

Constitution Law I

Unit II

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Position of the President and Prime Minister of India

In Indian Parliamentary practice, the President is the nominal executive or a Constitutional ruler. He is the head of the nation, but does not govern the nation. Our Union Council of Ministers headed by the Prime Minister is the real executive. And the President rules the country on the advice of the Prime Minister and his colleagues.

The Constitution provides a Council of Ministers with the Prime Minister at the head to aid and advise the President. The amendments made during and after emergency of 1975 have substantial changes in the content of Article 74th. The 44th Amendment Act, attempted to follow a middle path.

The amended provision runs as under “the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration. The question whether any, and if so what, advice was tendered by ministers to the President shall not be inquired into in any court”.

The controversy regarding the role of the President originated from different interpretations of Articles 53, 74 and 75. The President has to exercise his power in accordance with the Constitution. The Council of Ministers with the Prime Minister will aid and advise the President. But Article 75 states: “The ministers shall hold office during the pleasure of President, and the Council of Ministers shall be collectively responsible to the Parliament”.

The terms ‘aid and advise’ may mean that the ministers have to act as advisers to the President and it is for the President to make decisions. But the interpretation runs counter to the spirit of the parliamentary government. The President can dismiss his council of ministers. But the council of ministers is responsible to the House of the People.

If the President dismisses a council of ministers which enjoys confidence of the House of the People, the whole constitutional framework would topple down. Thus, a correct interpretation of the seemingly conflicting provisions leads to the conclusion that the President is a constitutional head of the state. Still it cannot be denied that there was ambiguity in the text of provisions.

Still the President is not a cypher or a mere rubber stamp. The proviso to Article 74(1) empowers the President to ask the council of ministers to reconsider the advice tendered to him. Besides, Article 78 confers significant powers on the President. It is the duty of the Prime Minister to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the union and proposals for legislation.

The Prime Minister should furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for. He should submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

Thus, although the President has to act on the advice of the ministers, acting on ministerial advice does not mean immediate acceptance of the ministers' first thought. The President can state his objections to any proposed course of action and ask his Minister-in-Council, if necessary, to reconsider the matter. It is only in the last resort that he must accept their final advice.

The Constitution defines, in general terms, the relationship between the head of the state and the actual head of the government, i.e., the Prime Minister. The discussions in the Constituent Assembly, as well as the working of the Constitution since 1950 leave no doubt on the point that the President is a mere formal head of the Indian Union.

There are some scholars, however, who have argued at length to prove that the President is a 'constitutional autocrat'. In the words of K.V. Rao, "our Constitution creates a very powerful executive, perhaps the most powerful in the world; our Constitution concentrates that power in the President who is king for five years, and on whom the only check against abuse is the impotent impeachment". So far nothing concrete has happened to prove that the President is anything but a mere formal head.

The 42nd Amendment of the Constitution in 1976 (which came into operation on January 3, 1977) made the position more explicit. The 44th Amendment added, “The President may require the council of ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration”.

Matters like the right of the President to be informed, his right to act only on the advice of his council, the right to dismiss a government at his discretion, the right to decide if new elections are to be held in place of the dissolved Lok Sabha, the right to reconsider a legislation if assented by the President, the open confrontation will finally go in favour of the Prime Minister.

The jurists maintain that there is virtually no point in an aid being binding. Aid is just assistance, and cannot be regarded as an admonition. At the same time, it is not so superfluous as to be merely an adulation. An advice is not an order and, therefore, is not mandatory in any sense. Yet Article 74 makes it clear that the PM and his ministers alone are responsible to advise the President on all matters.

Since the Constitution does not assign any other specific role to the Prime Minister and his ministers, rendering aid and tendering advice becomes critical. The advice is not superfluous and cannot be ignored. Besides, “advice, as a term, has to fulfill a purpose. It must be of assistance rather than an obstruction”. The aid and advice may not be binding because the President cannot be impeached for violating this advice. When a PM suggests dissolution of the house, the President can refuse to

accept the advice, because an alternative government may not be formed or the fresh elections could be detrimental to national interests.

The Constitution provides that the President must consult certain other authorities in certain further cases. He has to consult the Chief Justice of India in the matter of determination of the age of a High Court Judge under Article 217(3). In the matter of a disqualification of a Member of Parliament, he must consult the Election Commission under Article 103(2). The Forty-fourth Amendment Act says: “The President shall obtain the opinion of the Election Commission and shall act according to such opinion”.

The 44th Amendment ensures that the President abides by the aid and advice of the council of ministers, although, it does not mean immediate acceptance of the ministry’s first thought and compliance with such advice. He can state his objections and ask the ministry to reconsider such advice.

However, if the ministry sticks by its decision, the President has to sign it in the second instance. Several articles of the Constitution also point to the reality that the advice is binding. Article 78(a) demands that the PM communicate all decisions of the council of ministers to the President. The Governors explicitly have the right to act in their discretion. The President has no such areas of discretionary authority.

Besides if the President does not heed the advice, he can be impeached for violation of Article 74 of the Constitution. Similarly, the President is not answerable to any court for the exercise and performance of the powers and duties of his office. It follows that he may commit no wrong. Article 74 provides that what advice was tendered cannot be enquired into by courts. So, no legal relief can

be obtained against the President if he refuses to abide by the advice. The courts are barred by the Constitution from compelling production of the advice.

Still, there are a number of open ended questions to which the Constitution provides no answer. The President is always performing duties on someone else's advice, so he cannot be impeached for something he has not done individually. He need not obey any unconstitutional advice. He owes no personal responsibility to the nation, for these politico judicial riddles. Naturally 'The Presidency' to quote Dr Rajendra Prasad, "will be what the President will choose to make it".