

Answer to some frequently asked questions

Even while admitting the basic flaws of our system, issues are often raised about some aspects of the presidential model.

a) Failure of presidential system in many other nations

Many presidential systems have failed because these nations have adopted only a few aspects of the US model along with adequate checks and balances with separation of executive and legislature. (In all fairness, it may be mentioned that a large majority who raise this query change their opinion after understanding fully the functioning of a truly democratic presidential system.)

b) What happens if an inefficient person or one with a dubious or controversial background gets elected as a President (at the national level) or as a Governor (at the state level)? It would be difficult to remove them till they complete their tenure.

While there have been skeptics who have often raised this issue, after the election of Trump in 2016, their argument has gathered greater momentum. According to them, while the Legislature is fully empowered to remove such person in a Parliamentary democracy, the Congress in USA has no such powers to remove the President till they complete their tenure.

In the first instance, the possibility of an inefficient person or one with a dubious background getting elected as the CM or even a PM is much higher under our present system than under the Presidential system. Chapter 7 is replete with several such case histories.

Even assuming that a person with a dubious background, by a remote chance, gets elected as the President, the Senate has adequate powers to check him and, if necessary, even to

remove him by initiating impeachment proceedings if he is found to be guilty of bribery, treason or high crimes. The division of power between the Legislature and the Executive has always played a crucial role.

Further, as mentioned in Chapter 4, the authority to confirm all the major appointments, including the ministers, rests with the Senate. This by itself is a major check and by and large ensures better selection. It may be mentioned that in the case of President Nixon, who was almost sure to be impeached because of his dubious role in the Watergate scandal, nothing adverse was proved against any member of his cabinet. In fact, the performance of his team was as good as that of any other Presidential cabinet.

As regards inefficiency, it has been found in USA, that even in such cases, where the President's own record is not encouraging, the caliber of the professional cadre of the cabinet members has played an important role to cover up the shortcomings of the President.

The notion that in a parliamentary democracy it is easier for the Legislature to remove such a person is more of a myth especially if the ruling party has an absolute majority. Even the emergency regime of Mrs. Indira Gandhi was supported by almost all Congress MPs. In fact, many had showered praises on her and applauded her emergency rule, including all the Constitutional Amendments made, virtually providing her dictatorial powers. Even at the State level, there are innumerable examples where persons with dubious and controversial backgrounds have not only been able to get the coveted post of CM by sheer manipulation but have also been able to complete their tenure with all sorts of manipulative politics, leaving people as helpless spectators. The most striking example is that of Lalu Yadav, who in spite of being in

jail for corruption charges, managed to install his wife, Rabri Devi, in his place and remote-control the whole show! Similarly, Jayalithaa, while being imprisoned for corruption charges, ruled the state through a dummy CM.

c) Can we not think of the present French or German Constitutions or evolve a hybrid model including certain elements of the US model?

(i) As regards the German and French models, the present French Constitution has been in place since 1958 and the German model was adopted in 1948, whereas US's is a time-tested model, in place for more than 240 years. Additionally, both Germany and France are much smaller in size than USA.

(ii) Both India and USA are large and secular democracies, having diversity of language and culture, as against France and Germany, which have one language, one race and one culture.

(iii) In spite of diversity of races and culture, the system does not encourage vote-bank politics.

(iv) With immigration from all parts of the world, USA, in spite of being a melting pot, has been able to have a strong identity as a nation besides providing true federalism.

(v) The system has not only provided a healthy two-party system but also provided strong leadership in times of crisis. It has helped USA become a world leader and an exceptional performer in almost every field. As mentioned by Bhanu Dhamija,¹ "It is a system proven over the centuries. It is built on solid arguments. And it has helped America become an exceptional performer in almost every field. There isn't an area of human excellence, from arts to sciences, from sports to academics, in which the American people are not among the world's best.

Isn't the system that built the strongest nation on earth worthy of emulation?"

As mentioned by Dr. Pradip Khandwala², "America is not only the wealthiest nation in the world; it is also the most inventive. It spends the most money in the world on R&D, and over the years, has garnered the most patents of any nation on earth. America spends around \$500 billion a year on R&D. In 2015, over 325,000 patents were granted in US and over 600,000 applications were pending. Americas have won the largest number of Nobel Prizes of any nation: by 2015, 376 out of 900 awarded, and with sizeable numbers in each category. A significant number of American Nobel Laureates were not born in US, and they include three Indians. This attests to the attractiveness of American research organizations for bright foreign scientists, and vice versa."

"America has many of the world's most innovative universities. In rankings of the world's top 100 universities for innovation, seven out of the top eight were American universities. The universities were ranked in terms of their efforts to advance science, develop new technologies, and help drive the global economy."

"So attractive are the American universities to bright minds everywhere that nearly a million students from all over the globe are studying in them in any given year. About 30% are Chinese and about 13% are Indians. But this is not a one-way street. Around 300,000 American students study abroad (around 2% of the college students' population), propelled by their curiosity to learn more about other countries."

"Thanks to America's creative spirit, a large 'creative class' has emerged in America. According to Richard Florida, the creative class in America consists of around 40 million workers, about a third of the American workforce. About 15 million constitute the 'super-creative core'. These people

operate in science, engineering, IT, education, research, arts, design, and media. Their primary contribution is innovation. 'Creative professionals' are the remaining members of the creative class, basically knowledge-based workers working in various professions. They apply others' creative ideas and inventions in their work to bring about changes and improvements. Florida has argued that the creative class will increasingly become the leading energizer of growth in the economy."

"Not just the wealth of America, but also its freedom of expression and thought and the opportunities America offers for growth in income and knowledge, has drawn to it a huge horde of immigrants. There are in the country over 40 million legal foreign-born immigrants (including 3 million Indians), not to mention many millions of illegal immigrants. Between one and two million persons emigrate to US annually and over 170 million persons visit US annually."

"Americans give much in charity every year. Nearly \$360 billion was donated in 2015, of which over 70% was by individuals."

d) Time and again, there is an argument that many Americans themselves are not pleased with the system and think of an alternative.

In this regard, as quoted by Dhamija,³ "In his recent book, *A More Perfect Constitution*, Larry Sabato, Director of University of Virginia's Centre for Politics and a winner of the Thomas Jefferson Award, considered 23 proposals to 'revitalise' America's Constitution. None proposed changing the founders' fundamental structure. 'The heart of their Constitution (individual liberty, the separation of powers and federalism) is untouched in these pages,' Sabato wrote."

e) Do you suggest any changes in the US model of presidential democracy to suit our conditions?

While the basic model of Presidential democracy, viz. (1) direct election of the Executive head, (2) Separation of Executive, Legislature and Judiciary branches and (3) Checks and balances between the Executive and the Legislature should be kept intact, some amendments may be necessary to make it more suitable to the peculiar conditions prevailing in our country.

Thus, for example, in USA, the tenure of a member of a Lower House (known as House of Representatives) is only two years, which in India would be too short a term to be effective. While a Lower House member in USA has a constituency of nearly **0.75** million, our Lok Sabha member has a constituency of over 2-2.5 million and it may be difficult for the candidate, the party or even the Government to raise resources to hold elections at such short intervals. We can also hold the elections of the Executive heads (President and Governors) as well as that for the members of the Legislature at the National and State levels simultaneously to minimize the cost for all involved.

In USA, the ministers are not allowed to attend the Parliament. We can allow the ministers to attend both the houses and allow them to be heard at their request as permitted in the French system of Presidential democracy. We can restrict the question-and-answer (Q&A) session to be taken up by the MPs in the relevant committee meetings, where the concerned minister may be allowed to remain present if necessary. (Our present system of having the Q&A session in the full session of Parliament results in too much wastage of time of the entire Parliament.)

While amending our Constitution, certain basic electoral reforms like laws for political parties, partial funding of elections by the State and mixed system of proportional

representation for the Legislature as discussed in Chapter 11 also needs to be included.

f) Is it possible to bring about the required change in the system (from Parliamentary to Presidential) within the frame work of the present Constitution?

Under Article 368, Parliament has been empowered to amend the Constitution and the procedure has been defined for the same. Such an amendment has to be passed in each house by a majority of the total membership of that house and by a majority of not less than two-thirds of the members of that house, present and voting. However, if such an amendment seeks to make any changes in Articles 54, 55, 73, 162 and 241, it is required to be ratified by the legislatures of not less than one-half of the States. Articles 54 and 55 have provided for the present method of indirect system of election for the President, based on an electoral college consisting of both Houses of Parliament and the elected members of the legislative assemblies of each state, with pro-rata weightage given to the elected members of the legislative assemblies of the states based on the total population of the state. In reality, this has amounted to indirect election of the President, manipulated by the political parties according to their whims and fancies.

If these Articles are amended and the present system of electing the President is replaced by the direct election of the President by the people and the powers of the President under Articles 74 and 86 are restored as originally provided for in the Constitution (as discussed in Chapter 1), we can have a President who will be the Head of the Government in the real sense rather than a notional head or a 'rubber-stamp' President. Being directly elected by the people, he will not be obligated to any political party, including the majority party or the combined opposition. What it may lead to would be a semi-Presidential system as prevailing in many countries (as discussed in Chapter 8), with powers divided between the PM

and his Cabinet and the President. However, for a truly democratic Presidential system, including Governors at the state level to be directly elected and functioning as Executive heads of the Government at the state level, separation of the Executive and the Legislature and to have Legislators not bound by whips of the parties to vote on legislations and so on, as outlined in this book, it would be necessary to revamp the present Constitution.

g) Are there any countries that have changed over from the Parliamentary to the Presidential system? And how did the change take place?

Two countries in the recent past that switched over from the Parliamentary to the Presidential system are France and Sri Lanka. In France, General Charles de Gaulle brought about the change in 1958 through a public referendum, wherein it was approved by an overwhelming majority of 76.2% of votes. In Sri Lanka, the change took place on the basis of the mandate received from the electorate by the United National Party under the leadership of Jayewardene. The Party had included the issue in its manifesto during the 1977 elections and secured a thumping majority (140 out of 168 seats) in the elections, which enabled Jayewardene to bring about the change. As we do not have a provision for referendum in our Constitution, if a major political party in India includes the change as part of their manifesto and wins the majority of seats in Lok Sabha, it will have the mandate to bring about the necessary change, like Jayewardene did in Sri Lanka. After winning the elections, it can proceed to have a Constituent Assembly appointed out of eminent people from various fields and this Assembly can be given the mandate to draft the Constitution based on the model of a truly democratic Presidential system.

References / Notes

1. Bhanu Dhamija, op.cit., P. 346.
2. Dr. Pradip Khandwalla, *Fast Forward Toward Civilizational Greatness: Agenda for India*, published by Academy of Human Resources Development, 2017. P. 312.
3. Ibid