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CHAPTER III

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On the principle of cabinet government there was no deep cleavage of opinion but there were sufficient presidential enthusiasts at least to force an adequate statement of reasons to be given by the leaders. The most powerful argument of the critics was that only by making the executive independent of the legislature could its strength and stability be secured. This was counted partly by the view that English experience showed that weak, unstable governments were not a necessary feature of the cabinet-system, and partly by the point that the stable President was likely to be in frequent conflict with the legislature and this state of disharmony was a source of certain weakness. There was also the further point peculiar to India, if Presidential government at the centre implied the same system in the units, how could the Rajpramukh be fitted in except by the retrograde step of making them the real state ruler? But most telling of all was the simple argument of experience. The British model had been before them for a hundred years and they had been operating it in a qualified form in the provinces and now in its completeness at the centre itself. After this experience, said K.M. Munshi, ' why should we go back upon the tradition... and try a novel experiment? That decided, there remained the determination of the relation between the President as Head of the State and his Ministers. The Executive, legislative

and emergency powers of the President as listed in various parts of the Constitution are most formidable. On the other hand, the Council of Ministers with the Prime-Minister at the head is ' to aid and advise the President in the exercise of his functions ', and it was repeatedly stated that this formula was intended to convey that the President would act as constitutional head only. That this is what has in fact so far happened is fairly clear though President Rajendra Prasad did express his own views both publicly, in speeches and in one significant message to Parliament (on the Hindu Code Bill), as well as in private discussion and correspondence with the Prime Minister. That this may not be the case in every conceivable future situations is equally obvious. It was Prasad himself in the debates, who seemed anxious on the score that no provision was being included that would explicitly bind the future President of the Republic to act only and always on Ministerial advice. In deciding against this course, the Constitution- Makers may be assumed to have reckoned that the flexibility that is desirable for the unforeseeable crisis cannot be secured without giving a margin of discretion which might be abused. In a situation where even the impeachment procedure which has been included will not save the constitution, the probability is that nothing else would either.

The relations between the Indian President and the Prime Minister have been quite cordial in the past. The President

functioning as a Constitutional head of the State and the Prime-Minister enjoying the real powers. This had led many to believe that this pattern of relation was not only the one that was desired by the framers of the Constitution, but had been also supported by the Conventions practiced since independence. No sane man is going to place reliance on this belief after many healthy conventions were thrown to the winds in the States after the fourth general election and after so many happenings both at the Centre and in the States which went against the wishes of the Constitution makers.

In order to know the correct relationship between the two high offices we are left with no choice but to look to the various constitutional provisions having a bearing on their relationship and to analyse various extra Constitutional factors which guide the relationship in practice.

The Prime Minister is appointed by the President and holds office during his pleasure.¹ There is nothing in the Constitution to suggest in so many words, that the discretion of the President is limited. Yet certain articles i.e. 74, 75, 77, 78 of the Constitution indicates that the discretion of the President will not be so unfettered as it might appear on the face of it because the Constitution requires the Prime Minister to satisfy at least two qualifications.

 1) Article: 75 (1) and (2) of the Indian Constitution.

- i) First, he must command the confidence of the House of the People. It is so because the Council of Ministers of which he is the head has been made collectively responsible to that House.²
- ii) Second, he should be a member of either House of Parliament or become one within six months of his appointment as a Minister, because there is a provision that a Minister shall cease to be a Minister if he does not become a member of Parliament within six months of his appointment as a Minister.³

The term " Minister " applies to Prime Minister also. This ipsofactor implies that the Prime Minister must possess those qualifications which are required for a Member of Parliament.

Subject to these qualifications, the President is free to appoint anybody as Prime Minister. For instance, he may appoint any person as Prime Minister, who is for the time-being not a member of either House of Parliament or who is a member of the Council of State after his appointment. Not only that, the President can, if he finds it necessary or expedient, appoint even that person as Prime Minister,

2) Article: 75 (3) Ibid.

3) Article: 75 (4) Ibid.

who does not enjoy the confidence of the House of the people. Such a person, if appointed, can easily carry on, as Prime Minister, so long as he has not to face the House of the People. And he can easily do without facing that House for six months.

In actual practice, the President's choice, in this matter, will normally be limited, not so much because of the Constitutional requirements as on account of practical political considerations. If a political party has a clear majority in the House of the People and has recognised leader, the President is expected to appoint that leader of the majority party as Prime Minister, even if he, for the moment is not a member of either House of Parliament or is member of the Council of the State. This situation actually arose, after the death of Mr. Lal Bahadur Shastri, the Congress party which was in majority in the House of the People elected Mrs. Indira Gandhi, as its leader. If, however, no party gains a majority or; the majority does not have a recognised leader, the President has the discretion to appoint anybody as Prime Minister who in his opinion, shall command the confidence of the House of the people. When the political situation does not make the choice of the Prime Minister clear, the constitution expects the President to exercise his own discretion in the matter.

According to the Constitution, a formal vote of confidence is not required before a person's appointment as Prime Minister. Some times it is suggested that a provision for a formal vote of confidence should be made in the Constitution. That would not be proper because it would fetter the discretion of the President which may prove fatal to the vital interests of the certain country in circumstances.

Dismissal of the Prime Minister:

Situation may be visualised in which the President may dismiss a Prime Minister inspite of the Constitution and the so called conventions. The circumstances in which the President may take that step, would be determined by the practical forces operating at the time and not by the constitution.

To say that the dismissal of a Prime Minister would be unconstitutional and the President would be impeached for it will not be of much avail, because what is unconstitutional has not been precisely defined in the Constitution. A $\frac{2}{3}$ rd majority in each House of Parliament is necessary to impeach a President. It is this majority which would ultimately decide about the Constitutionality of the President's actions. Thus, if the President is sure of avoiding impeachment, he may dismiss a Prime Minister even though he might be enjoying the majority support in the Lower House.

The convention that a Constitutional head of a State can't dismiss a Prime Minister enjoying the support of the majority in the Lower House is a matter of policy and not of Constitution, because in no Constitution is it written that a head of the State cannot dismiss a Prime Minister.

If all political parties and most of the people, irrespective of their ideological differences are of the firm view that the head of the State cannot dismiss a Prime Minister, the head of the State would never take that step. This is the case in England. They would not find anything Constitutionally wrong in this, they would rather feel that the President has done his duty if Prime Minister is dismissed.

"In other circumstances the impeachment provisions might be taken as an encouraging provision for taking this extreme step. For instance, if a President feels that a Prime Minister is bent upon following an unconstitutional course or is pursuing a policy which is detrimental to the basic interests of the nation ~~or~~ is working to further his party's interests as against those of the nation he may dismiss the Prime Minister for avoiding the very impeachment, because if he allows such a Prime Minister to function, other parties might take it that the President has failed in his duty of protecting the constitution for which he must be impeached."⁴

4) Article 61 (i).

" Many other situations of this nature can be imagined in which the President might be inclined to take this step in spite of the constitution and sometimes because of the Constitution. For example, if a Prime Minister refuses to resign after a formal vote of no confidence has been passed against him, the President may dismiss him."⁵

Such fears are not empty fears and unfortunately the country's politics is heading towards a time when the President may eventually take this step. The possibility of such a step being taken will be greatest when the President and the Prime Minister belong to two parties which are known for their extreme views.

Duties of the Prime Minister:

In his day to day functioning as Prime Minister, he has to perform certain duties in relation to the President which are as follows:

i) It is a duty of the Prime Minister to communicate to the President all decisions relating to the administration of the country and proposals for legislation.

The Prime Minister is thus the Chief Spokesman of the Council of Ministers and the sole channel of communication between the President and the Council of Ministers.

5) Article 75, Clause (2).

ii) Another duty of the Prime Minister is to furnish any other information relating to the administration of the Union or proposals for legislation, which the President may demand.⁶

iii) A third duty of the Prime Minister is to submit for reconsideration of the Council of Ministers, if asked by the President, any matter on which a decision has been taken by an individual Minister but which has not been considered by the Council⁷.

In spite of the vast powers that the President possessed under the Constitution, he had been almost reduced to a nominal figure head. The responsibility for this rested on Pandit Jawaharlal Nehru, that the personality of Pandit Nehru was so dominating that President was reduced to a rubber stamp. The Prime Minister became real head of the executive, the President always acted upon the advice of the Prime Minister.⁸ The President had been reduced to a shadow, the substance being the Prime Minister.⁹

The real difficulty may crop up when the President and Prime Minister are both strong, having balanced support in

6) Article: 78 (b) Ibid.

7) Article: 78 (c) Ibid.

8) Palmer, N.D., The Indian Political System, George Allen & Unwin Ltd., London., Ed. I, 1961., p.115.

9) Lok Sabha Debate, Vol.7, 1961, Col-12439.

Parliament and about equal prestige and popularity in the country. In a situation in which the majority of the Council of State is with the President, and that of the House of the People naturally with the Prime Minister, It would start a test of strength between the President and the Prime Minister. It is to be seen how things get shaped in such circumstances, whether it is the President or the Prime Minister who emerges as dominant.

It is therefore, argued that the chance of a conflict between the President and the Prime Minister is not completely ruled out.

" Sometimes a President, by his democratic appeal, may command greater respect and support from the people than a Prime Minister and his colleagues. Conversely a Prime Minister and his colleagues may very often reflect public opinion more accurately than a President ... In such circumstances conflict may arise, and reliance on the British Constitution in this setting may not prove helpful in resolving such conflicts.¹⁰ This confused relationship may be a potential source of trouble.¹¹

10) Sen, D.N., From Raj to Shivaraj Ed.I, 1954, p.370.

11) Naumann, R.G., European & Comparative Government, Ed.III, McGraw Hill Series in Political Science, New York, 1960, p.711.

The fact is that both the President and the Prime Minister have their own different sources of strength. The source of the President's power is the Constitution, whereas the strength of the Prime Minister depends upon political factors. If a Prime Minister has the confidence of his party (which is in majority in Lok Sabha) the President normally should not interfere in the work of the Prime Minister.

" On the other hand, the Prime Minister must also realise that the President is under oath to protect the Constitution and serve the Country and the Constitution gives him sufficient powers under Article 60, to perform his duty and therefore, he should not do any thing which may be against the spirit of the Constitution or the interest of the Country"¹².

A President, who tries to interfere with such a Prime Minister, would be misusing his powers thereby compelling the Prime Minister to resign or protect to impeach the President.

The President if he chooses to be strong can use other methods also, e.g. warning, sending messages, calling a joint sitting of the two Houses or addressing any House to influence his decision. Viewed thus, both offices have been linked in a system of checks and balance within the framework of the

 12) Article: 60: Explains that - ' Before entering upon his office, the President has to make and subscribe to an Oath or affirmation in the prescribed form in the presence of the Chief Justice of India, or, in his absence, the senior most Judge of the Supreme Court. In this Oath, the President devote himself to the service and well-being of the people.

Constitution. Each has sufficient power to check the other from abusing his power and authority.

On the other hand, both have been made inter-dependent. Neither can do without having the support of the other. The President, of course, behaving within the Constitutional framework, can't do without a House of the People for a long time, and without a Council of Ministers at all, both of which will normally be behind the Prime Minister. The Prime Minister cannot function unless he has the co-operation of the President because of his legal powers. But the source of trouble is elsewhere. Hard realities of politics may not always allow this balanced view to prevail. The President and the Prime Minister both will try to assert their respective powers and each will try to dominate the other according to the political situations prevailing at any particular time. It may be said that this problem escaped the notice of the Constituent Assembly. Even after the commencement of the Constitution the dangers involved in the un-clear relations of the two offices have not been realised. We have seen how in our neighbouring countries of Burma, Pakistan, Egypt, and Sudan, the President eliminated the Prime Ministers with the help of the army. This situation is therefore, fraught with grave dangers and the sooner we take steps to clarify their relations in unambiguous terms, the better.¹³ Not to see the dangers inherent in the provisions of our Constitution is to shut our eyes to the realities of politics, which have already taken place in our country.

13) Prabhu, J.M.L.: Democracy in India, p.p.11-12.