
CHAPTER II

ELECTION OF THE PRESIDENT OF INDIA

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Article 54 of the Constitution of India lays down that the President shall be elected by the members of an electoral college consisting of:

- " a) the elected member's of both House of Parliament;
and
b) the elected members of the Legislative Assemblies of the States."¹

It is difficult to say what was the intention of the Constitution makers in using the expression ' an electoral college' in this article. It may be stated that they mean that all those eligible to vote at the Presidential election who have a single corporate entity and would be as such meet at one place for the purpose of electing the President in the laid down manner as follows:

$$\frac{\text{Total Number of Votes Polled}}{\text{Number of candidates plus 1}} \quad \text{Plus 1 = Quota declared elected}$$

Prescribed by the Constitution and in accordance with such additional rules as may be necessary. If this the

1. Article: 54.

intention, ^{it} may pointed that it has not been carried out in practice. Besides, a bare reference to the electoral college mentioned in this article, the Presidential and Vice-Presidential Elections Act does nothing for the constitution of any such organised single electoral college. On the other hand, rules made under this Act; prescribe that the Election Commission shall:

- a) Fix a place of polling in the Parliament House in New Delhi and also in the premises in each State in which Legislative Assembly, if any, of that State meets for the transaction of business;
- b) Specify with reference to each place of polling the group of electors who will be entitled to vote and the hours during which the poll will be taken at such place, and
- c) Give due publicity to the place so fixed and the group of electors and the hours so specified.

These electors would be of two classes. One class would consist of persons elected to both House of Parliament, while the second class, would consist of persons elected to the State Legislative Assemblies. The total numerical strength of class (I) at in the 1969 election was 736 while that of class, (II) was 3,358. So the total numerical strength of electors was 4,094. But the total voting strength of

Class I is equal to that of class II and to secure this a complicated system of calculating the numerical value of the vote of each elector of the two classes has been provided in by Article 55 (2)² which, inter alia, lays down:

- a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly.
- b) if after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one.
- c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, Fractions exceeding one half being co counted as one and other fractions being disregarded.

 2. Article: 55(2).

To the calculated number of votes an elected member of any House of Parliament has at the Presidential electing two mathematical operations are necessary.

Firstly, the total population of the State as ascertained at the last preceding census of which the relevant figures have been published, should be divided by the number of elected members of the Legislative Assembly of that State.

Secondly, the quotient so obtained should then be divided by 1000. If no remainder is left or the remainder left is less than 500, the final quotient obtained after this operation would represent the number of votes which such a member can cast at the presidential election. If the remainder left is more than 500, the quotient so obtained should be increased by one and the quotient so increased would represent the votes of such a member at the presidential election.

Similarly, to calculate the number of votes an elected member of any house of Parliament has at the Presidential election, two mathematical operations are necessary. Firstly, the total numerical strength of the votes of the elected members of the legislative Assemblies of all the States should be ascertained. The figure so obtained should then be divided by the total number of elected members of both

Houses of Parliament. If there be a fraction in the quotient it would be counted as one if it exceeds one half but would be disregarded otherwise. The quotient so obtained would represent the number of votes of such an elector. The number of votes of each elected member of the Legislative Assemblies of the different States and the total votes of the elected members of each Legislative Assembly during the presidential elections of 1967 and 1969 are given in the table below.

Each Legislative Assembly during the Presidential election of 1967 and 1969 are given in the table below:

Unit	Population Census 1961	No. of seats	Value of Total Votes.	Total Value.
1) Andhra Pradesh	35,983,447	287	125	35,875
2) Assam	11,872,772	126	94	11,844
3) Bihar	46,455,610	318	146	46,428
4) Gujarat	20,633,350	168	123	20,644
5) Haryana	7,590,543	81	94	7,614
6) Jammu & Kashmir*	4,410,000	75	59	4,425
7) Kerala	16,903,715	133	127	16,891
8) Madhya Pradesh	32,372,408	296	109	32,264
9) Madras	33,686,953	234	144	33,696
10) Maharashtra	39,553,718	270	146	39,420
11) Nagaland	369,200	46	8	368
12) Mysore	23,586,772	216	109	23,544
13) Orissa	17,548,846	140	125	17,500
14) Punjab	11,135,069	104	107	11,128
15) Rajasthan	20,155,602	184	110	20,240
16) Uttar Pradesh	73,746,401	425	174	73,950
17) West Bengal	34,926,279	280	125	35,000

* Population of Jammu & Kashmir is based on 1941 census.

The number of votes of each elected member of Parliament calculated on the same basis during these elections was equivalent to 576. The table has been drawn up on the basis of the population figures given in the population order of 1950. These figures would undergo revision after each new decennial census. It may be added, however, that no presidential elector is free to split or distribute his votes among different candidates for the presidency. In fact all his votes are counted for one and one candidate only at any one count. This is secured by issuing only one ballot paper to the elector and requiring him to indicate on that ballot paper his first preference, second preference and subsequent preferences. Rule 27, issued under the Presidential and Vice-Presidential Election Act lays down that for purposes of every presidential election, the Election Commission shall furnish the Returning Officer with a statement showing the number of votes which every elector has under the provisions of Clause (2) of Article 55³; and every valid ballot paper put in by an elector at that election shall be deemed to represent as many votes as that elector is shown having in that statement. So it would seem that what the Constitution-makers really intended was to give the Presidential electors the right of casting only a

 3. Article: 55, Clause 2.

single block transferable vote and intended that this single block transferable vote should have, like an algebraic variable quantity, a different valuation depending upon two factors, namely (i) the ratio of the members of a State Legislative Assembly to the population of that State and (ii) the ratio of the number of elected members of the two houses of the Union Parliament to the total States' vote at the presidential election. Perhaps, it would have been more appropriate to speak of the valuation rather than number of votes in Article 55 (2)⁴. As it is it should always be kept in mind that members of the electoral college have only non-distributable or single block transferable vote at the Presidential election.

The Constitution gives two reasons for the adoption of this complicated system of the valuation of the votes of the Presidential electors. These, according to Article 55 (2)⁵ are to secure firstly 'uniformity in the scale of representation of the different states', and secondly 'parity between States as a whole and the Union at the Presidential election. In the discussion that took place in the Constituent Assembly before the adoption of these provisions not a word was said either by the Chairman of

4. Article: 55 (2).

5. Article: 55 (2).

the Drafting Committee or by the other Speakers taking part in the discussions as to why they felt it necessary that at the Presidential election there should be parity between the States and the Union or there should be uniformity in the scale of representation of the States. It may, however, be presumed that the framers of the Constitution must have felt that the requirements of natural justice and democracy could be fulfilled only if each State had only that weight and no more at the presidential election to which it was entitled by the ratio of its population of the total population of the country. Ordinarily it is held that this objective can be secured by means of the Benthamite rule of 'one man one vote'. But within the scheme of the constitution, this golden rule could be of no avail to secure uniformity in the scale of representation of States at the presidential election nor could it establish parity between the Union and the States. The reason is obvious 'such uniformity among the States interse as the Constitution makers desired to secure could not be had on the basis of the Benthamite rule because members of the Legislative Assemblies were not to be elected in all the States from Constituencies having a population of the same size or numerical strength. It is true that Article 170 (2)⁶ of the

6. Article 170 (2).

Constitution lays down that ' the representation of each territorial constituency in the legislative Assembly of a State shall be on ... a scale of not more than one members for every seventy-five thousand of the population'. But this provision establishes what may be termed a negative uniformity. It prescribes a minimum limit of the population for which there can be one representative in the Legislative Assembly of any State. It does not lay down that a territorial constituency in every State would be of the same sized population. So it can well be that in one State the territorial constituencies may have the minimum prescribed strength of 75,000, while in another State such constituencies may have a strength of 100,000 or even more. Indeed the constitution itself contemplates such disparity in the population strength of the territorial constituencies. This is evident from the proviso to Clause (2) of article 170⁷ which states that 'the total number of members in the Legislative Assembly of a state shall in no case be more than five hundred or less than sixty. 'Now if the territorial constituencies were to be of a uniform population size, it would be impossible to keep within the maximum and minimum limits of the

7. Article 170, Clause 2.

membership of the Legislative Assemblies which are laid down in this proviso. Dr. Ambedkar, the Chairman of the Drafting Committee of the Constituent Assembly, also gave a similar reason in justification of this scheme of calculating the votes of each elected member of the State Legislative Assemblies. He said that such uniformity among the States could not be secured by the role of 'one man one vote' because of "the disparity between the members of the State Legislature and their ratio to population that exists between the different classes of States. The scale may vary from State to State. That being the position, the value of the votes cast in the election of the President by the members of the State Legislatures cannot be measured by the simple rule of assigning one vote to one man". Similarly in view of the great difference in the number of the elected members of the State Legislative Assemblies on the one-hand and that of the elected members of both Houses of Parliament on the other, parity could not be established between the States and the Union, on the basis of the rule of 'one man one vote'. So it was essential that some other system should be adopted to secure this parity and the present one was felt to be the most satisfactory for the purpose.

The effect of these two provisions is to make the President a representative of the States and the Union equally.

This is, indeed, in complete harmony with the general scheme of the Indian Constitution which is neither purely federal nor purely unitary in character. Indeed the Constitution of India is a unique cross between the principles of federalism and unitarianism. There is no Constitution in the world today which can be said to be parallel to it. There are, indeed federal constitutions, such as that of Canada, which lean slightly towards a unitary constitution, but remain true in letter and spirit to federalism in their working. Similarly there may be unitary constitution which may lean somewhat towards federalism but on the whole remains a unitary constitution in practice. The uniqueness of the Indian Constitution consists in the fact that it would be federal in normal times and almost wholly unitary in times of war or internal rebellion. In other words, the distribution of powers between the States and the Union is not absolute and un-conditional as in all other federal systems of the modern world ~~war~~ is it purely dependent on the will of national legislature as it always is in all the existing unitary systems. It is conditional on the continued existence of peace - peace within and peace with other countries. It is true that even elsewhere the federal government does get a great accession of power during war times. But in none of them is the scheme of distribution of powers legally or even practically suspended for the duration of the War emergency⁸. But in India, as we have already said, the scheme of distribution of powers would remain suspended

8. Article: 352.

for such time as the President of the Indian Republic with the approval of the Union Parliament considers essential at a time of war or civil commotion. In view of this unique character of the Indian Constitution, it would have been constitutionally incongruous if the President of India had been merely a creature of either the Union or the Constituent units. In conformity with the dual nature of the constitution, the constitution-makers have also made him a unique symbol of this dual relationship between the States and the Union. He would be at once an embodiment of the principles of federalism and unitarianism. It is plain from what has been said above that the constitution-makers could not but give equal voice to the States on the one side and the Union on the other side at the presidential election. Any other course would have made the presidency in practice, if not in law, a creature of whichever of these two had been given a predominant voice at the presidential election. This is why they made provision for a different value of the votes of the States' and Union's representatives in the presidential electoral college.

But how for this complicated system would ensure the realisation of this twin objective ? It is evident that in so far as the States are concerned, it does secure a rough uniformity in the scale of State's representation for each of them would have more or less a total vote equal to

one thousandth of their population. But it is true that the smaller States would get a slight weightage as against the bigger States. But this weightage would not be significant. So it may be said that in so far as the State's representation is concerned there is more or less uniformity. But this may not be said about parity between the States and the Union, on a superficial view it does appear that the total vote of the Union representatives is roughly equal to the total vote of the States' electors. But on probing beneath the surface it would be clear that this is not the case. The Union's vote consists of the elected members of the House of the people on the one hand and of the elected members of the Council of States on the other. While the House of the people would be truly a representative of the Indian people as organised in the Union, the Council of States would be representative of the people as organised in the States only. It is true that even the constituencies for the House of the people have been delimited statewise, that is to say, none of them falls simultaneously within the boundaries of two States. But these constituencies would be returning members to the House of the people on issues affecting the whole of the Union, and would thus be acting not as electoral units of the States within which they are but as the electoral units of the Union as a whole. So it can be said that the House of the people is a truly a representative of the Union as such. But this

cannot be said of the Council of States. Under Article 80 (4)⁹ " The representatives of each State in the Council of States shall be elected by the members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote". Now the members of the Legislative Assemblies of the States would be elected largely on State issues, and would be speaking not as representatives of the people organised in the Union but as representatives of the people as organised in States. So when they elect representatives to the Council of States, they are likely to be swayed by States' rather than by Union's interests. Thus the elected members of the Council of States would most probably be representatives of States' interests. In other words, they would be indirect representatives of the people organised as States rather than of the people organised as the Union. This aspect of their representative capacity has not as yet become generally apparent because of the peculiar historic conditions in which the constitution of India came into force and the first general elections under it were held. For almost half a century the dominating issue before the Indian people had been the winning of their national freedom and other issues had been relegated to an insignificant

 9. Article: 80 (4).

place in their minds. The Indian National Congress, originally founded to be a sort of 'Native Parliament' had taken sole charge of the struggle for freedom and had become in the eyes of the Indian people the soul and symbol of resurgent India. If even after the advent of freedom, the other issues have not come to the forefront and the Indian National Congress and its policies still dominate the Indian political scene there is no reason to feel surprised. Mentally habituated as Indians had been for more than half a century to think on a national plane, it is but natural that within the small time that has elapsed since the advent of freedom, they should not have begun to give great importance to local issues. But as time passes, these local issues are bound to occupy more and more of their attention. It may, therefore, be safely assumed that the present situation in which even the village assemblies are but small scale reflections of the national policies would not continue for long, and sooner than later State policies would be greatly conditioned and influenced by purely State issues. Once that happens the true character of the Council of States as a spokesman of the States would become quite evident. In any case its elected members would then be elected not on Union but state issues. Once this character of the representative capacity of the members of the Council of States is recognised, it becomes evident, that as against Union interests as such State interests have been given a dominant voice at the

presidential election would be cast for State interests rather than Union's interests.

It is thus evident that by giving the elected members of the Council of States the right of vote at the presidential election, the constitution-makers have jeopardised the realisation of their intention to secure parity between the States on the one hand and the Union on the other.

MODE OF ELECTION:

Besides this unique provision regarding the valuation of votes at the presidential election, the Constitution-makers have also laid down peculiar method of election for the President. Clause (3) of Article 55¹⁰ lays down that the election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot. This provision is an echo of the provision of the Irish Constitution for the election of President. In effect this clause provides for (1) proportional representation (2) single transferable vote, and (3) secret ballot.

Explaining why the system of the proportional representation was being adopted for the election of the President,

10. Article: 55 (iii).

Dr. Ambedkar, the Chairman of Drafting Committee had very aptly pointed:

" Now, there are two ways of electing the President. One way is to elect him by what is called a bare majority of the House. If a man got 51 percent, he would be elected. That is one way of electing the President and that is the simple and straight forward one. Now, with great regard to that, it may just happen that the majority party would be in a position to elect the President without the minority party having an voice in the election of the President.

Obviously no members of the House would like the President to be elected by a majority party or by a system of election in which the minorities had no part to play. The only method of giving the minorities a voice in the election of the President is, so to say, to have separate electorates and to provide that the President must not only have a majority, but he must have a substantial number of votes from each minority. But that again seems to me to be a proposition which we can not accept having regard to what we have laid down in the Constitution, namely, that there shall be no separate electorates. The only other method, therefore, that remained was to have a system of election in which the minorities will have some hand and some play, and

that is undoubtedly the system of proportional representation which has been laid down the Constitution"¹¹.

It is obvious from this rather long extract that the main objective for the adoption of proportional representation was to give the minorities a voice in the election of the President. The Constitution does not define the term Proportional Representation any where. What this term exactly means, the Chairman of the Drafting Committee was not prepared to explain.

" I can't, said he, 'really go into this question. To do so I will have to open a class and lecture on the subject, but I cannot undertake that task at this stage. However, it is well-known and every body knows how the system works."¹²

But neither in the Constituent Assembly nor outside it, any one had any idea how the system would really work in the Presidential election. It may be doubted whether even the learned Chairman of the Drafting Committee had any idea how it was to work for the expression has different meaning in different countries. 'This term' says an eminent authority

11. Constituent Assembly Debates, Vol.VII, p.1017.

12. **Ibid.**

on Constitutions, "really means very little, since there are many variations of it - almost as many, if fact, as there are States which have adopted it and many more in theory"¹³.

There is, however, one common factor in all the variations of Proportional representation. "It is that no system of proportional representation can possibly be worked on the basis of a single member constituency"¹⁴. In any system of proportional representation a candidate is elected once he obtains a prescribed number of votes known as the quota. In this simplest form the quota is a number of votes equal to the total of votes cast divided by the number of seats to be filled.

The total number of votes cast should be divided by two and the quotient obtained should be increased by one. The figure so obtained would be the quota. But it is another way of saying that the election would be an absolute majority of the valid votes polled. Indeed one element of the proportional representation - the element which gives significance to the expression proportional in the system of representation, namely that each successful candidate

13. Strong, Modern, Constitutions, p.175.

14. Ibid.

in the constituency would have the same number of votes behind him as any other and that, therefore, almost no vote in the constituency would go unrepresented would be completely absent from the above system. This being the case, it is evident that the minority can have no greater opportunity of influencing the election than it would have had if it had been laid down that to succeed at the Presidential election a candidate must poll an absolute majority of the votes cast. Besides, this opportunity would also seem to be quite insignificant for the majority can in all circumstances get its nominee elected against the unanimous opposition of the minority. It is one of the mystery of the Indian constitution why the Chairman of the Drafting Committee insisted on using the expression the "system of proportional representation" which on the face of it could not be employed for the election of the President.

In the light of sub-rule (3) of rule 30 it can be said that whatever else the system of representation operative in the Presidential election may be, it is, certainly not a system of proportional representation.

The second element of this system of representation namely the single transferable vote has also a somewhat singular operation here. Ordinarily, it means that a voter has a single vote, but he may indicate in the ballot paper that he would like it to be counted in the first instance

for one candidate of his choice, but in case this candidate of his first choice either fails to obtain the quota or obtains a sufficiently high position among the contesting candidates, is declared elected without his vote having been counted for him at the first count; his vote should be counted for the candidate of his second choice, and if that candidate also fails or succeeds like the candidate of his first choice, then it may be counted for the candidate of his third choice and so on. But this system implies two essential elements. These are:

- (i) The constituency must be a multiple one, and
- (ii) The elector must have one and one vote only.

Thus this system is in contrast to systems in which not only the constituency is a multi-member constituency but each elector is also entitled to cast as many votes as there are seats to fill. So it would be wrong to say that here the system of single transferable vote is standing on its head. But as explained above it has been provided by rules that an elector will have no right to distribute his multiple votes but will be expected to indicate the order of preference in which he would like all his votes to be counted for the candidates contesting election. So though no elector has a single transferable vote yet no harm is done for his many votes would be like a single vote in so far as their transferability to a candidate of a second or subsequent preference is concerned.

Finally, there takes place polling. Electors are entitled to vote either at Delhi, the capital of the Union or at the respective capitals of the States. Each elector is given one ballot paper containing the names of all the candidates and the elector is expected to indicate his preference by marking 1,2,3,4 against the name of the candidates in the order of his preference. After the polling, the ballot papers from the States polling centres are sent to the Returning Officer under seal.

The electorate and the method of election of the President of India are unique and not only have no parallel in the modern world but none in history either. So far the election of the head of the State has been directly by the people or by a special electoral body known as the electoral college, or by the two houses of the national legislature sitting jointly as a national assembly for the purpose.

"There is one other aspect in which the Presidential electorate in India differs from the presidential elections else where. Wherever the President is elected indirectly, he is so elected either solely by the representatives of the States as such or by the representatives of the nation as such. Thus the U.S. Constitution originally intended that the electors would be appointed by the States as their nominee. Even when the election of the President was made

by the Congress, the members, therefore, were to vote statewise and only when a majority of States voted for any particular candidate could he be elected. This if that constitution had not been modified in practice in the way it has been, the States alone would have had any voice at the election of the President. Before the second world war, the President in France and other continental countries, on the other hand were elected indirectly, solely by the representatives of the nation as such. In complete contrast to this the Indian Constitution, has made the Presidency an issue of the marriage between the Federal and the State Principles. As has already been Stated, the representatives of the people organised as the Union would both have an equal voice in election of the President. In other words the Presidency is at once the representative of the States and of the Union. Unfortunately this aspect of the Presidential office has not been appreciated and that office has been treated as a counter part of the British crown.

Indeed the legal and judicial luminaries in India are so over whelmingly influenced by British Constitutional ideas that they can't possibly contemplate that the Indian Constitution may have created a unique Presidential Office, for which no parallel is to be found any where else. But the

method of the election of the Indian President outlined above indicates that this office is not and cannot be a counter part of the English Crown; a both in theory and practice. The office of the President on various issues has come into problems. The re-thinking on the Status of the judicial system in India is bound to again effect the vote of the President.