



## The President, Constitution and Cabinet

SIR, ~ This is in response to Rajinder Puri's "Open letter to President" (26 July). He has urged the President to play "an activist role" because the "government is crumbling everywhere" and a "deep systemic crisis" confronts the nation. He has drawn "attention only to the systemic changes required", reminding Mr Pranab Mukherjee that "you have the solemn responsibility to ensure that the Constitution and laws are observed across the nation".

This brings us to the core issue of the Presidential powers as enshrined in the Constitution. The controversy was first triggered by Dr. Rajendra Prasad at the India Law Institute on 28 November 1960, when he observed that "there is no provision in the Constitution which in so many words lays down that the President shall be bound to act in accordance with the advice of his Council of Ministers".

But this should be read with what he said as the President of the Constituent Assembly: "It is hoped that the convention under which in England the King always acted on the advice of his ministers would be established in this country also and the President would become a constitutional President in all matters."

Article 53(1) stipulates that the executive power of the Union is vested in the President. But Article 74 provides for a Council of Ministers with the Prime Minister at the head "to aid and advise" the President in the exercise of his functions. The Supreme Court, in the Ram Jawaya vs State of Punjab case, has ruled that "the President has thus been

made a formal or constitutional head of the executive and the real executive powers are vested in the ministers or the cabinet". This was reiterated by the apex court in subsequent rulings, notably the Rao vs Indira case in which a unanimous court observed: "The Constituent Assembly did not choose the Presidential system of government."

The 44th constitutional amendment (1978), in a partial reversal of the 42nd amendment (1976), added a proviso which gave the President one chance to refer the advice back to the Council of Ministers for reconsideration. But if the cabinet reaffirms its original advice, the President shall be bound to act according to that advice. Article 74(1) has been rephrased accordingly.

Article 78 (a), (b), (c) deals with the duty of the Prime Minister and the channel of communication with the President. According to DD Basu, the constitutional expert, "even though any particular minister has tendered any advice to the President without placing it before the Council of Ministers, the President has (through the Prime Minister) the power to refer the matter to be considered by the Council of Ministers. The unity of the cabinet system will thus be enforced in India through the provisions of the written Constitution."

In the era of coalition governments, the President is called upon to play a vital role in the event of a fractured mandate. He has to exercise utmost caution and independent judgment on who will be asked to form the ministry. Here again,

a floor-test is the conventional course of action.

Article 111 is silent on the time-frame within which the President has to give his assent or refuse or return any Bill passed by Parliament. In the circumstances, he can exercise the 'pocket veto' in the manner of the US President. The former President, APJ Abdul Kalam, could have adopted this course of action when the Office of Profit Bill was presented to him.

yours, etc., debaki nandan mandal, kolkata, 26 july.