in impeachment cases (*Art. XI, Sec. 3, par. 3*).

**MATTERS EXEMPTED FROM PUBLICATIONS**

"Such parts, in [the Congress'] judgment affecting national security" (*Sec. 16, par. 4*). This is also provided in the Bill of rights "subject to such limitations as may be provided by law" (*Art. III, Sec. 7*).

**NOTE:** The Journal is conclusive upon the courts (*US v Pons, 34 Phil. 729 [1916]*).

**ENROLLED BILL THEORY**

An enrolled bill is the official copy of approved legislation and bears the signature of the Senate President and the Speaker of the HRep and also the certifications of the secretaries of each House that such bill was passed are conclusive of its due enactment (*Arroyo v De Venecia, 277 SCRA 268 [1997]*).

**NOTE:** Where the certifications are valid and are not withdrawn, the contents of the enrolled bill are conclusive upon the courts (*Mabanag v Lopez Vito, GR No. L-1123 [05.03.47]*).

**RATIONALE OF ENROLLED BILL THEORY**

An enrolled Act in the custody of the Secretary of State, and having the official attestations of the Speaker of the House of Representatives, of the President of the Senate, and of the President of the United States, carries, on its face, a solemn assurance by the legislative and executive departments of the government, charged, respectively, with the duty of enacting and executing the laws, that it was passed by Congress. The respect due to coequal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated; leaving the courts to determine, when the question properly arises, whether the Act, so authenticated, is in conformity with the Constitution (*Astorga v Villegas, 56 SCRA 714 [1974]*).

**NOTE:** If there has been any mistake in the printing of the bill before it was certified by the officers of Congress and approved by the Executive, on which we cannot speculate, without jeopardizing the principle of separation of powers and undermining one of the cornerstone of our democratic system, the remedy is by amendment or curative legislation, not by judicial decree (*Casco PH Chemical Co., Inc. v Gimenez, GR No. L-17931 [28.02.63]*).

**JOURNAL vs ENROLLED BILL**

The journal is conclusive upon the courts. But when the contents of the Journal conflicts with that of an enrolled bill, the enrolled bill prevails over the contents of the Journal (*Astorga v Villegas, 56 SCRA 714 [1974]*).

Nonetheless, if the presiding officer repudiates his signature in the enrolled bill, then the journal must be accepted as conclusive (*Id.*).

**NOTE:** In *Morales v Subido* (*27 SCRA 131 [1969]*) he Court has explicitly left this question unanswered, "If the enrolled bill conflicts with the journal on the matter required by the Constitution to be entered in the journal, which should prevail?"

**ADJOURNMENT**

Neither Chamber during session, without the consent of the other, adjourn for more than 3 days, nor any other place than that in which the two Chambers shall be sitting (*Sec. 16, par. 5*).

**"PLACE"**

Refers not to the building but the political unit where the Houses may be sitting (*Cruz, 250*).

**TYPES OF ADJOURNMENT**

1. Day to day;
2. *Sine die* – interval between the session of one Congress and that of another; Congress must "stop the clock" at midnight of the last day of session in order to validly pass a law.

   **Note:** The Congress may validly continue enacting bills even beyond the reglementary period of adjournment. When the journal shows that Congress conducted a sine die session where the hands of the clock are stayed in order to afford Congress the opportunity to continue its session. All bills enacted during the sine die session are valid and conclusive upon the Courts. The Journals are conclusive evidence of the contents thereof and Courts are bound to take judicial notice of them (*US v Pons, 34 Phil. 729 [1916]*).

**RECESS**

The interval between a session of Congress that has adjourned and another of the same Congress. It does not refer to the interval between the session of one Congress and that of another. In that case the interval is not referred to as a "recess" but an adjournment *sine die* (*Aytona v Castillo, GR No. L-19313 [19.01.62]*).

**VOLUNTARY RECESS**

Takes place before the adjournment of Congress like Christmas recess (*De Leon, 325-326*).

**COMPULSORY RECESS**

Takes place when Congress adjourns (*Id.*).

**NOTE:** The Senate is not a continuing body but a *continuing institution*. The Court rules there is no debate that the Senate as an institution is continuing as it is not dissolved as an entity with each national election or change in the composition of its members. However, in the conduct of its day-to-day business the Senate of each Congress acts separately and independently of the Senate of the Congress before it (*Neri v Senate Committee on Accountability of Public Officers and Investigation, GR No. 180643 [04.09.2008]; see Art. XVIII, Sec. 2, par. 2*).

**ELECTION TRIBUNALS**

1. **Senate Electoral Tribunal (SET);**
2. **House of Representatives Electoral Tribunal (*HRET*).**

**COMPOSITION**

1. 3 Supreme Court Justices designated by the Chief Justice;

   **Note:** The Senior Justice in the Electoral Tribunal shall be its Chairman.

2. 6 members of the Chamber concerned chosen on the basis of proportional representation from political parties and parties registered under the party-list system (*Sec. 17*).

   **Note:** Under Section 17 of Article VI, each chamber of Congress exercises the power to choose, within constitutionally defined limits, who among their members would occupy he allotted 6 seats of each chambers respective electoral tribunal (*Pimentel, Jr., v HRET, GR No. 141489-90 [29.11.2002]*).

**NATURE OF ELECTORAL TRIBUNAL**

It is a *non-partisan court* it must be *independent of Congress* and devoid of partisan influence and consideration. Disloyalty to the party and breach of party discipline are not valid grounds for the expulsion of a member (*Bondoc v Pineda, GR No. 97710 [26.09.91]*).

When there is an election contest, *i.e.,* when a defeated candidate challenges the qualification and claims the seat of a proclaimed winner, the respective *Electoral Tribunal of each House is the sole judge*, and *neither the Supreme Court nor each House of Congress nor the COMELEC can interfere*. Thus, the power of each House to defer the oath-taking of members until final determination of elections contests filed against them has been retained by each House (*Angara s Electoral Commission, 63 Phil. 139 [1936]*).

Since the *Electoral Tribunals are independent constitutional bodies*, independent even of the respective House, *neither Congress nor the Courts may interfere* with procedural matters relating to the functions of the Electoral Tribunal (*Co v HRET*).

**ELECTORAL TRIBUNAL VS COMELEC**

*Electoral Tribunal* governs electoral protest against a candidate *after his/her confirmation to respective position*; *COMELEC*, on the other hand, take jurisdiction on election dispute *prior to being elected*.

Once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the HRep, COMELEC's jurisdiction over election contests relating to his election, returns and qualification ends, and the HRET's own jurisdiction beings (*Aggabao v COMELEC, GR No. 163756 [26.01.2005]*).

**NOTE:** The 5 LDP members who are also members of the Senate Electoral Tribunal may not inhibit themselves since it is clear that the Constitution intended legislative and judiciary membership to the tribunal. As a matter of fact, the 2:1 ratio of legislative to judiciary indicates that legislative membership cannot be ignored. To exclude themselves is to abandon a duty that no other court can perform (*Abbas v SET*).

**SECURITY OF TENURE OF MEMBERSHIP**

Membership in the HRET may not be terminated except for a just cause, *e.g.,* the expiration of the member's congressional term of office, his death, permanent disability, resignation from the political party he represents in the tribunal, formal affiliation with another political party, or removal for other valid cause. A member may not be expelled by the HRet for party disloyalty short of proof that he has formally affiliated with another political group (*Pimentel, Jr., v HRET, GR No. 141489-90 [29.11.2002]*).

**JURISDICTION AND POWER OF ELECTORAL TRIBUNAL**

1. **Sole judge of all contests relating to the election, returns and qualification of their respective members;**

   **Election Contest**

   One where a defeated candidate challenges the qualification and claims for himself the seat of a proclaimed winner.

   **Requisites for the exercise of power**

   Once a winning candidate has been [**PAO**]
   a. **P**roclaimed;
   b. **A**ssumed office as a member of the Congress;
   c. Taken his **o**ath.

   **Note:** The Electoral Tribunals will only gain jurisdiction upon proclamation of the candidate. Until such proclamation, he is not yet a member of the Congress; hence, jurisdiction over such remains with the COMELEC (*Lazatin v HRET, GR No. 80007 [25.01.88]*). Once COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins (*Aggapao v COMELEC, GR No. 163756 [26.01.2005]*).

   **Note:** The term of office of a Member of the Congress begins only at noon on the 30th day of June next following their election. Thus, until such time, the COMELEC retains jurisdiction. Also, before there is a valid or official taking of oath, it must be made:
   a. Before the Speaker of the House of Senate President;
   b. In open session (*Reyes v COMELEC, GR No. 207264 [25.06.2013]*).

   **Note:** Electoral Tribunals have no jurisdiction over pre-proclaimed controversies which come under the

jurisdiction of the COMELEC (*COMELEC Res. No. 8804 [2010] Rule 3, Sec. 1*).

**Loss of jurisdiction**

Jurisdiction of the Electoral Tribunals, once acquired, is not lost upon the instance of the parties but continues until the case is terminated (*Robles v HRET, GR No. 86647 [05.0290]*).

Mere filing of a motion to withdraw protest, without any action on the part of he tribunal, did not divest it of jurisdiction. An election protest is impressed with public interest in the sense that the public is interested in knowing what happened in the election. For this reason, private interest must yield to the common good (*Id.*).

**Jurisdiction over party-list**

The HRET decides whether a party-list representative is qualified. But the COMELEC can decide whether a party-list organization is qualified to join the party-list system (*Abayon v HRET, GR No. 189466 [11.02.2010]*).

**Note:** The doctrine of ***primary jurisdiction*** dictates that prior recourse to the House is necessary before one may bring his petition to court. Furnishing a copy of petitioner's letter to the Senate President and to the Speaker of the House does not constitute the primary recourse required prior to the invocation of the jurisdiction of the Supreme Court (*Drilon v de Venecia, GR No. 180055 [31.07.2009]*).

**Review by the SC**

The decisions of the Electoral Tribunal may be reviewed by the SC *only upon showing of grave abuse of discretion* in a petition for *certiorari* filed under Rule 65 of the ROC (*Peña v HRET, GR No. 123037 [21.03.97]*).

**2. Rule-making power.**

The power of the HRET, as the sole judge of all contests relating to the election, returns, and qualifications of the Members of the HRep, to promulgate rules and regulations relative to the matters within its jurisdiction, including the period of filing election protests before it, is beyond dispute. Its rule-making power necessarily flows from the general power granted it by the Constitution (*Lazatin v HRET, GR No. 80007 [25.01.88]*).

**INDEPENDENCE OF ELECTORAL TRIBUNAL**

The employees of the Electoral Tribunals are its own and not of the Senate nor the House of Representatives nor any other entity, and it stands to reason that the appointment, the supervion, and the control over the said employees are wholly within the Tribunal itself (*Suanes v Chief Accountant of the Senate, GR No. L-2460 [26.10.48]*).

## COMMISSION ON APPOINTMENTS

**A. Function**

Acts as legislative check on the appointing authority of the President. For the effectively of the appointment of key officials enumerated in the constitution, the consent of the commission on appointments is needed

**B. Composition**

1. Senate President as *ex officio* chairman who shall not vote *except in case of a tie*;
2. 12 Senators and 12 Members of the HRep (*Sec. 18*).

**Note:** The 12 Senators and 12 Representatives are elected on the basis of proportional representation from the political parties and party-list organizations.

$$\left(\frac{\text{No. of Senators or Reps. of a political party}}{Total\ \#\ of\ Senators\ or\ Reps}\right) \times 12\ seats$$

**NOTE:** For the Senate, a political party must have at least 2 members to be entitled to one seat in Commission on Appointment. Rounding off is not allowed. Moreover, it is not mandatory to elect 12 Senators to the Commission; what the Constitution requires is that there must be at least a majority of the entire membership (*Guingona, Jr. v Gonzales, GR No. 106971 [20.10.92]*).

**NOTE:** In the HRep, however, the Court allowed the rounding off in computing the proportional representation in the Commission on Appointment (*Coseteng v Mitra, Jr., GR No. 86649 [12.07.90]*).

**NOTE:** The authority of the House of Representatives to change its representation in the Commission on Appointments to reflect at any time the changes that may transpire in the political alignments of its membership. It is understood that such changes in membership must be permanent and do not include the temporary alliances or factional divisions not involving severance of political loyalties or formal disaffiliation and permanent shifts of allegiance from one political party to another (*Daza v Singson*).

**C. Powers**

1. Acts on all appointments submitted to it within 30 session days of Congress from their submission by majority vote of its members (*Sec. 18*);
2. Promulgates own rules of proceedings.

**NOTE:** The Commission on Appointments shall be constituted within 30 days after the Senate and the House of Representative shall have been organized with the election of the President and the Speaker.

**D. Meetings**

- Commission on Appointments shall meet only while Congress is in session.
- Meetings are held either at the call of the Chairman or by a majority of all its members.
- Since the Commission on Appointments is also an independent constitutional body, its rules of procedure are also outside the scope of congressional powers as well as that of the judiciary.

**E. Jurisdiction**

1. Confirm the appointments by the President with respect to the following positions:

a. Heads of the Executive Departments (except if it is the Vice-President who is appointed to the post);
b. Ambassadors, other public ministers or consuls;
c. Officers of the AFP from the rank of Colonel or Naval Captain;
d. Other officers whose appointments are vested in him by the Constitution (*e.g.* COMELEC members).

2. Congress cannot, by law, require that the appointment of a person to an office created by such law shall be subject to confirmation by the Commission on Appointments;
3. Appointments extended by the President to the above-mentioned positions while Congress is not in session shall only be effective until disapproval by the Commission on Appointments or until the next adjournment of Congress.

**Note:** *Ad interim* appointments not acted upon at the time of adjournment of Congress even if the 30 day period has not yet expired shall be deemed by passed.

## POWERS OF CONGRESS

**A. Classification of Powers**

1. **Legislative**
   a. General plenary power (*Sec. 1*);
   b. Specific power of appropriation (*Sec. 24*);
   c. Taxation and expropriation (*Sec. 28*);
   d. Legislative Investigation (*Sec. 21*);
   e. Question hour (*Sec. 22*);

2. **Non-legislative**
   a. Canvass presidential elections (*Sec. 4*);
   b. Declare the existence a state of war (*Sec. 23, par. 1*);
   c. Delegation of emergency powers (*Sec. 23, par. 2*);
   d. Call special election for President and Vice-President (*Art. VII, Sec. 10*);
   e. Give concurrence to treaties and amnesties (*Art. VII, Sec. 21*);
   f. Constituent power – power to propose constitutional amendments (*Art. XVII, Secs. 1 and 2*);
   g. Confirm certain appointments (*Art. VII, Sec. 16*);
   h. Impeach (*Art. XI, Sec. 2*);
   i. Decide the disability of the President in cases where majority of the Cabinet dispute his assertion that he is able to discharge his duties (*Art. VII, Sec. 11*);
   j. Revoke or extend proclamation of suspension of privilege of writ of *habeas corpus* or declaration of martial law (*Art. VII, Sec. 18*);
   k. Power with regard to utilization of natural resources (*Art. XII, Sec. 2*).

**B. Substantive Limitations on the Powers of Congress**

1. **Express**
   a. Bill of Rights (*see Art. III, Secs. 4, 5, 10 & 22*);
   b. On appropriations;
      i. The procedure in approving appropriations for the Congress shall strictly follow the procedure for approving appropriations for other departments and agencies (*Sec. 25*);
      ii. Prohibition against use of public money or property for religious purposes (*Sec. 29, par. 2*);
      iii. No specific funds shall be appropriated or paid for use or benefit of any religion, sect, etc., *except* priests, etc. assigned to AFP, penal institutions, etc. (*Sec. 29, par. 2*);
   c. On taxations;
      i. No law granting any tax exemption shall be passed with the concurrence of a majority of all the Members of the Congress (*Sec. 28, par. 4*);
      ii. All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only (*Sec. 29, par. 3*);
      iii. All revenues and assets of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties (*Art. XIV, Sec. 4, par. 3*).
   d. On constitutional appellate jurisdiction of Supreme Court
      i. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in the Constitution without its advice and concurrence (*Sec. 30*);
      ii. No law granting title to royalty or nobility shall be passed (*Sec. 31*).

2. **Implied**
   a. Prohibition against irrepealable laws;
   b. Non-delegation of powers (*Nachura, 268*).

3. **Jurisprudence**
   a. Congress cannot provide for the holdover of elective officers if the same would go beyond their terms, as fixed in the Constitution (*Datu Michael Abas Kida v Senate, GR No. 196271 [18.10.2011]*);
   b. It cannot create a new term and effectively appoint the occupant of the position for the new term (*Id.*);
   c. It cannot grant legislative franchises or the operation of public utilities which shall be exclusive in character and which shall not be

subject to amendment, alteration, or repeal when common good so requires (*Tawang Multi-Purpose Coop. v La Trinidad Water District, GR No. 166471 [22.03. 2011]*);

d. Laws shall have no retroactive effect, unless the contrary is provided (*PERT/CPM Manpower Exponent Co., Inc. v Vinuya, GR No. 197528 [05.09.2012]*).

**C. Procedural Limitations on the Powers of Congress**

1. One-subject-one-title rule (*Sec. 26, par. 1*);

**Reasons**

a. To prevent hodgepodge or log-rolling legislation (*Central Capiz v Ramirez, GR No. L-16197 [12.03.1920]*);

**Hodgepodge or log-rolling legislation**

Any act containing several subjects with unrelated matters representing diverse interests, the main object of such combination being to unite the members of the legislature who favor any one of the subjects in support of the whole act.

b. To prevent surprise or fraud upon the legislature;
c. To fairly apprise the people (*Id.*).

**Note:** The title need not be an index of the contents of the bill. It is enough for the title to be comprehensive enough to include, subjects related to the general purpose that the statute seeks to achieve (*Tio v Videogram Regulatory Board, GR No. L-75697 [18.06.87]*).

2. 3 readings on 3 separate days; printed copies of the bill in its final form distributed to members 3 dayys before its passage, except if Pres. Certifies to its immediate enactment to meet a public calamity or emergency; upon its last reading, no amendment allowed and the vote thereon taken immediately and the yeas and nays entered into the Journal (*Sec. 26, par. c*);

**Note:** The phrase "except when the President certifies to the necessity of its immediate enactment: qualifies not only the requirement that printed copies of a bill in its final form must be distributed to the members three days before its passage but also the requirement that before a bill can become a law, it must have passed three readings on separate days (*Tolentino v Sec. of Finance, GR No. 115455 [30.10.95]*).

**Note:** A legislative act will not be declared invalid for non-compliance with the internal rules of the House (*Arroyo v de Venecia, GR No. 127255 [26.06/98]*).

3. Bills that shall originate exclusively in the HRep (*Sec. 24*) because Members of the HRep are presumed to be more familiar with the needs of the country in regard to the enactment of the legislation involved [**APRIL**]

a. **A**ppropriation bill – a bill which the primary and specific purpose is to authorize the release of funds from the public treasure (*Bengzon v Sec. of Justice, GR No. L-42821 [18.01.36]*);

b. **P**rivate bill – one affecting purely private interest, such as one granting a franchise (*De Leon, 269*).;

c. **R**evenue or tariff bill – one that levies taxes and raises funds for the government, and one that specifies the rates or duties to be imposed on imported articles, respectively (*Sinco, 197*);

d. Bills authorizing **i**ncrease in public debts – one which creates public indebtedness such as bills for the issuance of bonds and other forms of obligations (*Id.*);

e. Bills of **l**ocal application – one affecting purely local or municipal concerns like one creating a city or municipality (*De Leon, 269*).

**Note:** The exclusivity of the prerogative of the HRep means simply that the House along can *initiate* the passage of a revenue bill, such that, if the House does not initiate one, no revenue law will be passed. But once the House has approved a revenue bill and passed it on the Senate, the Senate can completely overhaul it, by amendment of parts or by amendments by substitution, and come out with one completely different from what the House approved ((*Tolentino v Sec. of Finance, GR No. 115455 [30.10.95]*).

**Note:** In cases of bills that must originate exclusively in the HRep, the Constitution does not prohibit the Senate to prepare for a bill in anticipation of the bill coming from the HRep as long as it does not act on it until it receives the bill from the HRep (*Alvarez v Guingona, GR No. 118303 [31.01.96]*).

**BICAMERAL CONFERENCE COMMITTEE**

In a bicameral system, bills are independently processed by both houses of Congress. The Conference Committee consisting of members nominated for both Houses is an extra-constitutional creation of Congress whose function to propose to Congress ways of reconciling conflicting provisions found in the Senate version and House version of the bill (*Bernas, 789*).

**NOTE:** The Bicameral ConCom should not perform functions that the Congress itself may not do. Moreover, their proposals need confirmation by both Houses of Congress (*Id.*).

**NOTE:** Following US practice, amendments germane to the purpose of the bill could be introduced even if these were not in either original bill (*Tolentino v Sec. of Finance, GR No. 115455 [30.10.95]*).

**NOTE:** The Bicameral ConCom is not required to comply with the 3 reading on separate day requirements, and with limitation on no-amendment on third reading rule (*ABAKADA Guro Party List v Ermita, GR No. 168056 [01.09.2005]*).

**POWER OF APPROPRIATION**

The spending power, called the "power of the purse" belongs to the Congress, subject only to the veto power of the President. It carries with it the power to specify the project or activity to be funded under the appropriation law (*Phil. Const. Ass'n v Enriquez, GR No. 113105 [19.08.94]*).

**CLASSIFICATIONS OF APPROPRIATION LAWS**

1. **General appropriation law –** passed annually, intended for the financial operations of the entire government during one fiscal period;
2. **Special appropriation law –** designed for a specific purpose (*Cruz, 306*).

**THE GOVERNMENT BUDGETING PROCESS [PLEA]**

1. **Budget preparation –** the first step is essentially tasked upon the Executive branch and covers the estimation of government revenues, the determination of budgetary priorities and activities within the constraints imposed by available revenues and by borrowing limits, and the translation of desired priorities and activities into expenditure levels;

2. **Budget legislation –** Congress enters the picture and deliberates or acts on the budget proposals of the President, and Congress in the exercise of its own judgment and wisdom formulates an appropriation act precisely following the process established by the Constitution, which specifies that no money may be paid from the Treasury except in accordance with an appropriation made by law;

   **Note:** The Congress examines the *p*rojects, *a*ctivities, and *p*rograms (*PAP*) of the departments and agencies. Thereafter, the HRep drafts the *g*eneral *a*ppropriations *b*ill (*GAB*).

   **General appropriations bill**

   A special type of legislation, whose content is limited to specified sums of money dedicated to a specific purpose or a separate fiscal unit (*Defensor-Santiago, 313*).

3. **Budget execution** – tasked on the executive, the third phase of the budget process covers the various operational aspect of budgeting;

4. **Budget accountability –** the evaluation of actual performance and initially approved work targets, obligations incurred, personnel hired and work accomplished are compared with the targets set at the time the agency budgets were approved (*Guingona v Carague, GR No. 94571 [22.04.91]*).

**NOTE:** The existence of appropriations and the availability of funds are indispensable pre-requisites to, or conditions *sine qua non* for, the execution of government contracts (*COMELEC v Quijano-Padilla, GR No. 151992 [18.09.2002]*).

**PORK BARREL: UNCONSTITUTIONAL**

Voting 14-0, the Court declared as unconstitutional the PDAF (*Belgica v Ochoa, GR No. 208560 [11.11.2013]*).

Pork barrel refers to an appropriation of government spending meant for localized projects and secured solely or primarily to bring money to a representative's district. It is lump-sum discretionary funds of Members of the Legislature, although, its usage later evolved in reference to certain funds of Executive (*Defensor-Santiago, 326*).

1. *Congressional Pork Barrel* – lump-sum discretionary fund wherein legislators, either individually or collectively organized into committees, are able to effectively control certain aspects of the fund's utilization through various post-enactment measures and/or practices;
2. *Presidential Pork Barrel* – a lump-sum discretionary fund which allows the President to determine the manner of its utilization

**PRIORITY DEVELOPMENT ASSISTANCE FUND (PDAF)**

The collective body of rules and practices that govern the manner by which lump-sum, discretionary funds, primarily intended for local projects, are utilized through the respective participations of the Legislative and Executive branches of government including its members.

**THE CONGRESSIONAL PORK BARREL VIOLATED THE:**

1. **Separation of powers –** from the moment the law becomes effect, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional (*ABAKADA Guro Party List v Purisima, GR No. 166715 [14.08.2008]*);

   **Note:** Since the restriction only pertains to any role in the implementation or enforcement of the law, Congress may still exercise its oversight function. But any post-enactment measure allowing legislator participation beyond oversight is bereft of any constitutional basis and hence, impermissible interference and/or assumption of executive function (*Belgica v Ochoa, GR No. 208560 [11.11.2013]*).

2. **Non-delegability of legislative powers –** the 2013 PDAF Article, insofar as it confers post-enactment identification authority to individual legislators, violates the principle of non-delegability since said legislators are allowed to *individually* exercise the power of appropriation, which should be lodged in the Congress;

   **Note:** That power to appropriate must be exercised only through legislation is clear from Sec. 29, par. 1, Art. VI of the Constitutoin which states that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law."

3. **Checks and balances –** the lump-sum/post-enactment legislative identification budgeting system fosters the creation of a budget within a budget which subverts the prescribed procedure of presentment and

consequently impairs the President's power of item veto;

4. **Accountability –** the mechanism here is normally done through the power of congressional oversight. The fact that individual legislators are given post-enactment roles in the implementation of the budget makes it difficult for them to become disinterested observes when scrutinizing, investigating or monitoring the implementation of the appropriation law.

5. **Local autonomy –** authorizing individual legislators to intervene in purely local matters through the use of their port barrel funds for local government projects subverts genuine local autonomy (*Belgica v Ochoa, GR No. 208560 [11.11.2013]*).

**DISBURSEMENT ACCELERATION PROGRAM (DAP)**

A program designed by the DBM to ramp up spending after sluggish disbursements had cause the growth of the Gross Domestic Product (GDP) to slow down. The funds under the DAP were taken from:

1. Unreleased appropriations;
2. Unprogrammed funds;
3. Carry-over appropriations unreleased form the previous years;
4. Budgets for slow-moving items or projects that had been realigned to support faster disbursing projects (*Araullo v Aquino, GR No. 209287 [01.07.2014]*).

**IN *ARAULLO v AQUINO*, THE COURT DECLARED AS UNCONSTITUTIONAL THE 4 ACTS AND PRACTICES UNDER THE DAP, TO WIT:**

1. The withdrawal of unobligated allotment from the implementing agencies, and the declaration of the withdrawn unobligated allotments and unreleased appropriations as savings prior to the end of the fiscal year and without complying with the statutory definition of savings contained in the GAA;
2. The cross-border transfer of the savings of the executing to augment the appropriations of other offices outside the executive (prohibited cross-border augmentation);
3. The funding of Programs, Activities and Projects (PAP) that are not covered by any appropriation in the GAA since augmentation can only be made from one existing item to another existing item in the budget;
4. The use of Unprogrammed funds in the absence of a legally required certification by the National Treasurer that the whole revenue collections exceeded the total revenue targets.

**NOTE:** Nonetheless, the Court upheld the efficacy of the DAP-funded projects by applying the *operative fact doctrine*.

**MEANING OF "SAVINGS"**

In ascertaining the meaning of "savings," certain principles should be borne in mind:

1. The Congress wields the power of the purse and decides how the budget will be spend;
2. The Executive is expected to faithfully execute the GAA and to spend the budget in accordance with the provisions of the GAA;
3. In making the President's power to augment operative under the GAA, Congress recognizes the need for flexibility in budget execution;
4. Savings must be actual (*Id.*).

**NOTE:** Savings refer to portions or balances of any programmed appropriation free of any obligation or encumbrance still available after the satisfactory completion or unavoidable discontinuance or abandonment of the work, activity or purpse for which the appropriation is authorized or arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay (*Sec. 19, RA 7180*).

**ACTUAL SAVINGS**

1. The PAP for which the appropriation had been authorized was completed, finally discontinued or abandoned;
2. There were vacant positions and leaves of absence without pay;
3. The required or planned targets, programs or services were realized at a lesser cost because of the implementation of measures resulting in improved systems and efficiencies (*Id.*).

**UNPROGRAMMED FUNDS**

Appropriations that provided standby authority to incur additional agency obligations for priority PAPs when revenue collections exceeded targets, and when additional foreign funds are generated (*Id.*).

**EXPRESS LIMITATIONS ON THE POWER TO APPROPRIATE**

1. **Constitutional limitation on Special Appropriation measures**
   a. It must specify the public purpose for which the sum is to be intended;
   b. It must be supported by funds actually available as certified to by the National Treasurer, or to be raised by a corresponding revenue proposal included therein (*Sec. 25, par. 4*).

   **Rationale:** To discontinue the practice of fictitious appropriations that were frequently enacted by the Congress even if it knew that no funds were available (*Cruz, 308*).

2. **Constitutional limitation on General Appropriations Law**
   a. All appropriation, revenue or tariff bills authorizing increase of the public debt, bills of local application, and private bills, shall originate exclusively in the HRep (*Sec. 24*);

      **Note:** Certainly, the framers of the Constitution did not contemplate that existing laws in statute books including existing presidential decrees appropriating public money are reduced to mere "bill" that

must again go through the legislative mill. The only reasonable interpretation of said provisions (*Secs. 24 and 27*) of the Constitution which refer to "bills" is that they mean appropriation measures STILL TO BE PASSED by Congress (*Guingona v Carague, GR No. 94571 [22.04.91]*).

b. Congress may not increase the appropriations recommended by the President for the operation of Government (*Sec. 25, par. 1*);

**Rationale:** Being responsible for the proper operation of the executive department, the President is naturally the party best qualified to know the maximum amount that the operation of his department requires (*De Leon, 272*).

c. No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein (*Sec. 25, par. 2*);

**Rationale:** To prevent "riders" or irrelevant provisions that are included in the general appropriations bill to ensure their approval (*Cruz, 309*).

d. Form, content and manner of preparation of budget shall be prescribed by law (*Sec. 25, par. 1*);

e. Shall strictly follow the procedure for approving appropriations for other departments and agencies (*Sec. 25, par. 3*);

f. Prohibition against enactment of laws authorizing transfer of appropriations (*Doctrine of Augmentation*);

**Rationale:** Stopping the practice in the past of giving the President authority to transfer funds from one department to another or under one appropriation law to another which in effect invested him with legislative power to appropriate, thereby providing a loophole for violations of the appropriations act (*De Leon, 274-275*).

**Note:** However, the President, President of the Senate and Speaker of the House, Chief Justice, and Heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from saving in other items of their respective appropriation (*Sec. 25, par. 5*).

**Note:** The power of augmentation could well be extended to his Cabinet Secretaries as alter egos under the *doctrine of qualified political agency* (*Nazareth v Villar, GR No. 168635 [29.01.2013]*).

**Requisites for valid transfer of funds [LaSaP]**

i. There is a **la**w authorizing the Pres, Senate Pres, Speaker, the CJ, and the Heads of the Constitutional Commissions to transfer funds within their respective offices;
ii. The funds to be transferred are **sa**ving generated from the appropriations for their respective offices;
iii. The **p**urpose of the transfer is to augment an item in the general appropriations law for their respective offices (*Araullo v Aquino, GR No. 209287 [01.07.2014]*).

**Prohibited Cross-Border Augmentations**

In *Araullo v Aquino*, the Court ruled that the GAAs of 2011 and 2012 lacked valid provisions to authorize fund transfer: "The aforequoted provisions of the GAAs of 2011 and 2012 were textually unfaithful to the Constitution for not carrying the phrase "*for their respective offices*" in Sec. 5, par. 5 of Art. VI. The impact of said phrase was to authorize only transfer of funds within their offices. The provisions carried a different phrase ("*to augment any item in this Act*") and the effect was that the 2011 and 2012 GAAs thereby literally allowed the transfer of funds from savings to augment *any item* in the GAAs even if the item belonged to an office outside the Executive. To that extent did the 2011 and 2012 GAAs contravene the Constitution.

g. Discretionary funds appropriated for particular officials shall be disbursed only for public purpose (*Sec. 25, par. 6*);

**Discretionary Funds**

Funds appropriated by Congress for certain activities of the government to be disbursed at the discretion of certain officials (*i.e.* intelligence funds), said funds must be disbursed only for public purposes, supported by appropriate vouchers and subject to the guidelines as may be prescribed by law.

h. Automatic re-appropriation – if, by the end of any fiscal year, the Congress shall have failed to pass the GAA for the ensuing fiscal year, the general appropriations law for the preceding fiscal year shall be deemed reenacted and shall remain in force and effect until the general appropriations bill is passed by the Congress (*Sec. 25, par. 7*);

**Note:** Art. VI, Sec. 29, par. 1, speaks of an "appropriation made by law," not an

"appropriation made by Congress."" The automatic reenactment of the general appropriations law for the preceding fiscal year is considered "an appropriation made by law" (*De Leon, 293*).

**Note:** There is no provision in our Constitution that provides or prescribes any particular form of words or religious recitals in which an authorization or appropriation by Congress shall be made, except that it be "made by law." An appropriation may be made impliedly (as by past but subsisting legislations) as well as expressly by the current fiscal year (as by enactment of laws by the present Congress), just as said appropriation may be made in general as well as in specific terms (*Guingona v Caragüe, GR No. 94571 [22.04.91]*).

i. Appropriations for sectarian purposes – prohibition against expenditure of public money or property for religious purposes (*Sec. 29, par. 2*);

**Rationale:** To further bolster the principle of "separation of Church and State" and emphasize the neutrality of the State in ecclesiastical matters (*Cruz, 315*). Aside from the express exceptions, payment to ecclesiastics is no prohibited when they do not act as such (*Aglipay v Ruiz, GR No. L-45459 [13.03.37]*).

j. The general appropriation law must be based on the budget prepared by the President (*Sec. 22*).

**IMPLIED LIMITATIONS ON THE POWER TO APPROPRIATE**

1. The appropriation must be devoted to a public purpose;

   **Note:** Appropriation of money for the construction of roads in a private subdivision but such road was subsequently donated to the government is not a valid appropriation. The subsequent donation of the road did not validate the law because the validity of the statute depends upon the powers of Congress at the tie of its approval, and not upon events occurring or acts performed subsequently (*Pascual v Sec. of Public Works, 110 Phil. 331 [1960]*).

2. The sum authorized to be released must be determined or at least determinable (*Cruz, 306-307*).

**LEGISLATIVE PROCESS**

**Bill**

A draft of a law submitted to the consideration of a legislative body for its adoption (*Bouvier's Law Dictionary*).

**Resolution**

A formal expression of opinion, will, or intent by an official, body or group.

Resolutions are employed with respect to matters within the exclusive authority of the law making body or to express an attitude or opinion; resolutions do not require the approval of the President to be effective (*De Leon, 287*).

**KINDS OF RESOLUTION**

1. **Simple –** passed for the exclusive use or purpose of either House;
2. **Concurrent –** passed independently in one House and ratified by the other;
3. **Joint –** approved by both Houses, voting separately, in a joint session. Congress may withdraw the power to fix tariff rates, etc. delegated to the President by means of resolution (*Id.*).

**STEPS FOR A BILL TO BECOME A LAW**

1. **Must be approved by Congress –** the legislative action required of Congress is a positive act; there is no enactment of law by legislative inaction;
2. **Must be approved by the President –** his approval may be positive or inaction (*Bernas, 262*).

**HOW A BILL PASSED BECOMES A LAW**

1. When the President signs it;
2. When the President vetoes it but the veto is overridden by 2/3 of all the members of each House;
3. When the President does not act upon the measure within 30 days after the date of receipt thereof (*Sec. 27, par. 1*).

**NOTE:** A bill calling a special election for President and Vice-President under Art. VII, Sec. 10 becomes a law upon third and final reading.

**PRESIDENTIAL VETO**

1. **General Veto –** if the President disapproves a bill enacted by Congress, he should veto the entire bill. He is not allowed to veto separate items of a bill;
2. **Item Veto –** it is the power of an Executive to veto separate items of a bill without vetoing the entire bill. Item veto is allowed in case of appropriation revenue and tariff bills (*Sec. 27, par. 2*).

**GENERAL RULE**

In the exercise of the veto power, it is all or nothing. Partial veto is invalid.

**EXCEPTION**

When it comes to appropriation, revenue or tariff bills, the Administration needs the money to run the machinery of government and it cannot veto the entire bill even if it ay contain objectionable features (*Bengzon v Drilon, GR No. 103524 [15.04.92]*).

**ITEM**

Particulars, the details, the distinct and severable parts of the bill (*Id.*).

**NOTE:** The Constitution provides that only a particular item or items may be vetoed. The power to disapprove any item or items in an appropriation bill does not grant the authority to

veto a part of an item and to approve the remaining portion of the same item (*Gonzales v Macaraig, Jr., GR No. 87363 [19.11.90]*).

**NOTE:** An item in a revenue bill does not refer to an entire section imposing a particular kind of tax, but rather to the subject of the tax and the tax rate (*CIR v CTA, GR No. L-47421 [14.05.90]*).

**NOTE:** A veto of a condition in an appropriation bill which did not include a veto of the items to which the condition related was deemed invalid and without effect whatsoever (*Bolinao Electronics v Valencia, GR No. L-20740 [30.06.64]*).

**EXCEPTIONS TO THE EXCEPTION**

1. **Doctrine of Inappropriate Provisions –** a provision that is constitutionally inappropriate for an appropriation bill may be singled out for veto even if it is not an appropriation or revenue item (*Gonzales v Macaraig, Jr., GR No. 87363 [19.11.90]*). The President may veto "riders" in an appropriation bill;

   **Note:** Any provision which does not relate to any particular item, or which extends in its operation beyond an item of appropriation, is considered an inappropriate provision which can be vetoed separately from an item. Also included are unconstitutional provisions and provisions which are intended to amend other laws (*Phil Constitution Association v Enriquez, GR No. 113105 [19.08.94]*).

   **Note:** The intent is to prevent the legislature from forcing the President to veto an entire appropriation law thereby paralyzing the government.

2. **Executive Impoundment –** refers to the refusal of the President to spend funds already allocated by Congress for specific purpose. It is the failure to spend or obligate budget authority of any type (*Id.*).

**POCKET VETO**

Vetoing of a bill by an executive by not acting in the time given by law (*Black's Law Dictionary*).

**NOTE:** It is not applicable in the Philippines because inaction by the President for 30 days never produces a veto even if Congress is in recess. The President must still act to veto the bill and communicate his veto to Congress without need of returning the vetoed bill with his veto message (*De Leon, 286*). On the other hand, the inaction of the President for a period of 30 days after receipt of the bill will make the bill a law as if the President has signed it.

**LEGISLATIVE CONGRESSIONAL VETO**

It is a means whereby the legislature can block or modify the administrative action taken under the statute. It is a form of legislative control in the implementation of particular executive action.

**FORMS**

1. **Negative –** subjecting the executive action to disapproval by Congress;
2. **Affirmative –** requiring approval of the executive action by Congress (*Nachura, 328*).

**NOTE:** Congressional veto is subject to serious questions involving the principle of separation of powers (*Id.*).

## POWER OF LEGISLATIVE INVESTIGATION AND OVERSIGHT FUNCTION

**LEGISLATIVE INQUIRIES**

These may refer to the implementation or re-examination of any law or appropriation, or in connection with any proposed legislation or for the formulation of or in connection with future legislation, or will aid in the review or formulation of a new legislative policy or enactment (*Senate Rules of Procedures Governing Inquiries in Aid of Legislation*).

**NOTE:** The power to conduct inquiries in aid of legislation is an inherent power of Congress, and as such the same may be exercised by the Congress even in the absence of any constitutional grant (*Senate v Ermita, GR No. 169777 [20.04.2006]*).

**NOTE:** The power may be exercised by each House of Congress or any committee thereof even if there is no pending legislation as long as the inquiry is within the jurisdiction of the legislative body making it, must be material or necessary to the exercise of a power in it vested by the Constitution such as to legislate or to expel a member (*Bengzon v Senate Blue Ribbon Committee, GR No. 89914 [20.11.91]*).

**LIMITATIONS ON THE POWER OF LEGISLATIVE INVESTIGATION [PAR]**

1. In accordance with duly **p**ublished rules of procedures;
2. It must be in **a**id of legislation;
3. Right of person appearing in or affected by such inquiry shall be **r**espected (*Sec. 21*).

**NOTE:** The questions that may be raised in a legislative investigation do not necessarily have to be relevant to any pending legislation provided that they are relevant to the subject matter of the investigation being conducted (*Arnault v Nazareno, GR No. L-3820 [18.07.50]*).

**THE POWER OF LEGISLATIVE INVESTIGATION INCLUDES [SuN CoR]**

1. To issue **su**mmons and **n**otices;

   **Note:** Anyone, except the President and Justices of the Supreme Court, may be summoned. Nor may a court prevent a witness from appearing in such hearing (*Senate Blue Ribbon Committee v Majaducon, GR No. 136760 [29.07.2003]*).

2. To punish or declare a person in **co**ntempt;

   **Contempt**

   It is the disregard of or disobedience to the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body (*Lorenzo Shipping Corp. v*

*Distribution Management Ass'n. of the Phil., GR No. 155849 [31.08.2011]*).

**Note:** Failure or refusal to attend a legitimate legislative investigation or contumacy of the witness may be punished as legislative contempt. It may include imprisonment for the duration of the session (*Arnault v Nazareno, GR No. L-3820 [18.07.50]*).

**Length of Imprisonment**

The Court held that the offender could be imprisoned indefinitely by the Senate, it being a continuing body, provided that the punishment did not become so long as to violate due process (*Id.*). As for the HRep, the same decision declared that the imprisonment could last not only during the session when the offense was committed but until the final adjournment of the body (*Id.*).

**Note:** The Senate, as an institution, is "continuing," as it is not dissolved as an entity with each national election or change in the composition of its members. However, in the conduct of its day-to-day business, the Senate of each Congress acts separately and independently of the Senate before it. thus, all pending matters and proceedings, *i.e.,* unpassed bills and even legislative investigations, of the Senate of a particular Congress are considered terminated upon the expiration of that Congress and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, not in the same status, but as if presented for the first time (*Romero, II v Estrada, GR No. 174105 [02.04.2009]*).

3. To determine the rules of its proceedings (*Id.*).

**Note:** It is incumbent upon the Senate to publish the rules for its legislative inquiries in each Congress or otherwise make the published rules clearly state that the same shall be effective in subsequent Congresses or until they are amended or repealed to sufficiently put public on notice (*Neri v Senate, GR No. 180643 [04.09.2008]*).

**NOTE:** The exercise of this power of Congress may be looked into by the Supreme Court under its expanded jurisdiction, *i.e.,* Art. VIII, Sec. 1, par.2 (*Id.*).

**NOTE:** The said investigation must at least express a suggestion of a contemplated legislation; a mere call upon the Congress to look into the matter will not suffice (*Bengzon v Senate Blue Ribbon Committee, GR No. 89914 [20.11.91]*).

**SUB JUDICE RULE**

Literally means *under judgment.* It restricts comments and disclosures pertaining to judicial proceedings to avoid prejudging the issue, influencing the court, or obstructing the administration of justice (*Romero, II v Estrada, GR No. 174105 [02.04.2009]*).

**NOTE:** However, when a resolution which was explicit on the subject and nature of the inquiry to be conducted by the respondent Committee was passed before the conduct of the investigation, mere filing of a criminal or an administrative complaint before a court or a quasi-judicial body should not automatically bar the conduct of legislative investigation (*Standard Chartered Bank v Senate Committee on Banks, GR No. 167173 [27.12.2007]*).

**NOTE:** Persons under legislative investigation are not being indicted as accused in a criminal proceeding but are merely summoned as resource persons or witnesses, in a legislative inquiry. Hence, they cannot, on the ground of their right against self-incrimination, altogether decline appearing before the Congress, although they may invoke the privilege when a question calling for an incriminating answer is propounded (*Id.*).

**NOTE:** While it is statutory and noble practice for Congress to refrain from issuing subpoenas to execute officials until resort to it becomes necessary, the fact remains that such requires are not a compulsory process. Being mere requests, they do not strictly call for an assertion of executive privilege. Thus, respondents' failure to invoke the privilege during the House Committee investigation did not amount to a waiver thereof (*Akbayan v Aquino, GR No. 170516 [16.07.2008]*).

**OVERSIGHT FUNCTION**

The heads of departments may upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each house shall provide, appear before and be heard by such house on any matter pertaining to their departments written questions shall be submitted to the President of the Senate or the Speaker of the HRep at least 3 days before the scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the State or the public interest so requires, the appearance shall be conducted in executive session (*Sec. 22*).

**RATIONALE**

The oversight function is intended to enable Congress to determine how the laws it has passed are being implemented (*Bernas, 249*).

**NOTE:** The framers removed the mandatory nature of such appearance during the question hour in the present Constitution so as to conform more fully to a system of separation of powers. To that extent, the question hour, as it is presently understood in this jurisdiction, parts from the question period of the parliamentary system. In fine, the oversight function of Congress may be facilitated by compulsory process only to the extent that it is performed in pursuit of legislation. And the only way for department heads to exempt themselves from it is by a valid claim of executive privilege. They are not exempt by the mere fact that they are department heads. Only one executive official may be exempted by this power; it is the President on whom executive power is vested, hence beyond the reach of Congress except through the power of impeachment (*Senate v Ermita, GR No. 169777 [20.04.2006]*).

**POST-ENACTMENT MEASURES UNDERTAKEN BY CONGRESS (Congressional Oversight)**

1. Monitor bureaucratic compliance with program objectives;
2. Determine whether agencies are properly administered;
3. Eliminate executive waste and dishonesty;
4. Prevent executive usurpation of legislative authority;
5. Assess executive conformity with the congressional perception of public interest.

**Note:** The power of oversight embraces all activities undertaken by Congress to enhance its understanding of and influence over the implementation of legislation it has enacted. Clearly, oversight concerns post-enactment measures undertaken by Congress (*ABAKADA Guro Party List v Purisima, GR No. 166715 [14.08.2008]*).

**NOTE:** Congress uses its oversight power to make sure that the administrative agencies perform their functions within the authority delegated to them (*Defensor-Santiago, 139*).

**CATEGORIES OF CONGRESSIONAL OVERSIGHT FUNCTIONS [SCL]**

1. **Congressional Scrutiny –** implies a *lesser intensity and continuity* of attention to administrative operations. Congress may *request information and report from the other branches of government.* It can *give recommendations or pass resolutions* for consideration of the agency involved. It is based primarily on the power of appropriation of Congress;

   **Purpose**

   To determine economy and efficiency of the operation of government activities (*Id.*).

2. **Congressional Investigation –** while congressional scrutiny is regarded as a passive process of looking at the facts that are readily available, congressional investigation *involves a more intense digging of facts*; recognized under Sec. 21, Art. VI

3. **Legislative Supervision –** otherwise known as <u>*legislative veto*</u>, it is the most encompassing form by which Congress exercises its oversight power (*Id., 140*).

   **Note:** Supervision connotes a *continuing and informed awareness on the part of a congressional committee regarding executive operations* in a given administrative area. It allows Congress to *scrutinize the exercise of delegated law-making authority*, and permits Congress to *retain part of that delegated authority* (*Id.*).

**NOTE:** Congressional oversight is not unconstitutional *per se*. It is *integral to the checks and balances* inherent in a democratic system of government (*Id.*).

**LIMITATIONS ON POST-ENACTMENTS CONGRESSIONAL MEASURES**

1. It must not vest itself, any of its committees, or its members with either executive or judicial power;
2. It must following the single, finely wrought, and exhaustively considered procedures specified under the Constitution, including the procedure for enactment of laws and presentment (*Id. 142*).

**NOTE:** *Post-enactment congressional measures should be limited to scrutiny and investigation*. In particular, congressional oversight must be confined to the following:

1. Scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation;
2. Investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation (*Id., 142*).

**EXECUTIVE PRIVILEGE**

The power of the Government to withhold information from the public, the courts and the Congress (*Sec. 22*).

**OPERATIONAL PROXIMITY TEST**

Communications which are close enough to the President to be revelatory of his deliberations or to pose a risk to the candor of his advisers are covered (*Neri v Senate, GR No. 180643 [04.09.2008]*).

**NOTE:** The President, however, has the constitutional authority to prevent a member of the armed forces from testifying before a legislative inquiry, by virtue of his power as commander-in-chief and a military officer who defies such injunction is liable under military justice (*Gudani v Senga, GR No. 170165 [15.08.2006]*).

| SEC. 21<br>In aid of legislation | SEC. 22<br>Question Hour |
|---|---|
| ***As to persons who may appear*** | |
| Any person; | Department head only; |
| ***As to who conducts investigation*** | |
| Committees; | Entire body; |
| ***As to subject matter*** | |
| Any matter for the purpose of legislation; | Matters related to the department only; |
| ***As to purpose*** | |
| To elicit information that may be used for legislation; | To obtain information in pursuit of Congress oversight functions; |
| ***As to appearance/compelling power*** | |
| Mandatory; Congress can compel the appearance of executive officials. | Discretionary; Congress cannot compel the appearance of executive officials if the required consent of the President is not obtained first, or if no such consent is given. |

*Senate v Ermita, GR No. 169777 [20.04.2006]*

**POWER TO TAX**
**(Section. 28)**

*The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation (Sec 28, No. 1).*

The power to tax is an incident of sovereignty and is unlimited in its ranged, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who are to pay it (*Defensor-Santiago, 368*).

**PURPOSE**

To raise revenue. Historically, power to tax has been recognized as an instrument of national economic and social policy, being an instrument for the extermination of undesirable activities and enterprises. It involves the power to destroy. Also, it has been used as a tool for regulation (*Bernas, 267*)

It has been characterized as "the power to keep alive." This is the foundation for the imposition of tariffs designed for the encouragement and protection of locally produced goods against competition from imports (*Id.*).

**PUBLIC PURPOSE**

Taxes are exacted only for a public purpose. They cannot be used for purely private purposes or for the exclusive benefit of private persons (*Defensor-Santiago, 369*).

**REASON**

The power to tax exists for the general welfare; hence, implicit in its power is the limitation that it should be used only for a public purpose. It would be a robbery for the State to tax its citizens and use the funds generated for a private purpose (*Id.*).

**NOTE:** The public purpose of the power to tax should not be viewed narrowly. It includes not only to those purposes which are traditionally viewed as *essentially government functions*, but also includes those purposes designed to *promote social justice* (*Id.*).

**STATUTORY CONSTRUCTION ON THE POWER TO TAX**

- Statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously;
- In case of doubt, tax statutes are to be *construed against the government and in favor of the citizens* because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import;
- *Tax exemption* is a result of legislative grace, hence, must be *strictly construed* such that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention (*CIR v Fortune Tobacco Corp., 559 SCRA 160 [2008]*).

**GENERAL LIMIT ON THE POWER TO TAX**

Both *due process* and *equal protection clause* may properly be invoked to invalidate in appropriate cases a revenue measure. As said by Justice Holmes, "the power to ta is not the power to destroy while this Court sits" (*Sison, Jr. v Ancheta, 130 SCRA 655 [1984]*).

**SPECIFIC LIMITS ON THE POWER TO TAX**

*See Sec. 28 of Art. VI.*

**"UNIFORM AND EQUITABLE"**

It means that *all taxable articles or kinds of property of the same class be taxed at the same rate*. The taxing power has the authority to make reasonable and natural classifications for purposes of taxation. It is enough that the *statute or ordinance applies equally to all person, form and corporation placed in similar situation* (*Tolentino v Sec. of Finance, 249 SCRA 628 [1995]*).

**PROGRESSIVE SYSTEM OF TAX**

It is not a prohibition on the imposition of indirect taxes which are regressive. What the Constitution provides is that the Congress shall evolve a progressive system of taxation, this means that direct taxes are to be preferred and as must as possible, indirect taxes should be minimized (*Defensor-Santiago, 370*).

*The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, imports and exports quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government (Sec. 28, No. 2).*

**TIE TWO DIF**

1. **T**ariff rates;
2. **I**mports and
3. **E**xport quotas;
4. **T**onnage and
5. **W**harfage dues;
6. **O**ther
7. **D**uties or
8. **I**mposts within the
9. **F**ramework of the nat. dev. prog. Of the Gov.

# The Executive Department

## ARTICLE VII

**EXECUTIVE POWER**

The power to enforce and administer laws. It is the power of carrying out the laws into practical operation and enforcing their due observance (*National Electrification Administration v CA, GR No. 143481 [15.02.2002]*).

**REORGANIZATION OF THE OFFICE OF THE PRESIDENT**

The Administrative Code of 1987 (EO 292) expressly grants the President continuing authority to reorganize the Office of the President in recognition of the recurring need of every President to reorganize his office to achieve simplicity, economy and efficiency. To remain effective and efficient, the Office of the President must be capable of being shaped and reshaped by the President in the manner he deems fit to carry out his directives and policies (*Nachura, 289*).

**NOTE:** The power to reorganize the Office of the President under Sec. 31 (2) & (3) of EO 292 should be distinguished from Sec. 31 (1).

- *Sec. 31 (1)* – the power to reorganize the Office of the President Proper. The President can reorganize the Office of the President Proper by *abolishing, consolidating or merging* units, or by *transferring functions* from one unit to another;
- *Sec. 31 (2) & (3)* – the power to reorganize the Office of the President. The President's power to reorganize offices *outside the Office of the President Proper* is limited to merely *transferring functions* from Office of the President to Departments or Agencies, and *vice versa* (*Domingo v Zamora, GR No. 142283 [06.02.2003]*).

  **Note:** The provision refers to reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions (*Defensor-Santiago, 433*).

**NOTE:** The President has the authority to carry out a reorganization of the DOH under the Constitution and statutes. This authority is an adjunct of the President's power of control under Secs. 1 & 17 of Art. VII, and it is also an exercise of his *residual powers*. However, the President must exercise good faith in carrying out the reorganization of any branch or agency of the executive department (*Malaria Employees & Wrokers Association of the Phil., Inc v Romulo, GR No. 160093 [31.07.2007]*).

**WITH WHOM THE EXECUTIVE POWER IS VESTED**

*The executive power shall be vested in the President of the Philippines* (*Sec. 1*) who is both the "Head of State" and "Chief Executive" (*Bernas, 277*).

**SIGNIFICANCE OF "HEAD OF STATE"**

The ceremonial head of the government, and he must take part with real or apparent enthusiasm in a range of activities that would keep him running and posing from sunrise to bedtime if he were not protected by a cold-blooded staff (*Id.*).

**SIGNIFICANCE OF "CHIEF EXECUTIVE"**

This means that he is the executive and no one else is. The heads of the executive departments occupy political positions and hold office in an advisory capacity, and should be of the President's bosom confidence, and are subject to the direction of the President (*Villena v Sec. of Interior, 67 Phil. 451 [1939]*).

**QUALIFICATIONS OF A PRESIDENT (*Sec. 2*)**

1. Natural-born citizen;

   **Note:** Assuming that Fernando Poe, Jr. was an illegitimate child of an American mother and a Filipino father, would he be a natural-born Filipino citizen? *Yes. Provided paternity is clearly proved, an illegitimate child of a Filipino father is a natural-born Filipino citizen* (*Tecson v COMELEC, GR No. 161434 [03.03.2004]*).

2. Registered voted;
3. Able to read and write;
4. At least 40 years of age on the day of the election;
5. Resident of the Phil. of at least 10 years immediately preceding such election.

**THE VICE PRESIDENT**

*There shall be a vice-president who shall have the same qualifications and term of office and be elected with and in the same manner as the president. He may be removed from office in the same manner as the president.*

*The vice-president may be appointed as a member of the cabinet. Such appointment requires no confirmation* (*Sec. 3*).

**FUNCTION OF THE VICE-PRESIDENT**

To be on hand to act as President when needed or to succeed to the presidency in case of a permanent vacancy in the office. The President may also appoint him as a member of the Cabinet. Such appointment does not need the consent of the Commission on Appointments (*Bernas, 284*).

**ELECTION (Sec. 4)**

**MANNER OF ELECTING**

By direct vote of the people as specified in Sec. 4 (*Id., 285*).

**REGULAR ELECTION**

Second Monday of May.

**CANVASSING BOARD**

Returns of every election for President and VP, duly certified by the board of canvassers of each province/city, shall be transmitted to Congress, directed to the Senate Pres. who, upon receipt of the certificate of canvass, shall not later than 30 days after the day of the election, open all the certificates in the presence of the Senate and HRep in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes. Congress shall promulgate its rules for the canvassing of the certificates (*Nachura, 281*).

**NOTE:** The function of Congress is not merely ministerial. It has authority to examine the certificates of canvass for authenticity and due execution. For this purpose, Congress must pass a law governing their canvassing functions (*Bernas, 286*).

**NOTE:** The proclamation of the presidential and vice-presidential winners is a *function of Congress* and not of the COMELEC. Hence, Sec. 18.5 of RA 9189 (Overseas Absentee Voting Act of 2003) is unconstitutional, insofar as it grants sweeping authority to the COMELEC to proclaim all winning candidates, in violation of Sec. 4, Art. VII of the Constitution (*Macalintal v COMELEC, GR No. 15701 [10.07.2003]*)

**NOTE:** There is no constitutional or statutory basis for COMELEC to undertake a separate and an unofficial tabulation of results. By conducting such tabulation, the COMELEC descends to the level of a private organization, spending public funds for the purpose. This not only violates the exclusive prerogative of NAMFREL to conduct an unofficial count, but also taints the integrity of the envelopes containing the election returns and the election returns themselves (*Brillantes v COMELEC, GR No. 163193 [15.06.2004]*).

**BREAKING A TIE**

In case two or more candidates shall have an equal and highest number of votes, one of them shall be chosen by a majority vote of all the member of Congress (*Id.*).

**DELEGATION OF THE POWER TO CANVASS**

Congress may validly delegate the *initial determination of the authenticity and due execution* of the certificates of canvass to a *Joint Congressional Committee*, composed of members of the HRep and Senate (*Lopez v Senate and House, GR No. 163556 [08.06.2004]*).

**CONTINUATION OF CANVASS AFTER ADJOURNMENT**

The final adjournment of Congress does not terminate an unfinished presidential canvass. Adjournment terminates legislative functions and not non-legislative functions of Congress such as canvassing of votes (*Pimentel v Joint Canvassing Committee, GR No. 163783 [22.06.2004]*).

**PRESIDENTIAL ELECTORAL TRIBUNAL**

The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns and qualifications of the President or the VP, and may promulgate its rules for the purpose (*Nachura, 282*).

***Q:*** *Can Susan Roces, widow of Fernando Poe, Jr. intervene and/or substitute for him, assuming arguendo that the protest could survive his death?*

***A:*** No, the fundamental rule applicable in a presidential election protest is Rule 14 of the PET Rules which provides, "only the registered candidate for President or for VP…who received the *second or third highest number of votes* may contest the election of the President or the VP…" Pursuant to this rule, *only two persons, the 2nd and 3rd placers, may contest the election* (*Poe, Jr. v Macapagal-Arroyo, PET Case No. 002 [29.03.2005]*).

**NOTE:** The *validity, authenticity and correctness* of the statements of votes (SOV) and the certificates of canvass (COC) are *under the PET's jurisdiction*. The constitutional function as well as the power and the duty to be the sole judge of all contests relating to the election, returns and qualification of the President and the VP is expressly vested in PET under Sec. 4 of Art. VII. Included therein is the duty to correct manifest errors in the SOV and COC (*Legarda v De Castro, PET Case No. 003 [31.03.2005]*).

***Q:*** *After Ramos was declared elected President, defeated candidate Defensor-Santiago filed an election protest with the SC. Subsequently, while the case was pending, she ran for the office of Senator and, having been declared elected, assumed office as Senator. What happens to her election protest?*

***A:*** With her election and assumption of office as Senator *she is deemed to have abandoned her protest*. A Senator's term is 6 years. It is a public trust. She has made a pact with the people that she would serve for 6 years (*Defensor-Santiago v Ramos, PET Case No. 001 [13.02.96]*).

**GROUNDS IN DISMISSING SUMMARILY ELECTORAL PROTEST BEFORE THE P.E.T.**

1. Insufficient in form and in substance;
2. Petition is filed beyond the periods provided;
3. Failure to pay filing fee within the given period;
4. Cash deposit is not paid within 10 days after the filing of the protest;
5. The petition or copies thereof and the annexes thereto are not clearly legible (*Defensor-Santiago v Ramos, 253 SCRA 559 [1996]*).

**TERM OF OFFICE**

Both the President and the VP are elected for a term of *6 years* which begins at *noon on the 30th day of June* next following the day of election (*see Sec. 4*).

**LIMITATION**

No re-election of the President and no VP shall serve for more than 2 successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected (*Bernas, 287*).

***Q:*** *If a VP succeeds to the presidency, may he run for President at the end of the term to which he succeeded as President?*

***A:*** No person who has succeeded as President and has served as such for more than 4 years shall be qualified for election to the same office at any time (*Sec. 4, par. 1*).

**OATH/AFFIRMATION OF OFFICE**

*I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President (or VP or Acting President) of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the nation. So help me God. (In case of Affirmation, last sentence will be omitted).*

**PRIVILEGES (*see Sec. 6*)**

1. ***Official residence***;

2. ***Salary*** – determined by law; shall not be decreased during tenure. No increase shall take effect until after the expiration of the term of the incumbent during which such increase was approved;

3. ***Immunity from suit*** –The President is immune from civil liability (*In Re: Bermudez, 145 SCRA 160*).

**Note:** The President is immune from suit and may not be prevented from instituting suit (*Soliven v Makasiar, 167 SCRA 393*).

**Rationale**

*To assure the exercise of presidential duties and functions free form any hindrance or distraction*, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention. *But this privilege of immunity from suit pertains to the President by virtue of the office and may be invoked only by the holder of the office, not by any other person in the President's behalf.* Thus, an accused in a criminal case in which the President is complainant cannot raise the presidential privilege as a defense to prevent the case from proceeding against such accused. Moreover, there is nothing in the law that would prevent the President from waiving the privilege.

**Not expressly provided in 1987 Constitution**

Although the 1987 Constitution has not reproduced the explicit guarantee of presidential immunity from suit under the 1973 Constitution, presidential immunity during tenure remains as part of the law. What has been rejected by the new Constitution is the expansive motion of immunity in the Marcos Constitution (*Bernas, 282*).

**Note:** After his tenure, the Chief Executive cannot invoke immunity form suit for civil damages arising out of acts done by him while he was President which were not performed in the exercise of official duties (*Estrada v Desierto, GR Nos. 146710-15 [02.03.2001]*).

**Note:** this presidential privilege of immunity cannot be invoked by a non-sitting president even for acts committed during his or her tenure (*Lozada v Macapagal-Arroyo, GR Nos. 184379-80 [24.04.2012]*).

**Impleading the former President**

It is contrary to public policy against embroiling the President in suits (*Resident Marine Mammals v Reyes, GR No. 180771 [21.04.2015]*).

This is not necessary since the suit impleads the Executive Secretary who is the *alter ego* of the President and he has in fact spoken for her in his comment (*Kilosbayan v Ermita & Gregory Ong, GR No. 179895 [18.12.2008]*).

**Note:** Even if the DECS Sec. is an *alter ego* of the President, he cannot invoke the President's immunity from suit in a case filed against him because the questioned acts are not the acts of the President but merely those of a department Secretary (*Gloria v CA, GR No. 119903 [15.08.2000]*).

**Liability of President under command responsibility doctrine**

The President, as Commander-in-Chief, can be held responsible or accountable for extrajudicial killings and enforced disappearances in the context of *amparo* proceedings, the requisites of which are:

a. Existence of superior-subordinate relationship;
b. Superior knew or had reason to know the crime;
c. The superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof (*Rodriguez v Macapagal-Arroyo, GR No. 191805 [15.11..11]*).

4. ***Executive privilege*** **–** the right of the President and high-level executive branch officials to withhold information from Congress, the courts, and ultimately, the public (*Senate v Ermita, GR No. 169777 [20.04.2006]*).

**Note:** The claim of executive privilege applies in cases where the subject of inquiry relates to constitutional powers committed to the President. Consistent with the doctrine of separation of powers, the information relating to these powers may enjoy greater confidentiality than others (*Neri v Senate Committees, GR No. 180843 [25.03.2008]*).

**Test in determining the validity of the claim of privilege**

Whether the requested information falls within one of the traditional privileges, but also whether that privilege should be honoured in a given procedural setting (*Senate v Ermita, GR No. 169777 [20.04.2006]*).

**Types of information covered**

a. Conversations and correspondence between the President and the public official covered by EO 464 (*Almonte v Vasquez, GR No. 95367 [23.05.95]*);
b. Military, diplomatic and other national security matters which in the interest of national security should not be divulged (*Chavez v PCGG, GR No. 130716 [09.12.98]*);
c. Information between inter-government agencies prior to the conclusion of treaties ad executive agreements (*Id.*);
d. Discussion in close-door cabinet meetings (*Id.*);
e. Matters affecting national security and public order (*Chavez v Public Estates Authority, GR No. 133250 [09.07.2002]*).

**Note:** Only one executive official may be exempted from this power – the President, hence, beyond the reach of Congress except through the power of impeachment (*Cruz, 418-419*).

**Note:** A claim of privilege *must be clearly asserted* and not merely implied. The President may authorize the Executive Secretary to invoke the privilege on her behalf, in which case the Exec. Sec. must state that the authority is "by order of the President" (*Senate v Ermita, GR No. 169777 [20.04.2006]*).

**How must the claim be stated**

A claim of privilege must be stated with sufficient particularity to enable Congress or the court to determine its legitimacy (*Senate v Ermita, GR No. 169777 [20.04.2006]*).

Congress must not require the Executive to state the reasons for the claim with such particularity as to compel disclosure of the information which the privilege is meant to protect (*Neri v Senate, GR No. 180643 [04.09.2008]*).

**Executive privilege has been construed to refer to**

a. *Informer's privilege* – the privilege of the Government not to disclose the identity of a person/s who furnish information on violations of law to officers charged with the enforcement of that law (*Cruz, 421*);

**Note:** Suspect involved need not be so notorious as to be a threat to national security for this privilege to apply (*AKBAYAN v Aquino, GR No. 170516 [16.07.2008]*).

b. *Presidential communications privilege* – communications, documents or other materials that reflect presidential decision-making and deliberations and that the President believes should remain confidential (*Gorospe, 442*);

**Elements**

a. The protected communication must relate to *quintessential and non-delegable presidential power*;
b. The communication must be authored or solicited and received by a close advisor of the President or the President himself;

**Doctrine of Operational Proximity**

The official involved here is a member of the Cabinet, thus, properly within the term "advisor" of the President (*Neri v Senate, 549 SCRA 77 [2008]*).

c. The presidential communications privilege remains a qualified privilege that may be overcome by a showing of adequate need, such that the information sought likely contains important evidence and by the unavailability of the information elsewhere by an appropriate investigating authority (*Id.*).

**What can be learned from *Neri v Senate***

The type of executive privilege claimed was presidential communication privilege which is presumptively privileged but subject to rebuttal. Thus, whoever challenges it, must show good and valid reasons related to the public welfare. The Senate failed to controvert the presumption in *Neri* case (*Bernas, 281-282*).

c. *Deliberative process privilege* – advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated;

**Note:** The presidential communications privilege applies to decision-making of the President; while, the deliberative process privilege, to decision-making of executive officials (*Id.*).

*d. Diplomatic negotiations privilege* – meant to encourage a frank exchange of exploratory ideas between the negotiating parties by shielding such negotiations from public view (*AKBAYAN v Aquino, GR No. 170516 [16.07.2008]*).

**PROHIBITIONS/INHIBITIONS (*see Secs. 6 & 13*)**

*For the following, paragraphs 1-4 apply to the VP as well, paragraphs 2-4 also apply to Members of the Cabinet, their deputies or assistants during tenure.* [**ReHoFCA**]

1. ***Shall not receive any other emoluments from the government or any other source;***

**Note:** They can engage in any other revenue-producing, income-producing activity legitimate in nature *provided* it does not conflict with the objective sought in this section (*Defensor-Santiago, 418*).

2. ***Unless otherwise provided in this Constitution, shall not hold any other office or employment;***

**Reason:** To prevent the concentration of powers in the Executive Department officials (*Id., 419*).

**Note:** *To hold office* means to possess or to occupy the office, or to be in possession and administration of the office, which implies nothing less than the actual discharge of the functions and duties of the office. Sec. 13, Art. VII makes no reference to the nature of the appointment or designation. The prohibition must be construed as *to apply to all appointments or designations, whether permanent or temporary* (*Id.*).

**Exceptions to prohibition on dual/multiple offices**

a. Those provided for under the Constitution, such as Sec. 3, Art. VII authorizing the VP to become a member of the Cabinet;
b. Posts occupied by Executive officials specified in Sec. 13, Art. VII without additional compensation in *ex officio* capacities as provided by law and as required by the primary functions of the official's offices (*Funa v Agra, GR No. 191644 [19.02.2013]*).

***Ex officio***

Means "from office; by virtue of office." Denotes an act one in an official character, or

as a consequence of office, and without any other appointment or authority other than that conferred by the office (*Civil Liberties Union v Exec. Sec., GR No. 83896 [22.02.91]*).

**Reason for exception**

These posts do not comprise "any other office" (*see Sec. 13, par. 1*) within the contemplation of the constitutional prohibition but are properly an imposition of additional duties and functions on said officials (*Funa v Ermita, GR No. 184740 [11.02.2010]*).

**Reason for no additional compensation**

These services are already paid for and covered by the compensation attached to his principal office (*National Amnesty Commission v COA, GR No 156982 [08.09.2004]*).

**Note:** The Sec. of Labor, who sits in an *ex officio* capacity as member of the Board of Dir. of PEZA is prohibited from receiving any compensation for this additional office, because his services are already paid for and covered by the compensation attached to his principal office. It follows that the Undersecretary, who sits in the PEZA Baord merely as representative of the Sec. of Labor, is likewise prohibited from receiving any compensation thereof (*Bitonio v COA, GR No. 147392 [12.03.2004]*).

**Note:** The Presidential Legal Counsel (PLC) cannot be made PCGG Chairman since the Chief PLC has the duty of giving independent and impartial legal advice on the actions of the heads of various executive departments and agencies and to review investigations involving other presidential appointees, he may not occupy a position in any of the office whose performance he must review (*Public Interest Group v Elma, GR No. 138965 [30.06.2006]*).

**Note:** Being designated as the Acting Secretary of Justice concurrently with his position of Acting Solicitor General, respondent was covered by Art. VI, Sec. 13. Hence, he could not validly hold any other office or employment during his tenure as the Acting Solicitor General (*Funa v Agra, 691 SCRA 196 [2013]*).

3. ***Shall not directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise or special privilege granted by the government or any subdivision, agency, or instrumentality thereof, including GOCCs or their subsidiaries;***
4. ***Strictly avoid conflict of interest in the conduct of their office;***
5. ***May not appoint spouse or relatives by consanguinity or affinity within the 4th civil degree as members of Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Under Secs., chairmen or heads of bureaus or offices, including GOCCs and their subsidiaries.***

**RULES ON SUCCESSION**

**VACANCY AT THE BEGINNING OF THE TERM**

| | |
|---|---|
| Death or permanent disability of the President; | The VP shall *become the President*; |
| President fails to qualify; | The VP shall *act as President* until the President-elect shall have qualified; |
| No President has yet been chosen at the time he is supposed to assume office. | The VP shall *act as President* until the President-elect shall have been chosen and qualified. |
| No President and VP were chosen or have qualified, or both have died or become permanently disabled; | *Senate President* or, in case of his inability, the *Speaker of the HRep* shall *act as President* until a President or a VP shall have been chosen and qualified; |
| When Senate President or the Speaker of HRep shall have died, become permanently incapacitated, or unable to assume office. | *Congress* shall decide by law who will act as President until a President or a VP shall have been elected and qualified. |

*see Sec. 7.*

**VACANCY DURING THE TERM**

| | |
|---|---|
| Death, permanent disability, removal from office, or resignation of the President; | The VP shall *become the President*; |
| When both President and the VP die, or are permanently disabled, are removed, or resigned; | The *Senate President* or the *Speaker* (in that order) shall act as President until a President or VP shall have been elected and qualified; |
| When acting President dies, or is permanently incapacitated, is removed, or resigns. | Congress will determine by law who will act as President until a new President or VP shall have been qualified. |

*see Sec. 8.*

**NOTE:** When the Senate President or Speaker becomes Acting President, he does not lose the Senate Presidency or the Speakership (*Bernas, 291*).

***Q:*** *How can the assumption of the presidency by then VP Macapagal-Arroyo in the middle of then President Estrada's term be justified?*

***A:*** The Court held that Joseph Estrada had resigned thereby leaving the office vacant. The judgment that Estrada had resigned was based on two statements of Estrada just before he left Malacañang and on the diary of Angara published in the Inquirer. The Court declared that the elements of a valid resignation are: 1) *intent to resign*; and 2) *act of relinquishment*. Both are present when Estrada left the Palace (*Estrada v Macapagal-Arroyo, GR No. 146738 [02.03.2001; 03.04.2001]*).

**VACANCY IN THE VICE PRESIDENCY DURING THE TERM**

The president shall nominate a VP from among the members of the Senate and the HRep who shall assme office upon confirmation by a majority vote of all the Members of both Houses of Congress, voting separately (*Sec. 9*).

**TEMPORARY DISABILITY**

| | |
|---|---|
| President transmit to the Senate Pres. and the Speaker his written declaration that he is unable to discharge the power and duties of his office; | The powers and duties of the presidency shall be discharged by the VP as Acting President; |
| When President transmit to the same officials his written declaration to the contrary. | He shall reassume the powers and duties of his office; |

*see Sec. 11, par. 1.*

| | |
|---|---|
| When majority of Cabinet Members transmit to the Senate Pres and the Speaker their written declaration that the President is unable to discharge the powers and duties of his office; | The VP shall immediately assume the powers and duties of the presidency as Acting President; |
| When President transmit to the same officials his written declaration that no inability exists; | He shall reassume the powers and duties of his office; |
| When majority of the Cabinet Members transmit within 5 days, to the same officials their written declaration that the that the President is unable to discharge the powers and duties of his office; | Congress shall decide the issue.<br><br>Congress shall convene, if not in session, within 48 hours. And if, within 10 days from the receipt of the last written declaration or, if not in session, within 12 days after it is required to assemble, Congress determines by a 2/3 vote of both Houses, voting separate, that the President is unable to discharge his powers and duties, the VP shall act as President; otherwise, the President shall continue exercising the powers and duties of his office. |

*see Sec. 11, pars. 2-4.*

**DUTY OF CONGRESS IN CASE OF VACANCY IN THE PRESIDENCY AND VICE PRESIDENCY**

The Congress shall, at 10am of the 3rd day after the vacancy occurs, convene in accordance with its rules without need of a call and within 7 days enact a law calling for a special election to elect a President and a VP to be held not earlier than 45 days nor later than 60 days from the time of such call.

The bill calling such special election shall be deemed certified and shall be come a law upon its approval on 3rd reading by the Congress.

Appropriations for the special election shall be charged against any current appropriations and shall be exempt from the requirements of par. 4, Sec. 25, Art. VI.

The convening of the Congress cannot be suspended nor the special election postponed.

No special election shall be called if the vacancy occurs within 18 months before the date of the next presidential election (*see Sec. 10*).

**SERIOUS ILLNESS OF THE PRESIDENT**

In case of serious illness of the President, the public shall be informed of the state of his health. The members of the Cabinet in charge of national security and foreign relations and the Chief of Staff of the AFP, shall not be denied access to the President during such illness (*Sec. 12*).

**NOTE:** Sec. 12 envisions any serious illness which can be a matter of national concern (*Bernas, 293*).

**POWER OF APPOINTMENT**

*The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions or boards.*

*The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission of Appointments or until the next adjournment of the Congress (Sec. 16).*

**APPOINTMENT**

The selection, by the authority vested with the power, of an individual who is to exercise the functions of a given office (*Nachura, 290*).

**NOTE:** Since *appointment to office is an executive function*, the *legislature may not usurp such function*. The legislature may create an office and prescribe the qualifications of the person who may hold the office, but it may neither specify who shall be appointed to such office nor actually appoint him (*Manalang v Quitoriano, GR No. L-6898 [30.04.54]*).

**NOTE:** The appointing authority of the President should not be confused with the authority of the legislature to impose additional duties on existing offices (*Roxas v Lopez, 17 SCRA 756 [1966]*).

***Q:*** *May the appointing authority be given to others?*

***A:*** Appointing authority may also be given to other officials than the President as provided in Sec. 16, par. 1, last sentence. When the authority is given to head of collegial bodies, it is to the chairman that the authority is given and not to the body. But he can appoint only officers lower in rank, and not officers equal in rank to him. Thus, a chairman may not appoint a fellow member of a Board (*Rufino v Endriga, GR No. 139664 [21.07.2006]*).

***Q:*** *Absence the recommendation of the Sec. of Justice, may the President validly appoint Conrado Quiaoit as prosecutor?*

***A:*** Yes (*see Sec. 9, Chapter II, Title III, Book IV of the Revised Admin Code of 1987*). The power to appoint prosecutors is given to the President. The Sec. of Justice is under the control of the President. Hence the law must be read simple as allowing the

Sec. of Jstice to advice the President (*Bermudez v Secretary, GR No. 131429 [04.08.99]*).

**DESIGNATION**

The imposition of additional duties, usually by law, on a person already in the public service (*Id.*). where a person is merely designated and not appointed, the implication is that he shall hold the office in a temporary capacity and may be replaced at will by the appointing authority. Only an acting or temporary appointment which does not confer security of tenure on the person named (*Binamira v Garrucho, 188 SCRA 154 [date]*).

**COMMISSION**

The written evidence of the appointment (*Id.*).

**NOTE:** The Acting President possess powers to appoint but his appointments may be revoked by the elected President within ninety days from his assumption or reassumption of office (*Sec. 14*).

**NOTE:** The power of the succeeding President to revoke appointments made by an Acting President evidently refers only to the appointments in the Executive Department. It has no application to appointments in the Judiciary, because temporary or acting appointments can only undermine the independence of the judiciary due to their being revocable at will (*De Castro v JBC, GR No. 191002 [17.03.2010]*).

**CLASSIFICATION OF APPOINTMENTS**

1. As to permanence
   a. **Permanent –** those extended to persons possessing the qualifications and the requisite eligibility and are thus protected by the constitutional guarantee of security of tenure;
   b. **Temporary –** (*see Sec. 15*) given to persons without such eligibility, revocable at will and without the necessity of just cause or a valid investigation; made on the understanding that the appointing power has not yet decided on a permanent appointee and that the temporary appointee may be replaced at any time a permanent choice is made (*Nachura, 290*).

      **Requisites:**
      i. It is necessary to make such appointment;
      ii. Only temporary appointment can be extended;
      iii. Appointments only in the Executive Department (*Sec. 15*).

      **Note:** A temporary appointment and a designation are *not subject to confirmation* by the Commission on Appointments (CA). Such confirmation, if given erroneously, will not make the incumbent a permanent appointee (*Valencia v Peralta, 8 SCRA 692 [date]*).

2. As to regularity
   a. **Regular Appointments –** one made by the President while Congress is in session, takes effect only after confirmation by the CA, and once approved, continues until the end of the term of the appointee**;**
   b. ***Ad interim* or Recess Appointments –** one made by the President while Congress is *not in session*, takes effect immediate without need for confirmation by the CA, but ceases to be valid if (*see Sec. 16, par. 2*):
      i. Disapproved by the CA; or

         **Note:** Absent the disapproval of the CA, the President is free to renew the *ad interim* appointment. Otherwise, the appointee can no longer be extended a new appointment (*Matibag v Benipayo, GR No. 149036 [02.04.2002]*).

      ii. Upon the next adjournment of Congress without the CA acting on the appointment (*Nachura, 291*).

   **Note:** It is deemed *by-passed* through inaction. Intended to prevent interruptions in vital governments services that would otherwise result from prolonged vacancies in government offices (*Id.*).

   **Permanence of *ad interim***

   An *ad interim* appointment is a permanent appointment (*Pamantasan ng Lungsod ng Maynila v IAC, 140 SCRA 22 [date]*) because it takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office. The fact that it is subject to confirmation by the CA does not alter its permanent character (*Matibag v Benipayo, GR No. 149036 [02.04.2002]*).

| ***AD INTERIM* APPOINTMENT** | **APPOINTMENT MADE IN ACTING CAPACITY** |
|---|---|
| Refers only to positions which need confirmation by the CA; | May also be given to those which do not need confirmation; |
| Given only when Congress is not in session. | Given even when Congress is in session. |

***Q:*** *The President made appointments of Acting Department Secretaries while Congress was in session. The appointments were challenged on the grounds that: 1) the Admin Code says that, in the absence of a Sec, the USec performs his functions; 2) appointments of acting Sec needs confirmation; 3) for its part, respondent says that since petitioner-senators are not members of the CA, hence they have no standing to challenge the act of the President. Decide.*

***A:*** 1) Congress, through a law, cannot impose on the President the obligation to appoint automatically the USec as her temporary *alter ego*. An *alter ego*, whether temporary or permanent, holds a position of great trust and confidence. Congress, is the guise of prescribing qualifications to an office, cannot impose on the President who her *alter ego* should be. 2)

the office of a department secretary may become vacant while Congress is in session. Since a department secretary is the *alter ego* of the President, the acting appointee to the office must necessarily have the President's confidence. Thus, by the very nature of the office of a department secretary, the President must appoint in an acting capacity a person of her choice even while Congress is in session. Moreover, the law expressly allows the President to make such acting appointment. Sec. 17, Chapter 5, Title I, Book III of EO 292 provides so. 3) as to standing, yes, since the CA is independent of the Senate, senators who are not members may not act in their behalf (*Pimentel, Jr. v Ermita, GR No. 164978 [13.10.2005]*).

| *AD INTERIM* | REGULAR |
|---|---|
| ***As to nature*** | |
| It is an appointment made by the President while Congress is *not in session* or *during recess*; | It is an appointment made by the President while the Congress is *in session*; |
| ***As to confirmation*** | |
| It is made before confirmation of the CA; | Made after nomination is confirmed by the CA; |
| ***As to effectivity*** | |
| Shall cease to be valid if disapproved by the CA or upon the next adjournment of the Congress. | Once confirmed by the CA, it continues until the end of the term of the appointee. |

**MIDNIGHT APPOINTMENT (*see Sec. 15*)**

It is an appointment made by a President after the election of his successor and up to the end of his term. This type of appointment is prohibited by the Constitution.

**NOTE:** The prohibition against presidential appointments during the 2 month period before a presidential election *does not extend* to appointments in the Judiciary (*De Castro v JBC, 618 SCRA 639 [2010]*).

**NOTE:** Exception to midnight appointments: temporary appointments (*see Sec. 15*).

**NON-APPLICATION TO LOCAL OFFICIALS**

The prohibition against midnight appointments only applies to presidential appointments. There is no law that prohibits local elective officials from making appointments during the last days of his or her tenure (*De Rama v CA, GR No. 141146 [28.02.2001]*).

**OFFICIALS APPOINTED BY THE PRESIDENT**

1. **With the consent of the CA (*see Sec. 16, 1st sentence*)** [**HAPAC**]
   a. **H**eads of Executive Departments;

      **Note:** Appointment of the VP as member of the Cabinet requires no confirmation of the CA (*Sec. 3, par. 2, Art. VII*).

   b. **A**mbassadors, other **p**ublic ministers and consuls;
   c. Officers of the **a**rmed forces from the rank of colonel or naval captain;

      **Note:** The police force is different from and independent of the armed forces and the ranks in the military are not similar to those in the PNP. Thus, directors and chief superintendents of the PNP do not fall under the 1st sentence of Sec. 16 requiring confirmation by the CA (*Manalo v Sistoza, GR No. 107639 [11.08.99]*).

      **Note:** The Phil. Coast Guard, no longer part of the Phil. Navy or the AFP but is now under DOTC, will not require confirmation by the CA (*Soriano v Lista, GR No. 153881 [24.03.2003]*).

   d. Those other officers whose appointments are vested in the President in the **C**onstitution.

**Note:** Only the categories above require the confirmation of the CA. hence, since the Commission of Customs is not included in the list provided above, confirmation of the CA is not required (*Sarmiento v Mison, 156 SCRA 549 [1987]*).

**Note:** The appointment of a sectoral representative by the President is specifically provided for in Sec. 7, Art. XVIII. Thus, the appointment of a sectoral representative fall under category (d) above (*see Quintos-Deles v Committee on Constitutional Commissions, 177 SCRA 259 [1989]*).

**Note:** Appointments in an acting capacity are not required to be submitted to the CA for concurrence.

**Note:** The Phil. Coast Guard, no longer part of the Phil. Navy or the AFP but is now under DOTC, will not require confirmation by the CA ().

2. **Without the consent of the CA (*see Sec. 16, 2nd sentence*)**
   a. All other officers of the Government whose appointments are not otherwise provided by law;
   b. Those whom the President may be authorized by law to appoint.

**Note:** The appointment of the Chairman of the Commission on Human Rights is not otherwise provided for in the Constitution of in the law. Thus, there is no necessity for such appointment to be passed upon the CA (*Bautista v Salonga, 172 SCRA 16 [1989]*).

**Note:** Art. 215 of the Labor Code, as amended by RA 6715, insofar as it requires the confirmation by the CA of the appointment of the NLRC Chairman and the commissioners, is *unconstitutional*, because it violates Sec. 16, Art. VII (*Calderon v Carale, 208 SCRA 254 [date]*).

**Note:** Congress cannot, by law, require the confirmation of appointments of government officials other than those enumerated in the 1st sentence of Sec. 16 (*Manalo v Sistoza, GR No. 107369 [11.08.99]*).

**NOTE:** The Court may not order the reinstatement of the petitioner to her former position in Geneva for that would be tantamount to a usurpation by the Court of the power to appoint, which is the exclusive prerogative of the Chief Executive which would violate the separation of powers (*Santos v Macaraig, 208 SCRA 74 [1992]*).

**APPOINTMENTS WITH PRIOR RECOMMENDATION OR NOMINATION BY THE J.B.C.**

1. Members of the Supreme Court and all lower courts (*Sec. 9, Art. VIII*);
2. Ombudsman and his 5 deputies (*Sec. 9, Art. XI*).

**STEPS IN THE APPOINTING PROCESS [No CIA]**

1. **No**mination by the President;
2. **C**onfirmation by the CA (*only for those that need CA confirmation*);
3. **I**ssuance of the commission;
4. **A**cceptance by the appointee.

**NOTE:** Appointment is deemed *complete only upon its acceptance*. *Pending such acceptance*, which is optional to the appointee, the *appointment may still be validly withdrawn*. Appointment to a public office cannot be forced upon any citizen except for purposes of defense of the State under Sec. 4, Art. II, as an exception to the rule against involuntary servitude (*Lacson v Romero, GR No. L-3081 [14.10.49]*).

**NOTE:** For *ad interim* appointments, the flow of appointment shall be steps 1, 3, 4 & 2.

**LIMITATIONS ON APPOINTING POWER**

1. The members of the Cabinet, and their deputies and assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure (*Sec. 13, par. 1*);
2. The spouse and relatives by consanguinity or affinity within the 4th civil degree of the President shall not, during his tenure, be appointed as:
    a. Members of the Constitutional Commissions;
    b. Members of the Office of the Ombudsman;
    c. Secretaries;
    d. Undersecretaries;
    e. Chairman or heads of bureaus or offices including GOCCs and their subsidiaries (*Sec. 13, par. 2*).
3. Appointments extended by an Acting President shall remain effective unless revoked by the elected President within 90 days from his assumption or reassumption of office (*Sec. 14*);
4. President or Acting President shall not make appointments except temporary ones to executive positions 2 months immediately before the next Presidential elections and up to the end of his term when continued vacancy will prejudice public service or endanger public safety (*Sec. 15*);
5. The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory but such appointments shall be effective only until disapproval by the CA or until the next adjournment of the Congress (*Sec. 16, par. 2*).

**POWER OF REMOVAL / DISCIPLINARY POWER**

**General Rule**

From the express power of appointment, the President derives the implied power of removal (*Cruz, 407*).

**Exception**

Those appoint by him where the Constitution prescribes certain method of separation from public service, *e.g.*, impeachment (*Id.*).

**NOTE:** Also, judges of lower courts, likewise appointed by the President, are subject to the disciplinary authority of, and may be removed only by, the SC (*Sec. 1, Art. VIII*).

**NOTE:** In all other cases, the same may be exercised only for cause as may be provided by law and in accordance with the prescribed administrative procedure (*Sec. 2, par. 3, Art. IX-B*).

**NOTE:** The disciplinary power of the President does not flow from the power of control, but rather from his power to appoint (*Ang-Angco v Castillo, GR No. L-17169 [30.11.63]*).

**POWER OF CONTROL**

*The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed (Sec. 17).*

It is the power to alter, modify, nullify, or set aside what a subordinate has done in the performance of his duties and to substitute his judgment to that of the former (*Mondano v Silvosa, GR No. L-7708 [30.05.55]*).

**EXTENT OF POWER OF CONTROL**

Extends over all executive officers from Cabinet Secs. To the lowliest clerk (*Carpio v Exec. Sec. 206 SCRA 290 [1992]*).

The power of control extends to the GOCCs, but such power comes not from the Constitution but from statute (*NAMARCO v Arca, 29 SCRA 648 [1969]*).

The power of control does not extend to quasi-judicial bodies whose proceedings and decisions are judicial in nature and subject to judicial review, even as such quasi-judicial bodies may be under the administrative supervision of the President (*Rufino v Endriga, GR No. 139664 [21.07.2006]*).

**NOTE:** The Subic Bay Metropolitan Authority (SBMA) is under the control of the Office of the President. All projects undertaken by SBMA involving P2M or above require the approval of the President under LOI No. 620 [*Hutchinson Ports Phils, Ltd. v SBMA, GR No. 131367 [31.08.2000]*)

**NOTE:** While the President has power of control over the judgment and discretion of his subordinates, it is the legislature which has control over the person (*see Sec. 2[3], Art. IX-B; see Ang-Angco v Castillo, GR No. L-17169 [30.11.63]; Bernas, 306*). The power of control may be exercised by the President only over the acts, not over the actor (*Angangco v Castillo, 9 SCRA 619 [date]*).

**POWER OF SUPERVISION**

It is the power to see to it that the inferior follows the law. The power of general supervision does not allow the superior to substitute his judgment (*contrary to "power of control"*) (*Defensor-Santiago, 431-432*). If the subordinate officers did not perform their duties, then the superior may take such action or

steps as prescribed by law (*Mondano v Silvosa, GR No. L-7708 [30.05.55]*).

Power of supervision is limited to the authority of the department or its equivalent to:

1. Oversee the operations of such agencies and insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities;
2. Require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines;
3. Take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses, etc.;
4. Review and pass upon budget proposals, but may not increase or add to them (*Kilusang Bayan v Dominguez, 205 SCRA 92 [1992]*).

**NOTE:** The power of control is entirely different from the power to create public offices. The creation of the Phil. Truth Commission (PTC) is not justified by the President's power of control, but is justified by the President's duty to ensure that laws are faithfully executed (*Biraogo v PTC, 637 SCRA 78*).

**SUPERVISION AND CONTROL INCLUDE ONLY THE AUTHORITY TO**

1. Act directly whenever a specific function is entrusted by law or regulation to a subordinate;
2. Direct the performance of duty;
3. Restrain the commission of acts;
4. Review, approve, revers or modify acts and decisions of subordinate officials or units;
5. Determine priorities in the execution of plans and programs;
6. Prescribe standards, guidelines, plans and programs (*Defensor-Santiago, 438*).

**POWER TO CONDUCT INVESTIGATION IN ENSURING THE FAITHFUL EXECUTION OF LAWS**

One of the recognized powers of the President granted is the power to create *ad hoc* committees which flows from the obvious need to ascertain facts and determine if laws have been faithfully executed (*Anak Mindanao Party List Group v Exec. Sec., 531 SCRA 583 [2007]*).

**NOTE:** The power of supervision does not include the power of control; but the power of control necessarily includes the power of supervision (*Id.*).

**SUPERVISION OVER L.G.U.s**

The President has general supervision over local governments (*Sec. 4, Art. X*).

**DOCTRINE OF QUALIFIED POLITICAL AGENCY**
**(*Alter Ego Principle*)**

The heads of the various executive departments are the *alter ego* of the President, and thus, *the actions taken by such heads in the performance of their official duties are deemed the acts of the President* unless the President himself should disapprove such acts (*Villena v Secretary of Interior, GR No. 46570 [21.04.36]*).

This power merely applies to the exercise of control over the acts of the subordinate in the performance of his duties (*Ang-Angco v Castillo, GR No. L-17169 [30.11.63]*).

**REASON:** The President cannot be expected to personally perform the multifarious functions of the executive office (*Defensor-Santiago, 437*).

**NOTE:** Applying the doctrine of qualified political agency, the power of the President to reorganize the National Government may be validly delegated to his Cabinet Members exercising control over a particular executive department (*DER v DENR Region XII Employees, GR No. 149724 [19.08.2003]*).

**NOTE:** The Sec. of Finance can act as agent of the legislature to determine and declare the event upon which its expressed will is to take effect. His personality in such instance is in reality but a projection of that of Congress. Thus, being the agent of Congress and not of the President, the latter cannot alter or modify or nullify, or set aside the findings of the Sec. of Finance and to substitute the judgment of the former for that of the latter (*ABAKADA Guro Party List v Exec. Sec. GR No. 168056 [01.09.2005]*).

**NOTE:** The doctrine of qualified political agency could not be extended to the acts of the Board of Dir. of the TIDCORP despite some of its members being themselves the appointees of the President to the Cabinet. The delegation of power under the doctrine of qualified political agency cannot be lightly inferred (*Manalang-Demigillo v TIDCORP, 692 SCRA 359 [2013]*).

***Q:*** *May an Assistant Executive Secretary, acting for the President, reverse a decision of the Sec. of Agriculture?*

***A:*** Yes, under the doctrine of qualified political agency (*Roque v Dir. of Lands, GR No. L-25373 [01.07.76]*).

***Q:*** *May the Dir. of NBI ignore or defy the order of the Sec. of Justice?*

***A:*** No. The acts of the Sec. of Justice in the ordinary course of the performance of his duties are acts of the President which are controlling over all executive officers. Hence, the NBI Dir. must obey (*De Leon v Carpio, citation [12.10.89]*).

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

Appeal to the President from decisions of subordinate executive officers, including Cabinet members, completes exhaustion of administrative remedies (*Tan v Dir. of Forestry, 125 SCRA 302 [date]*), except in the instances when the doctrine of qualified political agency applies, in which case the decision of the Cabinet Sec. carries the presumptive approval of the President, and there is no need to appeal the decision to the President in order to complete exhaustion of administrative remedies (*Kilusang Bayan v Dominguez, 205 SCRA 92 [1992]*), unless actually disapproved by the President (*Defensor-Santiago, 438*).

**MILITARY POWERS (*Sec. 18*)**

**1.) COMMANDER-IN-CHIEF CLAUSE**

The President shall be the *Commander-in-Chief of all armed forces of the Philippines* and whenever it becomes necessary, he may *call out such armed forces* to prevent or suppress lawless violence, invasion or rebellion (*Sec. 18, par. 1, 1st sentence*).

Vests in the President, as commander-in-chief, absolute authority over the persons and actions of the members of the

armed forces. Such authority includes the ability to restrict the travel, movement and speech of military officers (*Gudani v Senga, 498 SCRA 671 [2006]*).

**NOTE:** Under the calling-out power, the President may summon the armed forces to aid her in suppressing lawless invasion or rebellion, this involve ordinary police action. But every act that goes beyond the President's calling-out power is considered illegal or *ultra vires* (*Nachura, 300*).

**NOTE:** The calling out of the armed forces to prevent or suppress lawless violence is a power that the Constitution directly vests in the President. She did not need a congressional authority to exercise the same. If there is a need to pacify the people's fear and stabilize the situation, the President has to take preventive action (*Ampatuan v Puno, GR No. 190259 [07.06.2011]*).

**NOT SUBJECT TO JUDICIAL REVIEW**

The actual use to which the President puts the armed forces is, unlike the suspension of the privilege of the writ of *habeas corpus*, not subject to judicial review. The authority to decide whether the exigency has arisen belongs exclusively to the President, and his decision is conclusive upon all other persons (*Lansang v Garcia, 42 SCRA 448 [1971]*).

When the President calls out the armed forces to suppress lawless violence, rebellion, or invasion, he necessarily exercises a discretionary power solely vested in his wisdom. The Court cannot overrule the President's discretion or substitution its own (*IBP v Zamora, GR No. 141284 [15.08.2000]*).

**CONDITIONS IN EXERCISING THE "CALLING OUT" POWER**

The conditions of "actual invasion or rebellion" and "public safety requires it" need not concur before the President may exercise its "calling out" power. The only criterion is that *whenever it becomes necessary*, the President may call the armed forces *to prevent or suppress lawless violence, invasion or rebellion* (*SANLAKAS v Exec. Sec., GR No. 159085 [03.02.2004]*).

**NOTE:** The President has *discretionary authority* to declare a state of rebellion. The court may only look into the *sufficiency of the factual basis* for the exercise of the power (*Lacson v Perez, GR No 147780 [10.05.2001]*).

**DOCTRINE OF COMMAND RESPONSIBILITY**

The President, as commander-in-chief, can be held responsible or accountable for extrajudicial killings and enforced disappearances (*Defensor-Santiago, 442*).

**REASON:** Obedience and deference to the military chain of command and the President are the cornerstones of a professional military in the firm cusp of civilian control. These values of obedience and deference expected of military officers are *content-neutral, beyond the sway of the officer's own sense of what is prudent or rash, or more elementally, of right or wrong* (*Gudani v Senga, 498 SCRA 671 [2006]*).

**ELEMENTS COMMAND RESPONSIBILITY [ReKFa]**

1. Existence of superior-subordinate **re**lationship;

   **Note:** The President, being the commander-in-chief of all armed forces, necessarily possesses control over the military that qualifies him as a superior (*Id.*).

2. Superior **k**new, or had reason to know, that the crime was about to be or had been committed;

   **Note:** Constructive knowledge of the commission of the irregularities, crimes or offenses suffices, and is presumed when:
   a. The acts are widespread within the government official's area of jurisdiction;
   b. Acts have been repeatedly or regularly committed within his area of responsibility;
   c. Members of his immediate staff or office personnel are involved (*Id., 443*).

3. The superior **fa**iled to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof.

   **Note:** As the commander-in-chief of all the armed forces, the President has the power to effectively command, control and discipline the military (*Rodriguez v Macapagal-Arroyo, 660 SCRA 83 [2011]*).

***Q:*** *May the President prevent a member of the armed forces from testifying before a legislative inquiry?*

***A:*** Yes, by virtue of her power as commander-in-chief, and that as a consequence a military officer who defies such injunction is liable under military justice. This is not within the executive privilege but on the Chief Executive's power as commander-in-chief to control the actions and speech of members of the armed forces (*Defensor-Santiago, 444; see Gudani v Senga, 498 SCRA 671 [2006]*).

**NOTE:** The remedy of the Congress should the President prevent the military officers from appearing is that the President may be commanded by judicial order to compel the attendance of the military officer. Final judicial orders have the force of the law of the land which the President has the duty to faithfully execute (*Id.*).

**2.) SUSPENSION OF THE PRIVILEGE OF WRIT OF *HABEAS CORPUS***

**WRIT OF *HABEAS CORPUS***

Writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place, with the day and cause of his caption and detention, to do, submit to, and receive whatever the court or judge awarding the writ shall consider in that behalf (*Bernas, 145*).

**PRIVILEGE OF THE WRIT OF *HABEAS CORPUS***

The right to have an immediate determination of the legality of the deprivation of physical liberty (*Id., 146*).

**NOTE:** The writ is never suspended. What is suspended is the privilege of the writ, *i.e.,* once the officer making the return shows to the court that the person detained is being detained for an offense covered by the suspension, the court may not enquire any further (*Id.*).

**EFFECTS OF SUSPENSION OF WRIT**

1. Does not suspend the right to bail (*see Sec. 13, Art. III*);

2. Apply only to the persons judicially charged for rebellion or offenses inherent in or directly connected with invasion (*Sec. 18*);
3. Any person thus arrested or detained shall be judicially charged without 3 days, otherwise he shall be released;
4. Does not supersede civilian authority.

**GROUNDS FOR SUSPENSION OF THE PRIVILEGE**

Invasion or rebellion, when public safety requires (*Sec. 18*).

**DURATION:** Not to exceed 60 days, following which it shall be lifted, unless extended by Congress.

**NOTE:** It shall be the duty of the President to report the action to Congress within 48 hours personally or in writing.

**CONGRESS MAY REVOKE OR EXTEND**

Congress may revoke, or extend on request of the President, the effectivity of proclamation by a majority of all its members, voting jointly.

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**NOTE:** The Committee thought that to require a vote of 2/3 might be quite difficult for the Chief Executive, considering the only grounds now for martial law are actual invasion and actual rebellion (*Defensor-Santiago, 442*).

**3.) DECLARATION OF MARTIAL LAW**

**NOTE:** A state of martial law does not suspend the operation of the Constitution, nor supplant the function of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function nor automatically suspend the privilege of the writ (*Sec. 18*).

**POWER TO ORGANIZE COURTS MARTIAL**

The President is vested with the power to organize courts martial for the discipline of the members of the armed forces, create military commissions for the punishment of war criminals (*Kuroda v Jalandoni, 83 Phil. 171 [1949]*).

Where it was held that military tribunals cannot try civilians when civil courts are open and functioning (*Olaguer v Military Commission No. 34, 150 SCRA 144 [date]*).

Pursuant to RA 6975, members of the PNP are not within the jurisdiction of a military court (*Quilona v General Court Martial, 206 SCRA 821 [date]*).

**NOTE:** An officer whose name was dropped from the roll of officers cannot be considered to be outside the jurisdiction of military authorities when military justice proceedings were initiated against him before the termination of his service. Once jurisdiction has been acquired over the officer, it continues until his case is terminated (*Abadilla v Ramos, citation; see Gudani v Senga, 498 SCRA 671 [2006]*).

**SUBJECT TO JUDICIAL REVIEW**

The Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of *martial law* or the *suspension of the privilege* of the writ or the extension thereof, and must promulgate its decision thereon within 30 days from its filing (*Sec. 18; Lansang v Garcia, 42 SCRA 448 [1971]*).

**THE FOLLOWING CANNOT BE DONE**

1. Suspend the operation of the Constitution;
2. Supplant the functioning of the civil courts and the legislative assemblies;
3. Confer jurisdiction upon military courts and agencies over civilians, where civilian courts are able to function;

   **Open court doctrine –** civilians cannot be tried by military courts if the civil courts are open and functioning (*Olaguer v Military Commission No. 34, 150 SCRA 144 [date]*).

4. Automatically suspend the privilege of the writ of *habeas corpus* (*Sec. 18, par. 4*).

**NOTE:** The constitutional validity of the President's proclamation of martial law or suspension of the writ of *habeas corpus* is first a political question in the hands of the Congress before it becomes a justiciable one in the hands of the Court (*Fortun v Macapagal-Arroyo, GR No. 190293 [20.03.2012]*).

**NOTE:** Although the Constitution reserves the SC the power to review the sufficiency of such proclamation or suspension, SC must allow Congress to exercise its own review powers, which is automatic rather than initiated. Only when Congress defaults should the SC step in as its final rampart (*Id.*).

**MARTIAL LAW**

| **1973 CONSTITUTION Sec. 12, Art. IX** | **1987 CONSTITUTION Sec. 18, Art. VII** |
|---|---|
| ***As to grounds*** | |
| Invasion, rebellion, or imminent danger thereof when the public safety requires; | Actual invasion, or actual rebellion, when public safety requires; |
| ***As to period of effectivity*** | |
| Indefinite; | Not exceeding 60 days, subject to extension with the consent of Congress; |
| ***As to who exercises*** | |
| Executive prerogative of the President; | Shared by President with Congress;<br><br>*Reason:* they exercise the power, not only sequentially, but in a sense jointly, since, after the President has initiated the proclamation or suspension, only the Congress can maintain the same based on its own evaluation of the situation on the grounds, a power the President does not have (*Fortun v Macapagal-Arroyo*); |
| ***As to effect or Constitutional safeguards*** | |
| None; | **Congress' initiated review –** within 24 hours following such proclamation or suspension, convene without need of a call,<br><br>**Citizen initiated review –** |

| | |
|---|---|
| | before the SC, questioning the factual basis for the proclamation or suspension.<br><br>*Reason:* The constitutional validity of the President's proclamation or suspension is first a political question in the hands of Congress before it becomes a justiciable one in the hands of the Court (*Id.*).<br><br>**Ease of revocation –** the Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension which revocation shall not be set aside by the President.<br><br>*Note:* Martial law may also be extended by Congress, for a period to be determined by it, by a joint vote of both Houses. The initiative for extension can only come from the President; |
| ***As to President's exercise of legislative power*** | |
| President exercises legislative powers in times of martial law; | Does not supplant the functioning of the legislative assemblies;<br><br>*Note:* in the actual theatre of war, the martial law administrator's word is law, within the limits of the Bill of Rights. But outside the theatre of war, the operative law is ordinary law. |
| ***As to operation of civil courts*** | |
| A military commission has jurisdiction against civilians during period of martial law; | Does not supplant the functioning of the civil courts nor authorize the conferment of jurisdiction on military courts and agencies over civilian where the civil courts are able to function;<br><br>*Note:* "Open Court Rule." |
| ***As to suspension of privilege of the writ of habeas corpus*** | |
| Automatically suspends the privilege of the writ of *habeas corpus*. | Does not automatically suspend the privilege of the writ.<br><br>*Note:* The suspension shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion, and that during the suspension, any person thus arrested or detained shall be judicially charged within 3 days, otherwise he shall be released. |

**WAYS TO LIFT THE PROCLAMATION OF SUSPENSION**

1. Lifting by the President himself;
2. Revocation by Congress;
3. Nullification by the Court;
4. Operation of law after 60 days (*Sec. 18*).

| AUTHORITY TO DECLARE STATE OF NATIONAL EMERGENCY | EXERCISE OF EMERGENCY POWERS |
|---|---|
| Granted by the Constitution under Sec. 18, Art. VII. | Requires delegation from Congress as provided under Sec. 17, Art. XII. |

*David v Macapagal-Arroyo, GR No. 171396 [03.05.2006]*

**PARDONING POWER (*Sec. 19*)**
**(POWER OF EXECUTIVE CLEMENCY)**

*Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations and pardons, and remit fines and forfeitures, after conviction by final judgment.*

*He shall also have the power to grant amnesty with the concurrence of a majority of all the members of the Congress.*

**NOTE:** This power may not be controlled by the legislature or reversed by the courts, unless there is a constitutional violation (*People v de Gracia, citation*).

**ORDER RE-ARREST AND RE-INCARCERATION**

The Chief Executive is authorized to order the arrest and re-incarceration of any such person who, in his judgment, shall fail to comply with the conditions of his pardon, parole or suspension of sentence (*Sec. 64[i], Administrative Code*).

**LIMITATIONS**

1. Cannot be granted in cases of impeachment (*Sec. 19*);
2. Cannot be granted in cases of violation of election laws without the favorable recommendation of the COMELEC (*Sec. 5, Art. IX-C*);
3. Cannot be granted only after conviction by final judgment (*People v Bacang, 260 SCRA 44 [date]*);
4. Cannot be granted in cases of legislative contempt (as it would violate separation of powers), or civil contempt (as the State is without interest in the same);
5. Cannot absolve the convict of civil liability (*People v Nacional, GR No. 11294 [07.09.95]*);
6. Cannot restore public offices forfeited (*Monsanto v Factoran, citation*).

**Note:** See *Sabello v DECS* (*180 SCRA 623 [date]*), where a pardoned elementary school principal, on considerations of justice and equity, was deemed eligible for reinstatement to the same position of principal and not to the lower position of classroom teacher.

**Note:** If a pardon is given because he was acquitted on the ground that he did not commit the crime, reinstatement and backwages would be due (*Garcia v COA, GR No. L-75025 [14.09.93]*).

**FORMS OF EXECUTIVE CLEMENCY**

1. Reprieves;
2. Commutations;
3. Remission of fines and forfeitures;
4. Pardons;
5. Amnesty.

**NOTE:** The Constitution makes no distinction with regard to the extent of the pardoning power except with respect to impeachment. Hence, the executive clemency extends to administrative cases, only to all administrative cases in the *executive branch*, not in the judicial or legislative branches of the government (*Llamas v Orbos, GR No. 99031 [15.10.91]*).

**REPRIEVES**

Postponement of the execution of an offense to a day certain (*People v Vera, GR No L-45685 [16.11.37]*).

**COMMUTATION**

A remission of a part of the punishment; a substitute of a less penalty for the one originally imposed (*Id.*).

**NOTE:** Commutation of sentence is a prerogative of the Chief Executive – the recommendation of the Bureau of Pardons and Parole is just a mere recommendation, and until and unless approved by the President, there is no commutation to speak of (*Barredo v Vinarao, 529 SCRA 120 [2007]*).

***Q:*** *After serving sentence for 6 years, accused was released and placed under house arrest. Was his sentence effectively commuted to 6 years?*

***A:*** Yes. Commutation does not have to be in any specific form. The fact that he was released after 6 years and the fact that house arrest is not a penalty leads to the conclusion that the penalty had been shortened (*Drilon v CA, GR No 91626 [03.10.91]*).

**REMISSION OF FINES AND FORFEITURES**

Self-explanatory, however, it merely prevents the collection of fins or confiscated property; it cannot have the effect of returning property which has been vested in third parties or money in the public treasury (*Bernas, 315*).

**PAROLE**

Release from imprisonment, but without full restoration of liberty, as parolee is in the custody of the law although not in confinement (*Nachura, 304*).

**PARDON**

It is an act of grace, which exempts an individual on whom it is bestowed from punishment which the law inflicts for a crime he has committed. It is a private, though official, act of the executive magistrate, delivered to the individual for whose benefit it is intended and not communicated officially to the Court. A pardon is a deed, to the validity of which delivery is essential, and delivery is no complete without acceptance. It can be rejected by the person to whom it is tendered; and if rejected, the Court has no power to force it on him (*US v Wilson, 7 Pet. 150 [US 1833]*).

**NOTE:** Absolute pardon is complete even without acceptance; whereas a conditional pardon has no force until accepted by the condemned (*Cabantag v Wolfe, 6 Phil. 278 [1906]*).

**NOTE:** Subject to the limitations imposed by the Constitution, the pardoning power cannot be restricted or controlled by legislative action (*Ricos-Vidal v COMELEC, GR No. 206666 [21.01.2015]*).

**DOCTRINE OF NON-DIMINUTION/NON-IMPAIRMENT OF THE PRESIDENT'S POWER OF PARDON**

Any act of the Congress by way of statute cannot operate to delimit the pardoning power of the President (*Id.*).

**LEGAL EFFECT OF PARDON**

The legal effect of a pardon is to restore not only the offender's liberty but also his civil and political rights (*Cruz, 448*).

The very essence of pardon is forgiveness or remission of guilt and *not forgetfulness.* It does not erase the fact of the commission of the crime and the conviction thereof (*Defensor-Santiago, 448*). Pardon cannot bring back lost reputation for honesty, integrity and fair dealing (*Id., 451*).

**CLASSIFICATIONS OF PARDON**

- As to effect
  a. **Plenary –** extinguishes all the penalties imposed including accessory disabilities;
  b. **Partial –** does not extinguish all

- As to presence of condition
  a. **Absolute –** does not impose any condition upon the pardonee and is complete even without acceptance;
  b. **Conditional –** has no force until accepted by the condemned.

  **Reason:** The condition may be less acceptable to him than the original punishment, and may in fact be more onerous (*Cabantag v Wolfe, 6 Phil. 278 [1906]*).

  **Note:** Conditional pardon is in the nature of a contract to the effect that the President will release the convicted criminal subject to the condition that *if he does not comply with the terms of the pardon*, he will be recommitted to prison to serve the unexpired portion of the sentence or an additional one (*Defensor-Santiago, 446*).

  **Note:** The determination of the violation of the conditional pardon rests exclusively in the sound judgment of the Chief Executive, and the pardonee cannot invoke the aid of the courts, however, erroneous the findings may be upon which his recommitment was ordered (*Id., 447; see In Re: Wilfredo Sumulong Torres, 251 SCRa 709 [1995]*).

  **Note:** Final judicial pronouncement as to the guilt of a pardonee is not a requirement from the President to determine whether or

not there has been a breach of the terms of a conditional pardon

**AMNESTY**

Commonly denotes the general pardon to rebels for their treason and other high political offenses or the forgiveness which one sovereign grants to the subjects of another, who have offended by some breach of the law of nations (*Villa v Allen, 2 Phil. 436 [1903]*).

A person released under an amnesty proclamation stands before the law precisely as *though he had committed no offense* (*Art. 89, par. 3, RPC*).

Amnesty looks backward, and abolishes and puts into oblivion, the offense itself; it so overlooks and obliterates the offense with which he is charged, that the person released by amnesty stands before the law precisely as though he had committed no offense (*Magdalo v COMELEC, GR No. 190793 [19.06.2012]*).

**REQUIREMENT TO AVAIL AMNESTY**

To avail of the benefits of an amnesty proclamation, one must *admit his guilt* of the offense covered by the proclamation (*Vera v People, 7 SCRA 152 [date]*).

***Q:*** *A convicted prisoner claims to be covered by a general amnesty. May a court order his release in a habeas corpus petition?*

***A:*** No. The proper remedy for the convicted prisoner is to submit his case to the proper amnesty board (*De Vera v Animas, GR No. L-48176 [14.08.78]*).

| AMNESTY | PARDON |
|---|---|
| ***As to extent*** | |
| Political offenses; | Infraction of peace/common crimes; |
| ***Coverage*** | |
| Granted to classes of persons; | Granted to individuals; |
| ***Approval of Congress*** | |
| Requires concurrence of Congress; | Does not require concurrence of Congress; |
| ***Nature*** | |
| Public act to which court may take judicial notice; | Private act which must be pleased and proved; |
| ***Effectivity*** | |
| Looks backwards and puts into oblivion the offense itself; | Looks forward and relieves the pardonee of the consequence of the offense; |
| ***Limitation*** | |
| May be granted even before trial. | Can be granted only after conviction. |

*Barrioquinto v Fernandez, 85 Phil. 642 [1949].*

***Q:*** *By PD 1840, the President granted tax amnesty. To be valid, does this amnesty require the concurrence of the Batasan?*

***A:*** Under the 1973 Constitution, the Court answered this in the *negative*. What the President did issuing PD 1840 is exercise his legislative power under Amendment 6 which does not require concurrence of the Batasan but is concurrent witht eh legislative power of the Batasan (*Legaspi v Minister of Finance, GR No. 58289 [24.07.82]*).

***Q:*** *May the President now grant tax amnesty?*

***A:*** The President cannot grant tax amnesty without the concurrence of Congress. The President now does not have the legislative power of President Marcos under the 1973 Constitution (*Bernas, 319*).

**BORROWING POWER**

*The President may contract with guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board, subject to such limitations as may be provided by law. The Monetary board shall, within 30 days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decisions on applications for loans to be contracted or guaranteed by the Government or GOCCs which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law (Sec. 20).*

**REASON FOR PRIOR CONCURRENCE OF THE MONETARY BOARD**

It is because the Central Bank is the custodian of the foreign reserves of our country, and so, it is in the best position to determine whether an application for foreign loan initiated by the President is within the paying capacity of our country or not (*Defensor-Santiago, 452*).

**REASON WHY THE MONETARY BOARD NEED TO GIVE REPORT OF ACTION TAKEN ON LOANS AND GUARANTEES**

In order to allow Congress to act on whatever legislation may be needed to protect public interest (*Bernas, 320*).

**DIPLOMATIC POWER**

*No treaty or international agreement shall be valid and effective unless concurred in by at least 2/3 of all the members of the Senate (Sec. 21).*

**REASON FOR SENATE CONCURRENCE**

To provide check on the executive in the field of foreign relations (*Defensor-Santiago, 453*).

**NOTE:** The power to ratify is vested in the President, subject to the concurrence of the Senate. The role of the Senate, however, is limited only to giving or withholding its consent, or concurrence, to the ratification. Hence, it is within the authority of the President to refuse to submit a treaty to the Senate or, having secured to ratify it. Although the refusal of a state to ratify a treaty which has been signed in its behalf is a serious step that would not be taken lightly, such decision is without the competence of the President alone, which cannot be encroached by the Court *via* a writ of mandamus (*Pimentel, Jr. v Exec. Sec., GR No. 158088 [06.07.2005]*).

**NOTE:** The Court said that the decision to enter or not enter into a treaty is a prerogative solely of the President. Thus, unless the President submits a treaty to the Senate there is nothing for the Senate to concur in (*Id.*).

**STEPS IN TREATY MAKING PROCESS**

1. **Negotiation –** may now be assigned to the authorized representatives of the head of state. These representatives are provided with credentials known as *full powers*, which they exhibit to the other negotiators at the start of the formal discussion. The parties are to submit a draft of the proposed treaty

which, together with the counter-proposals, becomes the basis of the subsequent negotiations;

**Note:** In the negotiation phase, the executive may completely exclude the Congress. However, the fruits of executive's negotiation does not become binding treaty without concurrence of at least 2/3 of the Senate.

2. **Opening for signature –** if and when the negotiators finally decide on the terms of the treaty, the same is opened for signature. This is intended as a means of authenticating the instrument and for the purpose of symbolizing the good faith of the parties, but it does not indicate he final consent of the state when ratification of the treaty is required;

   **Note:** The document is ordinarily signed in accordance with the *alternat*, *i.e.,* each of the several negotiators is allowed to sign first on the copy which he will bring home to his own state.

3. **Ratification –** the formal act by which a state confirms and accepts the provisions of a treaty concluded by its representatives.

   **Purpose**

   To enable the contracting states to examine the treaty more closely and to give them an opportunity to refuse to be bound by it should they find it inimical to their interests.

   **Note:** Agreements that are permanent and original should be embodied in a treaty and need Senate concurrence. Agreements, however, which are temporary or are merely implementations of treaties or statutes do not need concurrence (*Bernas, 322*).

   **Note:** Where ratification is dispensed with and no effectivity clause is embodied in the treaty, the instrument is deemed effective upon its signature.

4. **Exchange of the instruments of ratification –** also signifies the effectivity of the treaty unless a different date has been agreed upon by the parties.

**OTHER FOREIGN AFFAIRS POWERS**

1. The power to make treaties (*Sec. 21*);
2. The power to appoint ambassadors, other public ministers and consuls (*Sec.. 16*);
3. The power to receive ambassadors and other public minister duly accredited to the Philippines;
4. Power to contract and guarantee foreign loans on behalf of the Republic;
5. Deportation power (*Tan Tong v Deportation Board, GR No. L-17169 [30.11.63]*).

**BUDGET POWER**

*The President shall submit to the Congress within 30 days from the opening of the regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures (Sec/ 22).*

**NOTE:** The Congress may not increase the appropriation recommended by the President for the operation of the Government as specified in the budget (*Sec. 25, par. 1, Art. VI*).

**INFORMING POWER**

*The President shall address the Congress at the opening of its regular session. He may also appear before it at any other time (Sec. 23).*

**NOTE:** The information may be needed for the basis of the legislation (*Cruz, 464*).

**NOTE:** The President usually discharges the informing power through what is known as the State of the Nation Address (*Id.*).

**RESIDUAL POWER**

**NOTE:** The powers of the President are more than the sum of the enumerated executive powers. The duty of the government to serve and protect the people as well as to see the maintenance of peace and order, the protection of life, liberty and property, and the promotion of general welfare is the basis of the existence of residual unstated power (*Marcos v Manglapus, GR No. 88211 [27.10.89]*).

**EMERGENCY POWERS**

**NOTE:** Congress may authorize the President to exercise powers necessary and property to carry out a declared national policy. It is submitted that on the basis of this provision, the president may be given emergency legislative powers if Congress so desires. This is confirmed by the explanation made on the floor of the 1971 Convention which is the source of this provision, that emergency powers can include the power to rule by executive *fiat* (*Bernas, 254*).

**CONDITIONS FOR THE EXERCISE [WaLa PNR]**

1. There must be a **wa**r or national emergency;
2. There must be a **la**w authorizing the President to exercise emergency powers;
3. Exercise must be for a limited **p**eriod;
4. Exercise must be **n**ecessary and proper to carry out a declared national policy;
5. Must be subject to **r**estrictions that Congress may provide (*Sec. 23, par. 2, Art. VI*).

**NOTE:** Such power shall cease upon next adjournment of Congress, unless sooner withdrawn by Congress.

**OTHER POWERS**

1. Call Congress to a special session (*Sec. 15, Art. VI*);
2. Approve or veto bills (*Sec. 27, Art. VI*);
3. Deport aliens (*Qua Chee Gan v Deportation Board, GR No. L-10280 [30.09.63]*);
4. Consent to the deputization of the government personnel by COMELEC (*Sec. 2, par. 4, Art. IX-C*);
5. Discipline such deputies (*Sec 2, par. 8, Art. IX-C*);
6. By delegation from Congress, exercise tariff powers (*Sec. 28, par. 2, Art. VI*);

7. Power to classify or reclassify lands (*Land Bank of the Philippines v Estate of J. Amado Araneta, GR No 161796 [08.02.2012]*).