



THE ELECTION TO INDIA'S PRESIDENT, THE CRITICAL ASSESSMENT TO ITS CONSTITUTIONAL POSITION

PART I: CRITICAL ANALYSIS OF THE ELECTION PROCEDURE FOR THE ELECTION OF PRESIDENT

INTRODUCTION :

With the tenure of the 14th President of India, Shri Ram Nath Kovind set to end in July 2022, on July 18, elected MLAs and MPs across the country will vote to elect India's 15th President. Article 62(1) of the Constitution provides that an election to fill a vacancy caused by the expiration of the term of office of the President shall be completed before the expiration of the term. It is noted that the elections are conducted and overseen by the Election Commission (EC) of India.

CRITICAL ASSESSMENT OF THE CANDIDATES FOR THE PRESIDENT ELECTION :

The BJP-led NDA government has fielded tribal leader Draupadi Murmu, the former governor of Jharkhand, as the candidate for the election; wherein, whereas the Opposition, including the Congress, Trinamool Congress, and NCP has unanimously declared Yashwant Sinha for the same. As Draupadi Murmu hails from the state of Odisha, after the support of Naveen Patnaik's Biju Janta Dal party, the NDA nominee has around 52 % votes (around 5,67,000 votes) out of a total of 10,86,431 votes of all electors. With this, she can set to become India's first tribal and youngest President. According to the official report, the BJP on its own has 393 MPs, excluding four nominated Rajya Sabha members, out of the current strength of 776 members from both Houses, which also paves it to give a clear majority. Among the states, the BJP has a maximum of 56,784 votes from Uttar Pradesh where it has 273 MLAs.

ELECTION PROCEDURE FOR THE ELECTION OF THE PRESIDENT :

Nomination Process: - After the Election Commission notifies the date for the presidential election, in the nomination stage before the voting, the candidate intending to stand in the election, files the

nomination along with a signed list of 50 proposers and 50 seconders; the rule was implemented in the year 1974. The sole intention to implement such a rule is that several candidates, many without even a bleak chance of winning, would not file their nominations to contest the polls.

These proposers and seconders can be anyone among the total members of the Electoral College from the State and national levels. An elected representative can serve as the proposer or seconder for only 1 candidate.

Electoral College: - As per Article 54 of the Constitution of India, the President is elected by an electoral college, which consists of all the Members of Parliaments (MPs) of both Houses of Parliament and the Members of the Legislative Assemblies (MLAs) of the states and assemblies of Delhi, and Puducherry. It is to be noted that the nominated members of Rajya Sabha, Lok Sabha, the Assemblies, and members of state Legislative Councils, are not part of the Electoral College.

WEIGHTAGE OF THE VOTES:-

1. **Weightage of the Votes of the MLAs:** - The votes are weighted, their value determined by the population of each state as per Census 1971. The value of each MLA's vote varies from a high of 208 in Uttar Pradesh to a low of 7 in Sikkim. This means that UP's 403 MLAs contribute $208 \times 403 = 83,824$ votes to the electoral pool, while Sikkim's 32 MLAs contribute $32 \times 7 = 224$ votes. The weighted votes from all the Assemblies add up to 5.43 lakh.
2. **Weightage of the Votes of the MPs:** - The process demands that the 776 MPs (543 in Lok Sabha, 233 in Rajya Sabha) should contribute the same total of votes as the MLAs. Thus, the value of each MP's vote is 5.43 lakh divided by 776. It is to be noted that The value of the vote of an MP has gone down to 700 from 708 in the presidential polls this time due to the absence of a legislative assembly in Jammu and Kashmir.
3. **Combined Weightage of Votes:** - The combined electoral pool from the Assemblies and Parliament adds up to 10.86 lakh.
4. In the given calculations, the total vote value of MLAs of Jammu and Kashmir is also included; because the newly formed Union Territories of Jammu and Ladakh have not been included in the Electoral College for the 2022 Presidential elections.

REQUIREMENT FOR WINNING THE ELECTION: -

A nominated candidate does not secure victory based on a simple majority but through a system of bagging a specific quota of votes. While counting, the EC totals up all the valid votes cast by the Electoral College through paper ballots, and to win, the candidate must secure 50% of the total votes cast + 1.

Unlike general elections, the voters of the Electoral College, under the system of proportional representation by means of the single transferable vote for the Presidential election, write the names of candidates on the ballot paper in the order of preference.

PART II: CRITICAL ASSESSMENT OF THE CONSTITUTIONAL POSITION OF THE PRESIDENT: -

VARIOUS FUNCTIONS AND POWERS OF THE PRESIDENT: EXECUTIVE POWERS AND FUNCTIONS:-

1. **Head of the Union:** The President is at the head of the Union Executive Consequently, all executive powers are exercised in his name. As per Article 53 of the Constitution of India, the executive powers of the Union shall be vested in the President and shall be exercised by him either directly or through the officers subordinate to him in accordance with this Constitution.
2. **Appointing Authority to Various Constitutional Bodies:** - The President assigns the various state Governors, the Chief Justice of India and other judges of the Supreme Court and the High Courts,

the Attorney General, the Comptroller and Auditor General (CAG) of India. The President also chooses the Election Commissioners and the Ambassadors to different nations. The thing to be noted here is that although the President does not select people for these coveted positions himself, he/she can choose not to complete the formal assigning and ask the government to re-look the selections.

3. **Appointment of the Government:** The President appoints the Prime Minister and with his/her advice, the other Ministers of the Union Council of Ministers. Having said so, he/she is, ordinarily, duty-bound to summon the leader of the political party, which secures an absolute majority in the Lok Sabha to become the Prime Minister and form the Ministry.
4. **Exercise the Discretion:** - When no single political party wins a clear absolute majority and, as a result, no Council of Ministers can be formed without a coalition of parties, the President can exercise his discretion judiciously in appointing the Prime Minister. Such situations developed in the past.
5. **Supreme Commander of the Armed Forces:** - As the head of the State, the President is the Supreme Commander of the Armed Forces of India and is entitled to declare war or conclude a treaty.

LEGISLATIVE POWERS AND FUNCTIONS: -

1. **President is a part of Parliament:** - The Union Legislature or Parliament consists of the President and two Houses of Parliament. The President is, therefore, an integral part of the Union Legislature. He/She shall summon from time to time, either separately or jointly, the Houses of Parliament. The President can prorogue the Houses or either House of Parliament and, if necessary, can dissolve the Lok Sabha. For instance, the President dissolved the twelfth Lok Sabha in early 1999, when the confidence motion in favour of the Vajpayee government was lost in the Lok Sabha.
2. **Summons and Addresses Parliament:** - The President may address either or both Houses of Parliament. In such an address, at the first session after a general election to the Lok Sabha and at beginning of a joint session of Parliament each year, he may place the reasons for summoning it. Apart from addressing Parliament, the President may also, in case of
3. **Power in respect of Bills:** - A bill passed by both the Houses of Parliament requires his assent in order to become an Act. He may give his assent to a bill or can withhold assent when a bill, after getting approved in both the Houses, is placed before the President. However, if Parliament, acting on President's refusal to assent to a bill, passes it again with or without amendment, for the second time and presents it to the President for his approval, the President, as per Article 111 of the Constitution, shall not withhold his assent therefrom.

In certain cases, prior sanction of the President is required for initiating any legislation. For instance, the bill for the formation of a new State or altering the boundaries of the existing State or state, or money bill is to be placed before Parliament with prior approval of the President.

EMERGENCY POWERS OF THE PRESIDENT

The constitution of India empowers the President to proclaim three kinds of Emergencies

1. National Emergency (Art. 352);
2. Emergency for the failure of Constitutional Machinery in a State (Art. 356);
3. Financial Emergency (Art. 360)

National Emergency: - The President of India may issue a Proclamation of National Emergency when the security of India or any part thereof is threatened by war, armed rebellion, or external aggression. Such a Proclamation of Emergency may remain in force for an indefinite period. During a Proclamation of National Emergency, the executive power of the States is to be exercised in accordance with the directions given by the Central Government. The Parliament has the power to make laws on the subjects enumerated in the State List. The right to freedom of speech and expression, freedom to

form an association, freedom to practice and profession, etc., embodied in Article 19 shall remain suspended.

State Emergency- In the case of failure of Constitutional machinery in a State, the President of India is authorized to make a Proclamation to that effect. The maximum duration of this type of emergency is three (3) years. During such an emergency, the President may assume to himself the executive powers of the State. The powers of the legislatures of the State are to be exercised by the Union Parliament.

Financial Emergency: - The President may also issue a Proclamation of Financial if he is satisfied that the financial stability of India is threatened. This type of emergency may continue to remain in force for an indefinite period. The Central Government may give directions to the States for canons of financial propriety. All money bills passed by the State Legislatures are to be reserved for the consideration of the President.

DIPLOMATIC POWERS: -

The President is considered as First Citizen of the country. All international treaties and agreements are negotiated and concluded on behalf of the President. However, in practice, such negotiations are usually carried out by the Prime Minister along with his Cabinet (especially the Foreign). Also, such treaties are subject to the approval of the Parliament

MILITARY POWERS: -

The President is the Supreme Commander of the Indian Armed Forces. The President can declare war or conclude peace, on the advice of the Union Council of Ministers headed by the Prime Minister. All important treaties and contracts are made in the President's name. He also appoints the chiefs of the service branches of the armed forces.

PARDONING POWERS / JUDICIAL POWERS: -

The President of India grants, pardons, reprieves, or remissions of punishment to any person who has been convicted by a Court of Law. As mentioned in Article 72 of the Indian Constitution, the President is empowered with the powers to grant pardons in the following situations:

- Punishment is for an offence against Union Law;
- Punishment is by a Military Court;
- The sentence is that of death.

CRITICAL SIGNIFICANCE OF THE PRESIDENT: -

De Jure Head of the State: - The position of the Indian President differs from the presidential system across the countries. The president does not exercise executive powers - he is the de jure head of the state and is required, as the Constitution of India, to act on the advice of ministers. Hence, the role is more akin to that of the British monarch or monarchs in countries like the Netherlands or Spain: a referee over a parliamentary system where ministers possess the real power. It is to be noted that countries like Germany and Israel have presidencies similar to that of India.

Not Entirely a Rubber Stamp: - James Manor, a professor at the London-based Institute of Commonwealth Studies who has extensively researched the presidency, says Indian presidents are "not entirely rubber stamps".

They can ask ministers to reconsider actions; offer them private advice and convey warnings. They also make public speeches, which indicate some differences of view with the government, and which may swing public opinion.

Free to Act in Certain Cases: - More importantly, after elections, the Presidents are free to act - and must act - without the advice of ministers if no party has been able to garner a parliamentary majority.

They also have some freedom to decide whether to accept a Prime Minister's request for dissolving the parliament to enable a general election. In this context, the two most pertinent examples are:

1. India's first president, Rajendra Prasad, frequently disagreed with prime minister Nehru and sometimes subtly criticized the government in his public statements;
2. On the contrary, the fifth president, Fakhruddin Ali Ahmed was criticized for readily acquiescing to former Prime Minister Indira Gandhi's demand for a declaration to impose a state of emergency when civil liberties were suspended in 1975.

Pro-active Role: - The tenth President Shri K R Narayanan sent back a proposal to impose direct rule in the northern state of Uttar Pradesh to the cabinet, asking the ministers to reconsider, while bluntly stating that he was not a rubber stamp. Similarly, Dr. APJ Kalam, one of the most popular Indian presidents, was more restrained, once returned an office of profit bill for reconsideration. These instances show that the proactive Presidents have never failed to put forth the concerns of the public interest.

Ordinance Making Power: - The more controversial and debatable legislative power of the President has always been the Ordinance Making Power. An ordinance cannot be promulgated when both the houses of parliament are in session. However, it may be passed when only one house is in session, the reason being that a law cannot be passed by only one house and thus it cannot meet a situation calling for immediate legislation. This power granted to the President in the Indian Constitution is unique and no such power has been conferred upon the executive in Britain or the USA. In justification of the inception of the Ordinance Making power in the Constitution, Dr. Ambedkar said that there might be a situation of emergency when the Houses of the parliament is not in session.

However, *A.K. Roy vs. Union of India* (1982) is one of those instances, wherein it was that the satisfaction of the President must be as to the existence of a situation which makes it necessary for the President to promulgate such an Ordinance. In *D C Wadhwa vs. State of Bihar*, the Apex Court, to make sure that the power is not misused by the ones who bear it, limited the President's power to issue ordinances.

CONCLUSION: -

With these analyses, it can be said that the President is not just a ceremonial position; with the vast Constitutional power, the President has the duty to uphold the Constitution and its ethos. We have the ample number of examples, wherein the persons in the concerned position proved the same. Dr. Kalam, earned the sobriquet of being 'the people's President', endeared himself to the people with his simple lifestyle, and to children and youth and is known for his inspiring speeches for Gen Next.

Moreover, it is also true that the President is free from political affiliation; one of the latest examples of a President who brought a new working style to Rashtrapati Bhavan was Pranab Mukherjee (2012-2017). He worked with the Congress government led by Shri Manmohan Singh and the NDA government led by Shri Narendra Modi. Despite differences in political thinking and ideologies, he had a good rapport with the NDA government. The Prime Minister even sought his guidance on issues like demonetization, etc.

Hence, These instances clearly show that Presidents can be independent and are not mere rubber stamps as many who do not know the history or depend on social media feel.