

The Role of Indian President

After an intense power game extending to over 2 months, the nation has once again undergone thru the motion for electing the President, the ceremonial head of the State. The incumbent President, virtually an unknown figure to the people, prior to his being picked up by the BJP political bosses will be privileged to stay in a huge palatial mansion several times larger than white house, the home and office of the world's most powerful head of the State and far bigger than royal palace occupied by the queen of England. In a country where poverty is still among the highest, this powerless head of the State will occupy mansion consisting of 340 rooms (having internal corridors of 2.5 km) spread over an area of 330 acres having the lush well kept garden of 190 acres, situated in one of the most prized areas.

Although the framers of Indian Constitution a large majority of whom were highly influenced by the British had opted for the Parliamentary model which provided Executive powers to the Prime minister, they still wanted President to play active and positive role, providing him with adequate powers to check both the Executive and the legislature. Article 74 and 86 of the constitution dealing with the powers of the President undoubtedly provided for this role. Article 74 says that "there shall be a Council of Ministers with a Prime Minister at its head to aid and advise the President in the discharge of his functions". As originally worded Article 86 provided the right of the President to address and send messages to both the Houses. It reads.. "(1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members. (2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration".

Both our earlier Presidents Dr. Rajendra Prasad (the only President to have elected twice) and Dr. Radhakrishnan who followed Dr Rajendra Prasad were undoubtedly fully aware of the powers as provided in the constitution.

When Bihar Zamindari bill was sent to Dr. Rajendra Prasad, he had expressed reluctance to grant his assent. He had even written to Nehru that "When I am asked to sign a document, I must satisfy myself and not sign blindly." ¹ Even on the Hindu code bill, Prasad had sharp differences with Nehru and had written to Nehru that he would return the bill to Parliament without ascending his assent if he thought it was inappropriate and he clearly stated: "My right to examine it on its merits when it is passed by Parliament before giving assent to it is there." ² When the election of the President was due for a second term in 1957 Nehru openly opposed Prasad. It was only due to the support of Maulana Azad ³ who put his foot down that Nehru had to accept Prasad's nomination for a second term.

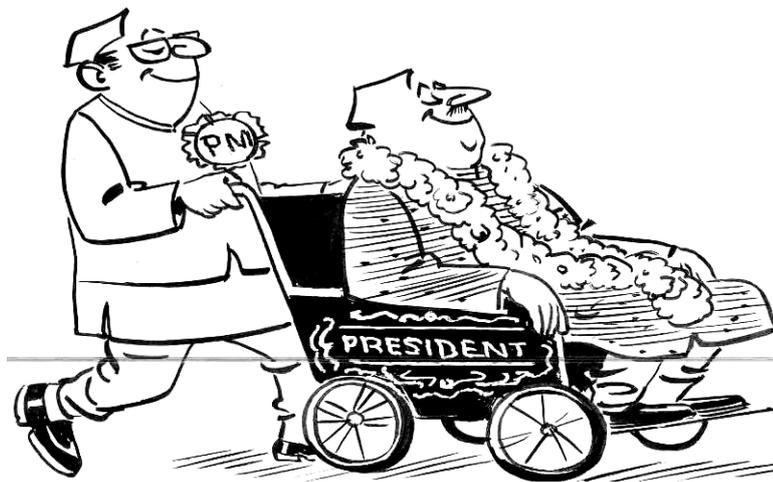
During Dr. Radhakrishnan's tenure when General Thapar submitted his resignation, Nehru, despite the poor performance of Lt. Gen B. M. Kaul wanted him to be promoted as General. But Radhakrishnan remained firm and Nehru had to yield and Lt. General J. N. Choudhary was promoted as General. Dr. Radhakrishnan is also reported to have supported those who demanded the resignation of V.K. Krishna Menon (who was then Defence minister) after the Chinese aggression of 1962, and an enquiry into the corrupt administration of Pratap Singh Kairon, the then Chief Minister of Punjab. He openly blamed his ministers for "widespread incompetence and the gross mismanagement of our resources." ⁴ (Not surprisingly, Dr. Radhakrishnan inspite of his popularity was not offered second term by the ruling party).

President reduced to a mere figurehead: With her complete hold on both the organisational and legislature wings of the party by virtue of the 42nd Constitutional amendment act passed during emergency in 1976, Smt. Indira Gandhi virtually curtailed all the powers provided to the President under the Constitution reducing him a mere 'rubber stamp', making it obligatory for him

to act as advised by the Cabinet without any discretion. The amendment in the article is indicated in bold:

“(1) Council of Ministers to aid and advise President – There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President **who shall, in the exercise of his functions, act in accordance with such advice**”.

2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.



The front seat passenger *

Apart from curtailing the powers of president the notorious 42nd amendment had also virtually provided all the powers to the parliament to amend article 368 of the Constitution making the parliament supreme to tinker with the Constitution in any manner including the fundamental rights as enshrined in the Constitution and not challengeable in any court of law.

After Janata Party assumed power in 1977 while passing the 43rd & 44th Constitution amendment it was expected to do away with all the mischievous and notorious provisions of 42nd amendment including the restoration of original powers as provided to the President under the Constitution.

While the power granted to the parliament to tinker with the fundamental rights were repealed by virtue of 43rd and 44th Constitution amendment act as regards to the restoration of the powers as provided in the Constitution under Article 74 to the President was only marginally restored to the extent of requiring Prime Minister (Council of Ministers) to reconsider the advice tendered to him but remained bound to follow the advice tendered thereafter. The amendments are indicated in bold). 74: “(1) Council of Ministers to aid and advice President. There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. **Provided that the President may require Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration**". (2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court”.

It was very apparent that even the Janata Government too led by Morarji Desai did not want the powers of the President to be restored as originally provided for in the Constitution and balance of power has remained in favour of the Prime Minister making the President for all practical purposes nothing more than a mere ceremonial head of the Government.

Our experience of last 7 decades has clearly established that legislature has utterly failed to provide the required checks on the executive. Enforcement of whip has further deprived the freedom to the legislatures. They are not even required to apply their mind on the legislative issues. The President has remained a mute spectator even when mind boggling corruption scams had completely shaken the faith of the people in the political system.

The success of any democracy whether Parliamentary or Presidential ultimately depends on inbuilt checks and balances. The restoration of power as originally contemplated in Article 74 along with direct election of President may well

provide the answer and create an Institution in Indian polity to provide the checks on the Executive and Legislature. However, to play his assigned role, it may be essential to have the direct election of the President by the people as this would enable him to assert himself. In our present system of elections, the ruling party at the centre led by the Prime Minister makes all the efforts to select a candidate who would be more amenable to the Government and the President himself also remains obligated to the ruling party for being selected for the coveted post. Under such a scenario even the restoration of President's powers as provided originally under Articles 74 may fail to serve this purpose.

While the Union Constitution Committee led by Nehru had recommended having President elected by the legislature, the Provincial Union Committee led by Vallabhbhai's Patel had recommended & approved that both President and the Governors at State level to be directly elected by the people. Vallabhbhai's recommendation was even approved by the full house. In fact, "in a joint meeting of Nehru's Union Constitution Committee and Patel's Provincial Constitution Committee on 11th June, 1947, Nehru was asked by a resolution to reconsider his decision and have the President directly elected, but he refused to do so".⁵ The direct election of governor as suggested by Vallbhabhai would have also helped to provide the required of checks and balances even at State level. In fact, ruling party at the centre has used the opportunity of appointing Governors more in the nature of providing lucrative postings for the retired senior politicians belonging to their party or bureaucrats who would be willing to oblige their Delhi bosses as and when the need would arise in case of a crisis at the State level.

References:-

1. Letter dated 15th September, 1951 Chaudhary, Valmiki (ed.), Dr. Rajendra Prasad: *Correspondence and Select Documents, 19 Vols, Bombay: Allied Publishers Ltd.* 1981: cited in Austin, *Working a Democratic Constitution (WDC)*, P.23. The letter was classified top secret.
 2. Bhanu Dhamija *Why India needs The Presidential System*, Harper Collins Publishers, India (2015). P. 157.
 3. Inder Malhotra, (An ex editor of Statesman & Times of India) "*All the Prime Minister's Men*", 'The Indian Express, 17th April, 2009.
 4. Dr. S.Radhakrishnan – *His Life and Ideas by Satachidananda Murty and Ashok Vora* P. 168- 171. Dr. S.Radhakrishnan was a Philosopher, Statesman & was first Vice President of India.
 5. Minutes of Joint Committee Meeting of the Union and Provincial Committees, 11 June, 1945, Rao, *ibid.*, Vol. 2, P. 612
- * The illustration is from author's book '*Quest For A Better Democratic Alternative*' 1994, N. M. Tripathi Pvt. Ltd., P.3