

MOOC ON
Constitutional Govt. & Democracy in India
MODULE-14
The President of India

ACADEMIC SCRIPT

The President of India

India has adopted a federal system of government. At the head of the Union executive stands the President of India. The Constitution of India provides for a President of India and the executive power of the Union Government including the supreme command of the defence forces, is vested in him. Infact Article 52 states that there shall be a President of India. Article 53 declares that the executive power of the Union shall be vested in the President. The executive power of the Union is vested in the President expressly, but there is no corresponding provision in the Constitution vesting the legislative and the judicial power in a particular organ of the State. While the legislative power is primarily vested in the legislature that is in the

Union Parliament and the State Legislatures, the judicial power is not vested in one organ. The State may confer judicial power on the courts and the tribunals. The division of the power of the State into three organs called executive, legislature and Judiciary are characteristics of all modern Constitutions. This vertical division of powers is called the theory of separation of powers. In some of the Constitutions the separation is more pronounced, as in the U.S.A. and in some less. Our Constitutions does not contain rigid separation of powers. In the Delhi laws Act Case the Supreme Court clearly stated that none of the organs of the state can divest itself of the essential functions which belong to it under the Constitution. This is based on the Doctrine of Constitutional Trust. The legislative and judicial functions are not vested in particular bodies, but powers and functions of each Constitutional entity are to be found within the Constitution. Thus, the law making function is generally vested in the legislature, but Article 123 and 213 confer the power to issue Ordinances on the President and the Governor respectively. The power is to be exercised in conformity with relevant conditions. In fact our

Constitution creates an office of the President but the form of the Government is not Presidential.

It must be noted that India has adopted for a Parliamentary form of government in which the President happens to be the Constitutional head and the real executive powers vested in the Council of Ministers. The Prime Minister being head of the Council of Ministers is the real head of the executive. Article 74 mandates that there shall be a Council of Ministers to aid and advise the President in the exercise of his functions. It is further prescribed that the President shall act in accordance with such advice. Article 75(3) lays down that the Council of Ministers shall be collectively responsible to the Lok Sabha. The Constitution has no article stating that the President is answerable or responsible to the Lok Sabha. The provision contained in Article 75(3) is the foundation of the Parliamentary form of government. The Council of Ministers is the final authority to take decisions in regard to the affairs of the Union, since they have been vested with the authority and have been made answerable to the Lok Sabha. The President being the titular or formal head

exercises all powers and functions conferred on him on the aid and advice of the Council of Ministers.

Qualifications

Article 58 of the Constitution requires that a candidate for the office of the President should possess the following qualifications:

1. She/he must be a citizen of India.
2. She/he must have completed 35 years of age.
3. She/he must possess all qualifications prescribed for election as a member of the Lok Sabha.
4. Besides she/he must hold any office of profit under the government of India or any State Government or any local authority subject to the control of central or State Government.
5. Article 59 says that she/he mustnot be a member of either House of Parliament or of any State Legislature. It means that in case the member of the Union or the State Legislature is elected for this office, his seat in the Legislature shall be deemed to have been vacated from the date on which he assumes his office as the President of India.

Election of the President

The procedure of Presidential election is contained in Article 54 and 55 of our Constitution. The President of India is elected by indirect election, that is, by an electoral college, in accordance with the system of proportional representation by means of a single transferable vote. According to Article 54 the Electoral College shall consist of –

- (a) The elected members of both Houses of Parliament and
- (b) The elected members of the Legislative Assemblies of the States.

Article 55 provides for the formula of uniformity in the scale of representation of different states, as far as practicable, by incorporating the method of proportional representation with single transferable vote system. This condition seeks to ensure that the votes of the States, in the aggregate, in the Electoral College for the election of the President, shall be equal to that of the people of the country as a whole. In this way the President shall be a representative of the nation as well as a representative of

the people in the different States. It also gives recognition to the status of the States in the federal system.

The whole procedure of Presidential election has been discussed by J.C.Johari with the help of the following steps:

1. Each elected member of a State Legislative Assembly shall have as many votes as there are the multiples of one thousand in the quotient by dividing the population of the State as given in the last census report by the total number of the elected members of the Assembly. Moreover if after taking the said multiples of one thousand, the remainder is more than 500 then the votes of each member shall be further increased by one. Its formula may be put as under:

Total number of votes = Population of the State / 1,000
of an elected M.L.A. Total no. of elected M.L.A.'s

To take a hypothetical example, we may say that if there is a population of 5,000,000 in a State and there are 50

elected M.L.A.s, then the value of the votes of each of them will be: $5,000,000 / 50 = 100,000 / 1000 = 100$.

2. Each elected member of the Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to all the elected M.L.A.'s of the country by the total strength of the elected M.P.'s is to be counted as one vote more, otherwise it shall be discarded. Its formula may be put as under:

Total number of votes = Total number of votes assigned to all elected M.L.A.'s
of an elected M.P. Total number of the elected members of Parliaments

To take a hypothetical example again, we may say that in case the total value of votes of all the elected M.L.A.'s of the country is 2,00,000 and the total strength of the Elected M.P.'S are 500, and then the value of the votes of each elected M.P. will be 400.

3. Finally, it is provided that the election of the President shall be by secret ballot and in accordance with the system of proportional representation with single transferable vote. It means that the voter shall be given a ballot paper having the names and party symbols of the candidates on the left side with blank columns on the right that he has to fill up by showing his preferences. The voter shall place the figures of 1,2,3 and so on in the blank columns to show his order of preferences after the polling is over, counting shall take place. First of all, invalid paper shall be rejected and electoral quota shall be taken out by means of this formula:

$$\text{Electoral Quota} = \frac{\text{Total number of valid votes polled}}{\text{Total number of constituencies}} + 1$$
$$1 + 1 = 2$$

Then counting will begin. In case a candidate secures vote's upto the figure of electoral quota in the first round, he shall be declared elected. Otherwise, subsequent rounds shall be made to declare the results. A candidate having least number of votes shall be eliminated and his votes shall be transferred to other candidates according to second preferences. Thus, the votes of other

candidates will be enhanced. The process will continue until the result is available.

A historical study of the Presidential polls tells us that not first, second and third, but the fourth and fifth elections assumed unprecedented significance. The fourth election of 1967 and, shortly after that, the fifth one of 1969 made a history of their own in view of the dwindling position of the Congress Party heading towards an inevitable split. The fourth Presidential election witnessed a meaningful political contest between a united Congress and a more or less united Opposition. It looked like a straight fight between Dr. Zakir Hussain as the nominee of the Congress party and K. Subba Rao as a chosen leader of the opposition parties, excluding the leftist element. But a more significant episode took place in the fifth Presidential poll of 1969. It marked an unprecedented contest between a divided Congress and a dis-united opposition each thriving on the bickering of the other. The result was that no candidate could win in the first round and the victory of the unofficial Congress nominee (Mr.V.V.Giri) at the expense of the official

candidate (Mr.N.Sanjiva Reddy) occurred owing to the process of elimination.

Evaluation of the method of election of the President

A critical examination of the system of the Presidential election in India shows that there are certain serious loopholes in it though some of them have been removed in course of time:

1. The expression of Article 55(3) providing for proportional representation system is incorrect in the sense that there can be no proportion unless there are at least two seats. That is, the system of proportional representation cannot apply to a single member constituency. Prof. M.P.Sharma was the first critic to point out in 1950 that the nomenclature of proportional representation is incorrect. According to him the question of proportion can arise only when there are at least two things to compare. Infact in his book entitled The Government of the Indian Republic he argued in favour of preferential or alternative vote system.

2. The Constitution is not clear as to what shall happen if the Electoral College is in a lame-duck situation. The XI Constitution Amendment Act was rushed through in 1961 to provide that the election of the President shall not be invalid if there were some vacancies in the Electoral College. However, it does not lay down whether the election will take place if any State is under President's rule. It must also be noted that a new device of half State emergency was invented in 1966 to keep the legislative Assembly of Punjab under suspended animation. The question arises as to what shall happen if there is no legislative Assembly in a State. This controversy arose in 1974 owing to President's rule in Gujrat. The matter was referred by the President to the Supreme Court for its advisory opinion. The Court advised in favour of the Government desiring election without a State Assembly.

3. The present system of Presidential election hardly provides any chance for the election of a non-political personality. The prospects of victory are there for one supported by the party having its overwhelming majority

in the Electoral College, or for one backed by a combination of parties, big and small, that somehow manage to come together for the purposes of having a friend of their own in the Rastrapati Bhawan.

4. The procedure of Presidential election is highly complex and is beyond the understanding of the ordinary citizens. If a political party ceases to have unanimous and absolute majority in both the Houses of the Parliament and if in such a situation many candidates of different political parties express their desires to contest for Presidential election then there is no doubt that such a procedure of Presidential election is bound to be even more complicated.

5. Dr. K.V.Rao in his book entitled Parliamentary Democracy of India has mentioned the voting system of the President as highly unscientific. According to him this system of election is more or less like a knock out tournament since in the method of proportional representation the first preference is given a greater value compared to the second one.

On the question of Presidential election opinion in the Constituent Assembly was at first divided. There were those who advocated the adoption of the Presidential system of government prevalent in the United States of America and advocated in favour of the direct election. But they formed only a small minority and the overwhelming majority was decisively in favour of an indirect election. Several reasons were cited in this regard by the members. They are:

1. India has adopted a Parliamentary system of government. The President is a mere titular head in such a system. If the President is directly elected then there might arise a possibility of conflict between the President and the Prime Minister. It is not desirable for the President to get himself involved into a conflict with the Prime Minister and his Council of Ministers.

2. The role of the President in India is mere constitutional. It was also desired by some other members that as the manner of direct election would

amount to a colossal waste of time, energy and money and also would lead to immense political difficulties, the President should be elected by the members of the Parliament.

3. In case of direct election of the President for two or more candidates there is a possibility of electing the one who has the support of the majority.

As such what was finally accepted was the Nehru – Ambedkar formula of indirect election of the President by an enlarged electoral college consisting of the elected members of the Union and the State legislatures in accordance with the principle of proportional representation with single transferable vote system. This formula, as stressed by Nehru and Ambedkar, had the support of three essential reasons- vast size of our electorate, strain on the administrative machinery and nominal position of the head of the State in our Parliamentary form of the government. In this way the principle of the indirect election of the President had its happy coincidence with the framework of our federal

system implying division of powers between the Centre and the States with the President being a chosen nominee of both. Thus, it has been remarked that the method adopted for the election of our President "is an original contribution to constitutional practice."

Tenure and Removal of the President

The President holds his office for a period of five years from the date he takes the oath in the presence of the Chief Justice of India. As the Constitution says nothing regarding the number of terms that a person may avail of, it is clear that the President is eligible for any number of re-elections. The President may also resign before the expiration of his term of office for any reason. It is provided that his resignation should be addressed to the Vice-President who is required to forthwith communicate it to the Speaker of the Lok Sabha. A voluntary resignation of the President may presumably be in any of the following four cases:

1. He may resign due to the reason of continued ill-health.

2. There may be a voluntary abdication in a case where the President may not be in harmony with the Council of Ministers and would prefer to quit rather than create a constitutional crisis. The resignation in such a situation may also be due to a directive from the High Command of the party in order to avoid the likely conflict.

3. The resignation of the President may also be to avoid removal by impeachment when such proceedings seem to be in progress.

The resignation of the President may also be a threat against the ministry or the majority party on some vital issue, which might reveal something damaging to the ministers who can thus be coerced to reconsider their stand, reconsider their differences, if possible, or offer themselves to resign.

In fact a vacancy of the office of the President may be caused in any of the following ways-

(i) On the expiry of his term of five years.

- (ii) By his death.
- (iii) By his resignation.
- (iv) On his removal by impeachment.
- (v) Otherwise.

When the vacancy is going to be caused by the expiration of the term of the sitting President, an election to fill the vacancy must be completed before the expiration of the term [Article 62(1)] but it is at the same time provided that the outgoing President must continue to hold office, until his successor enters upon his office [Art 56(1)].

In case of a vacancy arising due to reason of any cause other than the expiry of the term of the incumbent in office, an election to fill the vacancy must be held as soon as possible after, and in no case later than, six months from the date of occurrence of the vacancy.

Apart from the permanent vacancy, the President may be temporarily unable to discharge his functions, owing to his absence from India, illness or any other cause, in which case the Vice President shall discharge his

functions until the date on which the President resumes his duties. [Art 65 (2)].

Article 56(1) provides that the President of India may be removed by the process of impeachment for the 'violation of the Constitution.' An impeachment is a quasi-judicial procedure in Parliament. Either House may prefer the charge of violation of the Constitution before the other House, which shall then either investigate the charge itself or cause the charge to be investigated. But a House cannot prefer the charge unless—

(a) A resolution containing the proposal is moved after a 14 days' notice in writing signed by not less than $\frac{1}{4}$ of the total number of members of that House and

(b) The resolution is then passed by a majority of not less than $\frac{2}{3}$ of the total membership of the House.

The President shall have a right to appear and to be represented at such investigation. If, as a result of the investigation, a resolution is passed by not less than $\frac{2}{3}$

of the total membership of the House before which the charge has been preferred declaring that the charge has been sustained, such resolution shall have the effect of removing the President from his office with effect from the date on which such resolution is passed. [Art 61]. Since the Constitution provides the mode and ground for removing the President, he cannot be removed otherwise than by impeachment, in accordance with the terms of Arts. 56 and 61.

A critical examination of the procedure for the impeachment of the President shows that it is full of loopholes and inconsistencies, which may be enumerated as under:

1. The phrase 'violation of the Constitution is delightfully vague. It is not clear as to what it includes and what it excludes. One may, and one may not agree with the view of Dr. Ambedkar that President's refusal to summon the Parliament, for example, on the advice of the Prime Minister constitutes a violation of the Constitution. Prof. B.M.Sharma feels that any act of the

President without or against the wishes of the Council of Ministers would amount to a violation of the Constitution.

2. The members of the State Legislatures have been deprived of any part in this process in spite of the fact that they have their full part in the election of the President. There ought to have been some provision for the ratificatory role of the State Legislative Assemblies.

3. The provision of at least $\frac{1}{4}$ members at the time of the initiation of the move in either House of Parliament and of $\frac{2}{3}$ majority of the whole House at the time of the adoption of the resolution include all the members of the House whether elected or nominated. One may ask as to why the nominated members of the House have been given the right to take part in the impeachment proceedings when they have no such rights in matters of Presidential election.

4. The provision that the other House of the Parliament shall investigate the charge is understandable but it is not

clear whether the House will do the tedious job itself or appoint some judicial commission for the said purpose.

5. It is not clear as to what time the investigating House will give to the President for making his defence since the term 'short notice' does not give any idea of specific time period and personal equation with the President are more likely to influence the outcome.

6. As the President has the power to summon and prorogue the Parliament and dissolve the Lok Sabha, he might use these powers thereby delaying the process of impeachment.

7. The Constitution makes no mention of the disqualifications that a person shall incur after his removal from the office of the President.

8. Above all the requirement of the 2/3 majority of the House makes the whole affair highly tedious that goes to the benefit of the President himself.

Conclusion

Keeping in view all these inherent loopholes and inconsistencies in the provisions of the Constitution, the process of impeachment is not only cumbersome but also very long delayed. As such the limitations of the process will tend to make it ineffective, almost impossible, to apply in practice.