

What Sort Of President Should India Have?

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The exercise of selecting a candidate for the post of President which is due to fall vacant in the middle of the year has begun in right earnest, with the Congress wanting either Hamid Ansari or Pranab Mukherji as a candidate acceptable to its allies and the BJP rejecting both names and stating that it will support Dr. A.P.J. Abdul Kalam, provided the Samajwadi Party suggests his candidature. There is also a demand for a non-political President and, therefore, several names, including of Shri N.R. Narayana Murthy, have been put forward.

Is the post of President apolitical? Unlike a Governor who under Article 155 is appointed by the President and under Article 156 holds office for five years, but subject to the President's pleasure, the President is elected. Under Article 54 the electorate of the President consists of an electoral college comprising the elected members of both the Houses of Parliament and the elected members of the Legislative Assemblies of the States. Article 55 gives the formula according to which each member of a State Legislative Assembly and of the two Houses of Parliament is assigned a given number of votes depending on the population of States in the case of the Assemblies and, in the case of Parliament, as a fraction of the total number of votes assigned to each member of the State Legislative Assemblies. One need not go into the details of the formula, but despite the fact that the election is indirect, the President holds an elective office and his election is obviously determined by the relevant strength of the political parties in the State Assemblies and in Parliament. There is nothing to prevent the electoral college from electing a non-political or apolitical person, but the fact still remains that it is political equations in Parliament and the State Legislative Assemblies which will determine who would be President. Under these circumstances, unless the political equations are such that no candidate can hope to win a majority of votes except through a complicated process of preference votes, the President is likely to be a political figure. One should not be afraid of this fact because democracy means politics and the President is a democratic head of State.

Having stated that one would still like the President to be mature, educated, experienced, with some knowledge of statecraft and the capacity to understand the finer points of the Constitution and the law. Undoubtedly under Article 75 of the Constitution the President is required to act in accordance with the aid and advice of the Council of Ministers, which means that though the executive power of the Union vests in him it will be exercised strictly in accordance with the advice given to him by his Council of Ministers. Independently he is not required to take executive decisions. A comparison is always made with the British Sovereign, who is required to reign but not rule. In Britain the Constitution is unwritten, conventions are time tested and tantamount to constitutional provisions but Parliament is supreme and right from the time of the Magna Carta the supremacy of Parliament and the largely ceremonial role of the Sovereign have been emphasised. Despite this it is well understood that the Sovereign is required to give sane advice to the Prime Minister and the government and where the Sovereign feels that government is acting against the mandate given to it by the people or is acting in violation of the unwritten Constitution, he should gently nudge the Prime Minister in order to push him back on the right track. This relationship is informal, unwritten and yet understood by all,

The Indian Constitution is written and apart from amendment through Acts of Parliament, it is subject to interpretation by the courts. That is why in the Keshvanand Bharti case the Supreme Court prescribed the basic features of the Constitution which Parliament was not empowered to amend and

thereby the Supreme Court circumscribed the powers of Parliament to amend the Constitution. That judgement stands and will do so unless the Supreme Court changes its order because if Parliament tries to overturn the judgement by law the Supreme Court will strike it down as being ultra vires. There are no such restrictions on the British Parliament. The Indian President is also required to reign rather than rule. However, under Article 60 of the Constitution the President is required to subscribe an oath or affirmation in the following form "I AB do hereby swear in the name of God /solemnly affirm that I will faithfully execute the office of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and welfare of the people of India". If the President is required to preserve, protect and defend the Constitution, then he must have the ability to recognise the circumstances under which the Constitution is under threat. Normally the Council of Ministers would advise him of such threat and would further advise him whether action needs to be taken under Part XVIII of the Constitution, the Emergency Provisions.

Whether it is a proclamation of Emergency under Article 355, proclamation of a Financial Emergency under Article 356 or a proclamation under Article 356 taking over any or all the functions of a State by the President, he is required to act in accordance with the advice given to him by the Council of Ministers. However, the Constitution does not say the he should do so without question. In fact the proviso to Article 74 (1) categorically authorises the President to require the Council of Ministers to reconsider the advice rendered by it. When a proclamation under Article 356 was suggested by the Council of Ministers with regard to Bihar the President, A.P.J. Abdul Kalam did use these powers to ask the Council to reconsider its advice. Of course when the Council reiterated its recommendations the President acted accordingly. However, the fact that the President has the power to return the Council's advice for reconsideration means that he is not a rubber stamp. In the case of legislation every Financial Bill can only be moved in Parliament on the recommendations of the President under Article 117, though this recommendation will be based on the advice rendered by the Council of Ministers. The President does have the right to ask the Council to reconsider its advice. In the matter of assent to Bills under Article 111 the President can withhold his assent and he may return the Bill to Parliament for reconsideration, together with a message in this behalf. If Parliament again passes the Bill with or without the amendment suggested by the President, then he is constitutionally bound to give his assent. President Zail Singh in the matter of the Postal Bill concluded that the Constitution of India, unlike the American Constitution, does not have a time limit for giving the assent or returning the Bill and by neither giving his assent nor returning the Bill he sat on it long enough for the House to dissolve after its normal tenure and the Bill to lapse. Whether this practice is desirable or not, as the Constitution stands today it is valid in law and unfortunately there are many Governors of States who either on their own or, as is largely the case, on a signal from the Central Government, have been using these tactics for indefinitely delaying enactment of a law. The ability of the President to understand the nuances of the Constitution, coupled with a consciousness about his duty to help the elected government to enact legislation, is not only desirable but should be a mandatory quality in any person elected as President.

There are issues in which the President does have discretionary powers. Article 124 (2) of the Constitution states, " A Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years: provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted ". The Supreme Court through its pronouncements and by practice has created a collegium of judges which makes recommendations to the President (effectively to government) about the appointment of Judges. However, the Constitution gives

freedom to the President to consult any Judge of the Supreme Court or a High Court. Does President in this case mean the Council of Ministers? Will the Council of Ministers decide which judges may give it advice? Or is it only the Chief Justice of India who will determine whom the President (for President read government) will consult? If the President decides that he will use powers vested in him under Article 124 to consult judges other than the members of the collegium, will he be acting according to the Constitution as provided in Article 124 or contrary to the Constitution as provided in Article 74? This issue has not been satisfactorily resolved and the Judicial Accountability Bill cannot even address this issue because the Constitution under Article 124 (2)(b) and 124 (4) and (5) provides for enacting a law governing removal of a Judge and, therefore, the proposed National Judicial Commission can only address this issue. Constitutionally it is debarred from having a say in the appointment of a Judge.

Let us take an extreme case where the Council of Ministers advises the President to do something which is palpably unconstitutional. Suppose contrary to the judgement of the Supreme Court in the Keshavanand Bharti case the Council of Ministers advises the President to give his assent to a Bill setting aside this order of the Supreme Court. Under Article 141 the law declared by the Supreme Court is binding. The judgement in the Keshavanand Bharti case is, therefore, binding. Is the President bound to accept the advice of the Council of Ministers in such a case, or is he to go back to his oath of office and hold that by accepting this advice he would not be true to his solemn oath to preserve, protect and defend the Constitution? Can the Council of Minister advise the President to ignore the judgements of courts in other matters and allow the executive to flout such judgements?

There is one matter in which the discretion of the President cannot be questioned and that is in the appointment of the Prime Minister under Article 75 (1). At the time a Prime Minister is appointed there is no Council of Ministers to aid and advise the President. Of course in deciding to invite a person to be Prime Minister the President has to bear in mind that under Article 75 (3) the Council of Ministers is collectively responsible to the House of the People and, therefore, it would be a foolish President who invites a person to be Prime Minister who does not enjoy the confidence of the House. But a situation cannot be ruled out, at least hypothetically, that the President appoints the Prime Minister who does not command a majority, summons the House and immediately prorogues it, thus ruling out an immediate vote of no confidence or confidence. The House need not be summoned for the next five months and twenty-nine days because under Article 85 more than six months should not intervene between two sessions of Parliament. In these five months and twenty-nine days a Prime Minister who does not enjoy majority support can use the authority of government to subvert, suborn, purchase or otherwise influence those Members of Parliament who oppose him and by the time Parliament is summoned again, he may garner some sort of a majority. This is legally possible but morally and democratically reprehensible. Unfortunately the record of the Indian Parliament and the State Legislatures indicates that such tactics are used and are becoming increasingly in vogue. I mention this because a President is capable of mischief if he is so inclined. The fact that this would destroy the essence of democracy would probably be lost on a person bent on mischief.

This point is emphasised because we have to be very careful in ensuring that a mischievous person does not become our President. In the process of election it is undoubtedly politics which determines who will be elected, but assuming that our politicians are or should be responsible representatives of the people, one can expect them to behave in a responsible manner and if they do not do so today, they would do so in the future in the interest of our democracy. Before the election the President can be a politician, provided that his track record indicates that he has a capacity to understand the fundamentals of what a democracy requires and a proven reputation for personal integrity in which he demonstrates that the nation come before narrow political or personal interests. R. Venkatraman is a

fine example of such a political figure who became our President. If he is not a politician then the President must be so distinguished in an area of achievement that he is universally respected. Dr. S. Radhakrishnan was basically an educationist, but he was undoubtedly one of the finest Presidents we have had. Dr. A.P.J. Abdul Kalam also proved that though a scientist and a teacher he could be a President whom everyone could respect and whom people would like to see in Rashtrapati Bhawan even today. Our first President, Dr. Rajendra Prasad, was a great freedom fighter and amongst the top ten leaders of the freedom movement. His knowledge of constitutional law (he was the Chairman of the Constituent Assembly) his erudition, his simplicity and austerity are all qualities which mark him out as a great President. Dr. Radhakrishnan, R. Venkatraman and Dr. A.P.J. Abdul Kalam were erudite, humble and austere. These names I have mentioned because whether they were politicians or they came from other fields of endeavour, they enhanced democracy in India. President K.R. Narayanan was a Foreign Service officer who was also an educationist and his period as President will be long remembered as adding glory to Rashtrapati Bhawan. He is projected as the first dalit President, whereas he should be projected as the first civil servant President. In a single post the Constitution does not provide for reservation and the President cannot be elected on the basis of narrow, communal, sectarian or caste basis. It is the worth of the man or woman which must determine who should be President.

There are three names now being broadcast as the leading presidential candidates, Hamid Ansari, Pranab Mukherji and A.P.J. Abdul Kalam. They all belong to a desirable meritocracy, each of whom would make a worthwhile President. P.A. Sangma, Meira Kumar and Gopalakrishna Gandhi, whose names are also mentioned, are meritorious. Anyone of these six would restore the glory to Rashtrapati Bhawan which, unfortunately, we lost in the last five years. One prays that one of the five men and one woman becomes President because he or she would bring brilliance to Rashtrapati Bhawan, project an image of India within and abroad as a country whose Head of State is cultured and civilised and bring back to politics a decency, a courtesy, an integrity which is fast eroding.
