

Social
Movements 1- Ghanshyam Shah.
Books. 2- M.S.A. Rao

12/12
12/12/14.

Nature of women movement

Indian women movement is known as
Equality movement rather than freedom movement.

Union Executive

- The position of President
- The position of PM
- State Executive
- Position of Governor.

Position of President

- Analyze the nature of the institution of President in Indian Constitution.
- Discuss the Constitutional changes in context of Institution of President.
- Compare position of President with that of Governor

Form of Government in India.

- India adopted Parliamentary form of govt.

There was a debate in Constituent Assembly over form of govt. There was some reluctance w.r.t. to adoption of Parliamentary form of govt.

- Why the reluctance?

- Except U.K. Parliamentary form of govt.

has not been easy to manage. France

had parliamentary form of govt. in

4th Republic. However because of political

instability they have gone for semi-Presidential type.

present
5th
republic.

U.S.: Leg ruling.

Fr. President > PM

Ge PM > President.

Germany has Parliamentary form of govt.

But it is not exactly the British type.

Germany is known as "Chancellor's Democracy".

India adopted Federal form of govt.

The ideal form of govt. in a federation is Presidential type. Nature of federation will be impacted w.r.t. the party equations.

If same party at Centre & State, federation will run smoothly. If different parties, it may create tensions. And Parliamentary form of govt. is based on Party system.

Ultimately things settled in favour of Parliamentary form of govt.

Reasons:

- Our experience
- It is more representative
- Decision making is more democratic because of plural executive.
- Except U.S.A. there is no other example where Presidential form of govt. could retain its democratic character.

What is Parliamentary form of govt.?

- Centre of gravity is Parliament.

Parliament is central to the formation of govt. Govt. can remain in power so long it enjoys the confidence of the House (Lower House).

- In Parliamentary form of govt., there is no separation of powers betⁿ executive & legislature.

Executive is formed out of legislature. Party or group representing majority in Parliament forms the govt. PM is the leader of the group representing majority. Hence real powers are in PM's hand.

- In Parliamentary form of govt. there are 2 Heads.

- A nominal Head or Titular Head.

In case of Britain, it is British monarch.

In case of India, it is President.

President / British monarch can be treated as ornamental heads. They are also treated as Head of the State.

- PM : PM is the real head. He is head of the govt.

Why 2 heads are needed?

- To ensure continuity in the administration.

- To give legitimacy to the acts as PM is purely a political post & President can be treated above the party politics.

Why? he :

- President is elected by absolute majority.

- President enjoys fixed tenure & can be removed only by impeachment.

In Indian situation President also represents the states. The members of State Legislative Assembly also participate in his election.

Position of President as per Constitution

- Head of Union Executive.
- All executive actions are in the name of President.
- Supreme Commander of the Defence forces.
- Integral part of Union Parliament
- Representative of states at Union level.

Nature of the authority of President.

- Even Constituent Assembly was not clear about the nature of authority of President because, President in Indian situation was not the exact replica of British monarch. Constituent Assembly left it on the times.

Diff. in Position of President & British monarch.

- British monarch is hereditary. Hence it can be considered as completely above Party politics.
- Since India is republic, the position of President is elected. President cannot be treated completely above the party politics.
- President is elected not by simple majority but by single transferrable vote system where even the members of state legislative assemblies also participate.

- It shows that maybe C.A. was not thinking of a position of President to be purely ornamental.

- In case of Britain the convention is

pre- 24th C.A.

42nd C.A.
P acts on
advice of
COM

42nd C.A. theoretically
right.
In Indian situation.

"King can do no wrong". In Britain there is concept of impeachment of the king.

However in case of India, President can be impeached for the violation of Constitution. (Art. 61)

- What amounts to violation of Constitution was not clear until 42nd C.A. Act. As per 42nd C.A. Act, President is bound to act on the advice of COM headed by PM. If President does not act according to the advice it can be considered as violation of Constitution.
- Another reason for confusion is oath of President (Art. 60)
 - To execute the functions of office of President faithfully.
 - To preserve, protect & defend the Constitution & the Law.

If the provision of oath is read along with the provision of amendment of Constitution before 24th C.A. Act, President was not bound to give his assent. It means original constitution did not envisage the position of president that of Golden Zoro like British monarch.

Origin of Controversy

- w.r.t. Hindu Code Bill & the then President Rajendra Prasad was not in favour of the Bill. His view was the position of President in India is different to that of British monarch & President does have discretionary power.

Views of Nehru

Nehru held that India has Parliamentary form of govt. & so President is not more than Constitutional head.

Ultimately controversy settled in favour of Nehru's position by the intervention of the then Attorney General M.C. Setalvad.

- Later on SC in Ram Jawaya Kapoor case clarified that President & Governors are constitutional heads.
- 24th C.A. Act brought clarity w.r.t. the amendment bills
- 42nd C.A. Act attempted to settle the controversy completely. It amended Art 74. It made it clear that President shall act on the advice of COM headed by PM. | Art 74(1)

Impact of 42nd C.A. Act.

It has established that President of India is like a rubberstamp & the position is purely ornamental. 42nd C.A. Act was correct from perspective of theory of Parliamentary form of govt. However it appeared as an example of executive overreach in Indian situations.

To understand the principles of Parliamentary form of govt. we can give ref. of Art 111.

Art. III : Deals with requirement of President's assent for any bill to become Law.

As per Art. III,

- any bill passed by both Houses of Parliament shall be Presented to President.

President has following courses of action.

- he can give assent to the bill.
- In case bill is Ordinary Bill, he can send the bill for reconsideration. However he is bound to give his assent if bill is returned to the President.
- President can withhold his assent.

Pointing confusion

- It has not clear whether, Constitution gives any real veto powers to President. Constitution mentions that President can withhold his assent (absolute veto).

The absolute veto of the President is to be interpreted as per the principles of Parliamentary form of govt. It is to be used on the advice of the PM & not against the advice of PM.

- Pocket veto

Constitution does not mention any time frame within which President has to give his assent or withhold his assent. He can leave the bill as it is. Pocket veto of U.S.

President is weaker than that of Indian President.

However in case of pocket veto also President

is not supposed to go against principles of

Parliamentary form of govt. This is the reason when

even supported Presidential form of govt.

Position of President since 44th C.A. Act.

- 28th Oct 1997 President K.R. Narayanan has used Presidential discretion given by 44th C.A. Act. when he sent the advice of L.K. Gubral Govt. w.r.t. imposition of President's Rule in U.P. Since then the convention is if President sends advice back for imposition of Art. 356 it is not sent back for reconsideration. It is also an example of Presidential activism & president assuming full discretion w.r.t. Art 356.

- President K.R. Narayanan came to be known as 'Activist President' for not only sending the above advice but for other reasons also.
- He preferred to give interview on the eve of Republic Day rather than reading the speech by Vajpayee Govt.
- He has written his own speech on the occasion of state dinner to U.S. President where he criticised unilateralism & asked for strengthening of NAM.

Example of Dr. Rajendra Prasad, C.Z. Singh, K.R. Narayanan, show that institution is shaped not only by Constitutional provisions but also by the personalities & the prevailing situations.

Conclusion :

- Views of former President R. Venkataraman
 - He had to face the most challenging situations the beginning of coalition era which gave situation discretion to the President.
 - However he tried to develop conventions & minimize the scope of discretion. Calling himself as "Copybook President", he mentions that position of President in India is like 'emergency lamp' which comes to power only when 'main switch' is off.

According to Constitutional experts, Constitution neither envisages Activist Presidents like K.R. Narayanan, nor populist President like APJ Abdul Kalam but the Constitutional head or the nominal head.

President is supposed to be "Friend, Philosopher & guide" of the govt. It is a position of dignity. There are certain obligation of PM towards President as given in Art. 78 which PM is supposed to fulfil.

Position of P

Position of PM &

How coalition politics has impacted the institution of PM.

To evaluate the position of PM we have to take into consideration, the Constitutional provisions dealing with PM as well as extraconstitutional factors like party system & personality factor.

Position of PM as per theory of Parliamentary forming govt.

- The position of PM is explained through 2 phrases
 - PM is *Primus Inter pares* or first among equals.
 - PM is *inter stellas luna minores* or moon among stars.

Both the above phrases explain the position of PM w.r.t COM. 1st phrase suggests that PM is the head of COM but the status of other COM is not that of subordinates as in case of Presidential form of govt. In Presidential form of govt other ministers are secretaries of President. They are chosen by President by spoils system. Whereas the members of COM are also the members of Parliament.

2nd phrase shows the situation which has been found in practice & is more realistic explanation. PM gains primacy over other members of the Council because
> Other members are appointed on the advice of PM.

strengthening of
Parliamentary
form of govt

steps
no. of parties.

> Other ministers are on the pleasure of President which means pleasure of PM.

Situation in India

- During the time of Nehru 1st
- 1st Phase (till Patel was alive)
Nehru's position was that of 1st among equals.
after Patel's death, there was no other personality to challenge Nehru. So Nehru emerged as "moon among stars".

- During the time of Indira Gandhi, when she became PM for 1st time after death of Lal Bahadur Shastri, her position was not strong. In 1969 there was a split in Congress party, Congress (O) & Congress (R) later on she could establish herself in power as Congress (I) got clear majority in 5th General Elections. According to Political analysts, there was a decline in power of Com during her time & there was concentration of power in the hands of PM. She undermined Com & was dependent on personal advisors.

office
request
thrust

- Later on it was said that India started developing the strength of PMial form of govt even Presidential form of govt & towards emergency even aut dictatorial form of govt undermining all other institutions. that include institution of President, powers of Judiciary as well as Parliament & FR of people.

- Situation during Rajiv Gandhi
- The undermining of COM continued as he tried to go for the technocratic form of govt.
- Position of PM since coalition era.

Coalition era has impacted the institution of PM in a big way. Coalition govt. is a fragmented govt. In practice there are many PMs rather than 1 PM. For a particular faction of a coalition its leader is their PM. The position of the PM is more like a manager of a coalition. However ~~is~~ is wrong to consider that coalition politics shall always undermine the position of PM. It will depend on multiple factors.

> Personality factor.

We can sight the example of N. Rao heading a minority govt & heading A.B. Vajpayee whose coalition govt. could complete the full 5 yr term for 1st time.

> Coalition culture

If sound coalition culture is developed then it will not create challenges. Establishing ^{Establishing} right institutions & practices.