

Presidential system: The need of the hour

By Jashwant Mehta

In the last nine years, we have had as many as four general elections and seven prime ministers. Now that the Vajpayee government, an alliance of eighteen parties has fallen, how stable will the next government be and if for any reason, the mid-term elections are held, will the situation be any different?

The founding fathers of our Constitution while drafting the Constitution took good care to safeguard the fundamental rights of the people except in times of emergency. However, as far as the form of Government was concerned, they adopted the British system with a few cosmetic changes, the President replacing the King as the near-ceremonial Head of the State.

The success of the British model of parliamentary democracy is mainly dependent on the evolution of a genuine two party system. However, our experience of the last fifty years has proved that such a development in the Indian conditions is a mirage! We have witnessed an endless process of formation of new parties, splitting up of the existing parties and defections from one party to other party of self-seeking ends. If we were to compile a list of all the parties formed in the last fifty years in India, it would become a mini-dictionary itself. The only time we had come closer to the criterion of a two-party system was in 1977 post-emergency elections when almost all the opposition parties had come together to form the Janata Party. However, events have proved that this was more of an accident than a subsisting reality. Over a period of time this party has ceased to exist in totality and a subsequent new party has been born under the same name.

A question arises as to what the reasons were for the farmers of our Constitution to opt for the feeling of respect and familiarity which made them opt for the British model.

In this context, Dr K M Munshi, a leading member of the then Constituent Assembly, had aptly observed: "During the last one hundred years, Indian public life has largely drawn upon the traditions of British constitutional law. Most of us have looked to the British model as the best. For the last thirty or forty years, some kind of responsibility has been introduced in the governance of the country. After this experience, why should we go back on the tradition and try a novel experiment." Shri B K Nehru, a distinguished civil servant, who had also served as India's Ambassador to the USA as India's High Commissioner to the UK, similarly observed: "Furthermore, the Constituent Assembly was dominated by lawyers trained solely in the British traditions and the British system of Law, who constituted a substantial proportion of the members of the Assembly. Their knowledge of constitutional law was largely confined within the horizon of the British Constitution."

At this juncture, it will be interesting to know as to why the USA which like us had also won independence from the British and whose leaders were even more familiar with the British form of parliamentary democracy than us, in as much as a large majority of them were British immigrants, still chose to opt a different form of democracy viz Presidential system of democracy, while drafting its Constitution. There was a lurking fear in their minds that the USA which was essentially going to be a nation of immigrants with people coming from various countries of Europe and where they might not possess the basic prerequisites for the evolution of a genuine two-party system, as it was apprehended that there could be a temptation for these immigrants belonging to different nationalities to form parties based on their nationalities and under such a multi-party formation they might not be able to achieve a

stable government. They, therefore, opted for a different model, popularly called the Presidential form of government. In this form of government, as we all are by now familiar, the executive is directly elected by the people and once elected he has a full security of tenure.

Strange as it may sound, but it will be of further interest for us to know that over a period of time, it has been found that the Presidential form of government discourages the formation of smaller parties and is actually helpful in strengthening a genuine two-party system, an important lesson for us to learn. The reason is that in the Presidential form of government, a candidate of a party getting a smaller percentage of votes has little or no impact on the final outcome of the elections. From time to time, there have been several examples of new parties being formed in the USA and the candidates of these parties have contested the Presidential elections in the past. Thus, for example in the 1968 Presidential elections, Alabama's racist governor, George Wallace, after breaking away from the Democratic party founded the American Independent Party on the issue of racial superiority of whites and had contested the Presidential elections. Due to a strong sentiment in South on this issue, he was able to secure as much as 13.50% of total votes. For a party contesting elections for the first time, this was certainly a significant percentage to be reckoned with. However, its overall impact on the outcome of Presidential elections was insignificant and his party gradually faded away.

Even in 1980 Presidential elections, another powerful personality, John Anderson, a republican had broken away from the main party and contested elections as a third party candidate securing 6.6 percent of total vote. However, this had hardly any impact on the final outcome of the elections and in the subsequent elections, Anderson himself endorsed the candidature of the Democratic party nominee.

Now compare this with our situation where we have seen that even a smaller party getting a tiny fraction of the total votes and securing a few seats in the legislature is able to play a king-maker's role and determine the very survival of a prime minister or a chief minister. Smt Jayalalita has 21 seats out of 542 members in Lok Sabha and in terms of percentage, her party may not have secured more than 3 to 4 percent of total votes, but today, she is the one who was able to determine the very fate of the national government. As it is, it was an agonising process for all of us to read every morning about her tantrums. Thus, our system, therefore, rather than promoting a healthy two-party system, has encouraged fragmentation and splitting up of political parties over a period of time.

France is another country which has some interesting lesson for us. They had a Parliamentary system of Government and like us had witnessed a continuous process of unstable governments. There was also an endless process of formation of new parties as well as splitting of existing parties. The country much smaller in size than ours had as many as fourteen political parties and during a twelve-year period between 1946 and 1958 had as many as 26 different governments. It had become a common practice in France that when a prime minister would go in for a swearing-in ceremony while assuming the office, people would wish him good luck rather than congratulating him. After the adoption of the Presidential form of government in 1958, not exactly of the US model, but with many similarities with it, there is not only a stable government, but a drastic reduction in the number of parties. Against the fourteen parties existing earlier, there are now only four major political parties and even these four parties now in vogue are divided in two large coalitions of left and the right leading to the much-needed stabilisation.

Even while adopting the British model, we have chosen to ignore some of the good elements of that system. Many of us may not be aware that the size of cabinet in the British system is restricted to about twenty members. Such norms are also established in other democracies such as in Japan wherein the Constitution itself has limited the strength of cabinet to twenty at the maximum. Similarly, in Australia, which is a large country with several states like us, the number is limited to 30. In contrast to this, the size of cabinet in our country, both at the State and Central levels,

Smt Indira Gandhi.

The Forty-second Amendment to the Constitution passed during this period was a close step to dictatorship as it had empowered the Parliament to amend Article 368 of the Constitution thereby enabling it to change any part of the Constitution which could not be questioned in any Courts on any ground. Fortunately, this Amendment was repealed during the Janata regime.

The executive, legislature and judiciary are the three main organs of the government. In a broad sense, the executive would cover the prime minister and his team at the National level and the Chief Minister and his team at the state level. In order to have a truly democratic Presidential system of democracy where the checks and balances are really effective, the separation of powers between the executive and the legislature is essential. This would mean that the legislature must not be a part of the executive. The Constitutions in both the USA and France score on this point as compared to other Presidential systems. The US is a near perfect example where the executive and the legislature have ideally performed the exercise of providing checks and balances on each other. On one hand, the President has been given a free choice to select the best available talent for his cabinet while, on the other hand, he is also required to get the necessary approval of the concerned committees in the Legislature (i.e. the Senate) for all the appointments in the cabinet. The Senate on its part has no vested interest in these appointments as no Senator or member of Lower House is allowed to be a part of the cabinet. On the legislative front, the members of the Congress i.e. the legislators (the upper and the lower house) have been given full freedom to vote on any legislation irrespective of the party lines and there is no such word as 'whip' in American democracy and through a strong committee system, all proposed legislations are analysed in an impartial and professional manner.

The negative feature of French system as compared to the US system is the power given to the President to dissolve the Parliament which can have dangerous repercussions. The tenure of French President is also for six years as against four years for the US President.

As regards the function of the judiciary, the role of judiciary whether under the Parliamentary or Presidential system is to ensure that neither the executive nor the legislature over-steps its respective limits or violate the fundamental rights of the citizens as guaranteed in the Constitution.

Another notable feature of the US democracy is the restriction of tenure for the President who cannot continue more than two terms. Such a restriction is also applicable at the state level for the governors. It is said that 'absolute power corrupts absolutely.' There is no better way to counter this argument than by restricting the tenure of the Head of the State up to a certain specific limit.

A book entitled *Presidential system: The Need of the Hour* would answer most of your queries as regards the suitability of a truly democratic presidential system for India vis-a-vis our current parliamentary system. Shri Chimanbhai Mehta has also published a book *Parliamentary System V/s. Presidential Democracy*.

While concluding, I would like to quote the writing of the eminent Jurist, Shri N A Palkivala, who has observed "A bad government is the inevitable consequence of an indifferent electorate. Politics will never be cleaner and our economic future will never be brighter, unless and until our citizens are willing to give of themselves to the land which gave them birth." The great French thinker Montesquieu has observed in the same vein "The tyranny of a Prince in an oligarchy is not so dangerous to the public welfare as the apathy of a citizen in a democracy."



Indira Gandhi

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is determined by the considerations of political expediency of buying peace in the face of challenges from the dissidents. The ministerial berths are used for doling out the largesse so as to enable the chief minister or the prime minister concerned to secure his hold on the various groups or parties to keep his position secure. Here those who cannot be accommodated in the ministry are offered the next lucrative option of Chairmanship of State/Central Corporations/Public Sector Undertakings. It may be mentioned that in Britain, except for the minister, no member of Parliament is allowed to enjoy any office of profit.

The general misconception about the Presidential system in the minds of many of us is the fear that it may degenerate into dictatorship. The likelihood of any democracy, whether Parliamentary or Presidential, degenerating into dictatorship is dependent on the provision of in-built checks and balances. In a short span of seven years (1932-1939) during the "Third Reichstag" in Germany (1920-1939) Hitler could assume all the powers of a dictator by circumventing the then existing parliamentary democracy. Even in our own Parliamentary system, we had a near dictatorial regime during the emergency rule of the late