

Role of President in Indian Constitution

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Abstract :- Since childhood, I had seen some books written by Rajendra Babu, like his 'Autobiography' (1946) and 'India Divided' (1946), in the family library established by my grand father in my old home. At my school and college also, along with the photographs of other great national leaders, a huge photograph of 'Deshratna Rajendra Prasad' also was hung on the wall. In the family library, books like 'Shivabavani' by Bhushan, 'Jaidrath-Vadh' by Maithilisharan Gupt, 'Renuka' by Dinkar, 'Madhushala' by Bachchan, etc drew more attraction in comparison to political books. But as destiny would have had it, I took up Political Science as my subject for higher studies in Patna University. It was then that I got a chance to study in detail about Rajendra Babu in Indian politics and administration.

Rajendra Babu was born on 3 December, 1884 in Jeeradei village in Saran district of Bihar. He died in Patna on 18 February, 1963. At that time, I was a student of M.A. in Patna University. He was brought up in a simple farmer family. After getting a Degree in Law with distinction from Calcutta Law College, he started practicing Law in Calcutta High Court. In 1916, he came to Patna High Court. Along with practicing Law, he started doing nationalist journalism also. He started writing leading articles in the daily newspaper 'Search Light' of Patna. He also established and edited weekly magazines called 'Bihar Law Weekly' and 'Desh'.

In 1917, Rajendra Babu joined the Champaran Kisan Movement of Mahatma Gandhi. In the beginning of the 1920 decade, he joined the nationwide non cooperation movement of Mahatma Gandhi. He went to jail many times. From August 1942 to 1945, he was in jail for three years with the members of the Working Committee of the Congress. He was elected as the President of the Indian National Congress thrice – 1934, 1939 and 1947. During the initial years of independence, the Congress President was called as 'Rashtrapati'.

When the job of framing the Constitution for free India started in the Constituent Assembly, Rajendra Babu was elected as the President of the Assembly from 1946 to 1949. As the President, he solved the complicated issues of disputes. On its completion, his speech of appreciation presents his farsighted prediction of the apt analysis of the characteristics of the Constitution and its functioning. He said that the Constituent Assembly has studied all the constitutions of the world and formed the Constitution of India according to the circumstances and needs of India. He said that we have adopted a focused Parliamentary Federal system for national unity, but in due course, the federal characteristics of the Constitution will become clearer according to India's diversity and the needs of autonomy of the states and institutions. On 26 January, 1950, when the Constitution of the Indian Republic was implemented, Rajendra Babu was unanimously elected as the first President of India. In 1952, when the general elections were held under the new Constitution on the basis of public right to vote, Rajendra Babu was again elected as the President by the Election Board, Parliament and the Executive Councils of the states. In 1957, after the second general elections, Rajendra Babu was again elected as the President. In this way, his tenure as a President was for twelve years, which is the longest tenure for any one holding a post.

The President is the head of the Indian Republic, but not of the Indian Government. The head of the government is the Prime Minister. If we go into further details, there are three units of the government – Executive, Legislature and Judiciary. The President is seated on the top of both Executive as well as the

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Legislature. But he is the head of these two units for name sake only. All the jobs of the Executive are executed in his name only. The actual head of these two units is the Prime Minister and the person at the top of the Judiciary is the Chief Justice. This model of the government in the Indian Constitution (1950) has been adopted on the design of the Parliamentary-Federal Constitutions of Canada (1867) and Australia (1901). This model of the constitutions in Canada and Australia are inspired by the unwritten constitution of Britain, where during the evolution of history in the English civil War (1642-1851), the army of the Parliament defeated the king's army. After the war for succession of the throne of 1668, the Parliament decided as to who would sit on the throne. As a result, the powers of the king were transferred in the form of the power of the Parliament and as the leader of the Parliament and the Cabinet, the Prime Minister became the actual head of the Government and the king was reduced to a head for name sake only.

In free India, since the beginning, the relations between the President and the Prime Minister have been under dispute as formal and actual parts of the Executive. Actually, this dispute was raised by the Chairman Rajendra Prasad himself in the Constituent Assembly. He said that it is said in the Constitution that there would be a Cabinet of Ministers to assist and advise the President. But it has not been specified anywhere whether the President is bound to accept the advice of the Cabinet or not. Dr. Bhim Rao Ambedkar, who was the Chairman of the Drafting Committee, said in reply that according to the well known constitutional tradition of the British Commonwealth, the President has always accepted the advice of the Cabinet. Hence it was not felt necessary to mention it in the Constitution. In Britain, the definition of the 'constitutional tradition' is that they have always been followed as a matter of practice. In Canada, its definition is that they are often followed and in case of dispute, the court upholds them. The same thing happened in India. In the *Shamsher Singh versus Punjab state* (1974), the High Court gave the decision that it was mandatory for the President to accept the Cabinet's advice. Later by the 42nd amendment of the Constitution (1978) during the internal emergency of Prime Minister Indira Gandhi's government, it was added in written in section 74 (1) that the President was bound to accept the advice of the Cabinet. After the withdrawal of emergency, the Janata Party came into power. The Janata Party did not invalidate the clause, but made another change by the 44th amendment (1979) that in case of disagreement, the President can send the proposal back to the cabinet for reconsideration once. But if the Cabinet represents the same proposal, then the President must accept it.

But before this constitutional assimilation, one description still remains to be narrated, which is necessary to be analyzed. After assuming the post in 1950, President Rajendra Prasad sent a document to Prime Minister Nehru, in which he presented an argument that, the President of India cannot be a replica of the British King because the President is an elected officer while the king is a hereditary head of the state. The President can be removed from his post for violating the Constitution by impeachment, but for the king, there is a constitutional theory that he cannot commit any mistake. The President is a federal officer, while the king is the head of a monarch kingdom. Hence, the President wrote that he would use his own wisdom in sending any dialogue to the Parliament and in the process of agreeing to any parliamentary bill and in signing to make it a law. Perhaps he did this because Prime Minister Nehru was considering making amendments in the Hindu Traditional Family Law, which the President did not like because he was himself a traditional Hindu. When the Hindu Code Bill was presented in the Parliament, Prasad expressed his opinion that instead of presenting this aggressive reformative bill in the interim Parliament, it should be kept on hold till the first general elections, when there could be some consultation on this issue in public opinion. Prasad brought the federal dimension also in this issue. The Traditional Family Law based on religion/community comes in the concurrent list of the Constitution, on which both the Parliament as well as the State Legislatures have a right to make the law, but in case of conflict between the two, the

parliamentary law would be in force. If the Parliament makes a law on this matter without consulting the state governments, then it would be against the Federal sentiment. In this way, Prasad considered the unwritten belief of the Constitution as unreasonable in a very logical manner.

Nehru expressed his disagreement and sent Prasad's note to the existing Attorney General Mohanlal Chimanlal Setalwad and the erstwhile Councilor of the Parliament Sir Alladi Krishnaswami Iyer. Both of them supported the Prime Minister's opinion that it is clear in the debates of the Constitution as what is the belief of the makers of the Constitution, though they did not feel it necessary to write this constitutional tradition in the Constitution. Then President Rajendra Prasad did not pursue the matter. He continued to play the role of a formal or constitutional President. Therefore no situation of any constitutional crisis came up.

Many years later, President Prasad again raised the issue of describing the powers of the President for an academic discussion. During the last years of his second tenure as a President, on 28 November, 1960, he said during his speech on the occasion of the foundation ceremony of the Indian Law Institute, New Delhi, that he is taking the liberty to present this suggestion that this institute should take up a research on this issue as to what are the actual powers of the President of India. The Indian Constitution is said to be mainly based on the British Constitution, but there are clearly some fundamental differences between the two. Britain's Constitution is unified, in which the Constitution is the only highest sovereign power, which does not share its power with any other constitutional entity. Any other unit has the right only to the powers transferred to it by the Constitution, which the Constitution can take back as and when it wishes to. On the other hand, our Constitution is a federal contract in which the minimum and maximum powers and functions of the Parliament and the Legislature are divided in a written Constitution, and encroachment of these is prohibited and unconstitutional for both. The head of Britain is a king whose post is permanent and hereditary. India's President is an elected head for a limited tenure and can be removed from the Parliament by impeachment. In this vast written Indian Constitution, there is no such provision that the President is the head of the country only for name sake and is bound to accept the advice of the Cabinet. In the light of the above mentioned facts, President Prasad raised the question that 'to what extent is it justified to consider the Indian President as equal to the British king'. On 18 September, 1951, in a note sent to the Prime Minister, President Prasad expressed his intentions for his conduct according to the above mentioned explanation. But after a limited opposition and debate, he gave up. On 28 November, 1960, in his lecture in the Law Institute, Prasad kept the above issue only for academic discussion.

His successor, President, Dr. Sarvapalli Radhakrishnan also played the same role of the Constitution bound President in his conduct. Except expressing his opinion occasionally on certain policies and actions of the Nehru Government, he was of the opinion that the President should not use his functional powers directly and freely. He always showed the script of his lectures and speeches to the Prime Minister. Only on one occasion, he did not do so, because Prime Minister Lal Bahadur Shastri was not available at that time. Later Lal Bahadur Shastri expressed his displeasure on this.

The untraditional explanation of the powers of the President by President Prasad goes against the model of the Parliamentary Federal model of British Commonwealth, because in the Constitutions of Canada and Australia, the role of the head of the country has/had been clarified and established by the Constituent Assembly. The Indian Constitution also has adopted the role of President on the model of the Governor-General of the Parliamentary-Federal Canada and Australia, who is appointed on the binding advice of the British head or by the Prime Minister or Cabinet of Canada or Australia. It is surprising that President Prasad omitted Canada and Australia and mentioned only Britain in his note. Why? I need to do some more research to find an answer to this question, because for this neither his ignorance, nor his intention of misdirecting his readers or audience can be held responsible. As the senior most member of the Constituent Assembly, Patna's famous scholar Advocate and the Interim President of the Constituent

Assembly, Shri Sachchidanad Sinha had discussed about all the constitutional models of the democratic world in his inaugural speech in the above mentioned function. The other more than a dozen constitutional experts – Ambedkar, Alladi Krishnaswamy Iyer, Kanhaiyalal Maniklal Munshi, Gopal Swamy Iyengar, C P Ramaswamy Iyer, the Legal Advisor of the Assembly Benegal Narasimha Rao, etc., who were present in the Constituent Assembly, had already presented written documents and questionnaires for the members on various constitutional issues. Rajendra Babu himself was no less knowledgeable. After a lot of introspection, I can come to only one conclusion. In the atmosphere of debate of the Constituent Assembly and in the sub-consciousness of all the members, the ghost image of the British Constitution was the point of most of the discussion, probably because they were most well acquainted with the British laws and constitutional traditions. Perhaps this is the reason that the same replica appeared in President Prasad's note and speech.

From one perspective, the issue brought up by President Prasad in front of the country was a futuristic statement. In the beginning of the 1970s, when Indira Gandhi reached the peak of her power and indications of totalitarianism and corruption in Congress began to manifest and a non parliamentary mass movement under the leadership of Jai Prakash Narayan was started against her, Prime Minister Indira Gandhi declared an internal emergency under section 352 of the Constitution in a very unconstitutional manner. She did not consult the Cabinet before this declaration. President Fakhruddin Ali Ahmad issued the declaration in the night and next morning, Prime Minister Gandhi merely informed the Cabinet about this task performed. President Ahmad neither asked the question whether the Cabinet had been consulted, nor advised that if the Cabinet has not been consulted, then it should be done. The end of the infamous internal emergency (1975-1977) came to an end with the defeat of the Indira Gandhi led Congress government in the general elections in 1977. The Morarji Desai government, which was born out of the mass movement of Jai Prakash Narayan, passed the 44th constitutional amendment (1978), about which I have given a brief description earlier in this write up. The main points of this amendment are – first, in the earlier causes of emergency in Article 352 – grave threat to the security of the whole of India or a territory of India either by war, external aggression or internal disturbances -- another cause was added – armed rebellion. It is worth noting that the movement of Jai Prakash Narayan was unarmed and non violent. It was also made clear that before the threat actually occurs, if the President is satisfied that there is a forthcoming fear of this threat, in such cases also emergency can be declared. Second, a provision was also clearly made by the amendment that the President will not declare emergency till he gets a written decision of the Cabinet related to this intention. After the declaration, provisions for acceptance of the declaration of emergency by the Parliament within a certain time period, and its maximum time period, etc were already there in the Constitution.

In this way see that the significant 74th amendment of the Constitution bears a clear impression of President Rajendra Prasad's note of 1951 and speech of 1960.

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