Introduction

The Problem

The office of the Indian President is one of great prestige and authority. His office entitles him to all dignities, immunities and protocols. He possesses executive, legislative and various other powers under the Constitution of India. But his powers are neither like those of the British Monarch nor of the American President although the Indian Constitution incorporates the important features of the Constitutions of both these countries.

The scope and extent of President's powers has always been the matter of debate among politicians, academics, lawyers and jurists since the commencement of the Constitution but still no unanimous decision and final perspective on this is available.

Dr. Rajendra Prasad, the first President of India, differed strongly with Pt. Nehru over the question of President's powers and also questioned the tendency to equate the President's position with that of the British Monarch. He also suggested an investigative study of the President's powers and functions by experts.

After the fourth general election, in the wake of emergence of non-Congress coalition governments in some states, some new dimensions of the powers of the President came to be underlined. The frequent use of ordinances and
promulgation of emergencies under Article 356 by the party in power at the Centre emphasised the need for an impartial and non-partisan Head of the State.

The issue concerning President's powers was again raised in 1975 when the then President, Shri Fakhruddin Ali Ahmed, rubber stamped Mrs. Indira Gandhi's decision to impose the Emergency on the country and did not care to ask her to reconsider the measure and produce evidence to prove that the situation in the country had deteriorated to such an extent where it was not possible to cope with it through the normal processes.

Though in 1976, the Government sought to end the ambiguity concerning the powers of the President through the 42nd Constitution Amendment Act¹ but even then the office of the

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1. The original Article 74 stipulated that, 'There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions'.

The 42nd Amendment changed the construction of this sentence to clarify further that, 'the President shall, in the exercise of his functions, act in accordance with such advice'. Thereafter by the Constitution (Forty-Fourth Amendment) Act 1978, the following proviso was added to the revised clause(1) of Article 74:

'Provided that 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. See Sunder Raman, Constitutional Amendments in India (1950-1989), (Calcutta : Eastern Law House, 1989), pp. 182, 218.
Head of the State was most seriously pushed into public controversy in 1979 when President, Shri Sanjiva Reddy, not only ignored the claim of Shri Jagjivan Ram to form an alternative government but also dissolved the Lok Sabha. Again in 1987, the question of President's powers assumed importance when President, Shri Zail Singh, addressed a letter to Prime Minister, Shri Rajiv Gandhi, that he was not being kept informed about state affairs under Article 78 of the Constitution of India and thus created a controversy.

In this dissertation, we shall try to ascertain whether in view of the basic ideals and listed Articles of our Constitution, the President of India enjoys the rights to be informed of public affairs, to appoint/dismiss the Prime Minister and to dissolve the Lok Sabha. The other issues come up as corollaries.

Actually, we have set the problem in two contexts which are (i) the action taken by Shri Sanjiva Reddy in 1979 in first appointing Shri Charan Singh as Prime Minister and then dissolving the Lok Sabha on his advice, ignoring the offer of Shri Jagjivan Ram to form an alternative stable government, (ii) the alleged threat (by Shri Zail Singh) of the dismissal of Shri Rajiv Gandhi in 1987 for refusing to discharge his constitutional obligations under Article 78.
The specific questions that we have taken up are - what led the President, Shri Sanjiva Reddy, to take a controversial and momentous decision of dissolving the Lok Sabha? What could possibly have been the reason which made the President to deny Shri Jagjivan Ram the chance he deserved? Moreover, what are the alternatives open to the President of India when confronted with a situation as it existed in 1987 - when the Prime Minister showed scant respect due to the Head of the State, when the members of the Council of Ministers (viz., K.K. Tiwary) openly maligned him, when the Prime Minister refused to part with information called for by him and thus disregarded the orders of him (in the discharge of his constitutional duties) and when charges of corruption were being levelled openly against the Head of the Government?

As far as the question of personal insult is concerned, the President obviously cannot act out of pique but he cannot remain indifferent to the violation of his constitutional rights or to the public image of the Council of Ministers.

Our hypothesis is that since he (President) has taken the oath to preserve, protect and defend the Constitution and to devote himself to the service and well-being of the people of India, he is duty bound to act in his own discretion - in the interests of the Country and its people -
what if the Government enjoys comfortable majority in the Parliament.

We submit that the alternatives open to the President are:

(1) To apprise the representatives of the people about the crisis (Right to send messages to the Parliament);

(2) To dismiss the Prime Minister for flouting the Constitution;

(3) To look for an alternative Government;

(4) Failing which, to appoint a caretaker Government and to dissolve the Parliament and thus to go to the people to give their verdict. In case the verdict goes against him, he has to quit.

Review of Literature

The office of the President and the powers embodied in it have drawn the attention of quite a good number of scholars. Notable among them are Shri J.R. Siwach who published his book The Indian Presidency in 1971. This (book) is a comprehensive study of the various powers of the President of India. The various constitutional provisions

and the role played by different Presidents have also been discussed. According to this study, the position of the Indian President is not the same as that of the British Monarch and in certain situations, the President should act in his discretion, if the federal character of the Constitution is to be maintained.

Mr. Alan Gledhill, lecturer in Indian and Burmese Law in the school of Oriental and African Studies, published a textbook in 1951 entitled *The Republic of India*. Even though it was meant to be a text book, it has become a classic on the Indian Constitution because Mr. Gledhill presented in this book a nightmare about the President of India becoming a dictator. In his own words:

"Let us assume that one-fourth of the members of a House of Parliament ... have given notice of a resolution to impeach the President. The resolution cannot be moved until fourteen days have elapsed, and in the meantime the President may dissolve Parliament. A new House of People must be elected, but it need not meet for six months. He may dismiss the Ministers, and appoint others of his own choice; for six months it is not necessary that they should be members of Parliament. The

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President may issue ordinances, which will be as valid as Acts of Parliament for six months.

"The situation would probably be such as to justify a Proclamation of Emergency, which the Courts would find difficult to hold invalid, so that he could legislate on any subject, and deprive the States of the right to their share in Income Tax and other distributable sources of revenue. He could suspend the Fundamental Rights, and their remedies ... As Commander-in-Chief, he could use the armed forces 'in support of the civil power'. He might ensure the election of a House of the People who would support him ...".4

He argues that what he is presenting is a nightmare. But he says:

"This may seem a nightmare, but it is not dissimilar to the way in which the Weimar Constitution was destroyed. It is possible to set out a list of things the King of England could constitutionally do, things which would have ruinous consequences, and dismiss them with the comment that, as matters of practical politics they could not be done. Can the same be said of what has been set out in the last paragraph? Possibly the danger is averted by recognising it, but one must remember that the personal ambitions of an English King would always be controlled by devotion to the dynasty and the monarchical principle, factors not available to curb a President".5

He concludes:

"The vast Indian electorate will have to develop a proper regard for the sanctity of the Constitution before its stability can be assured".6

5. Ibid.
The argument of Mr. Gledhill has never been a problem in Indian politics and no President in India has tried to be a dictator on the lines suggested by Mr. Gledhill. Even then it remains a warning and as a warning it has academic, political and practical significance.

The *Indian Presidency* by Shri V.R. Krishna Iyer, former judge of the Supreme Court of India is an analytical study. Shri Iyer presents his own interpretation on the role of the President. It is particularly important on the question of whether the Indian President has freedom of information or not. He says that the President is more than a ceremonial inconsequence but he is not a rival centre of power. Information for the President is a safeguard and his sword. He presents the view that the President must have freedom of information. However, this book is confined to a very limited period as it mainly deals with the controversial relations between President, Shri Zail Singh, and the Prime Minister, Shri Rajiv Gandhi.

The *State of the Nation* written by Shri R.L. Handa is an authoritative account of the Presidential addresses to Parliament from Dr. Rajendra Prasad to Shri Sanjiva Reddy.


Before every address, small annotation by the author is also given.

The Presidential addresses are the authenticated official statements and reflect the policies and programmes of the government. In Indian political system, these addresses occupy a unique place for they are an indication of what the Cabinet has been able to achieve and what it proposes to achieve in future.

The annotations by Shri Handa are very brief and indicative but their utility is limited because the suggestions and criticisms offered by the Opposition parties while discussing the Presidential addresses are missing.

*Rajendra Prasad: Twelve Years of Triumph and Despair* by Mr. R.L. Handa is a useful source of information on the working and thinking of the first President of India. Shri J.P. Narayan wrote the foreword. In thinking and temperament Pt. Nehru and Dr. Prasad were poles apart. Though Shri Rajendra Prasad preferred to remain passive, he kept on advising Pt. Nehru as an old associate and comrade.

Shri Amar Nandi in his book, *The Constitution of India* has analysed the powers and the position of the President

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of India in detail. He says in normal situation, the President has no right to interfere in the day-to-day administration of the Country. But in extraordinary situations, the President may choose to act in his own discretion without accepting the ministerial advice. He also points out that the emergency powers of the President are like a loaded gun which can be used both to protect and destroy the liberty of citizens. Therefore the gun must be used with extreme caution.

Shri B.C. Das has published his book *The President of India*\(^\text{11}\) in 1977. In his book, he has tried to examine the structure of the Indian Presidency by discovering the connecting links with the past in order to explain the present. He has also discussed the basic conceptions and notions in order to substantiate the intention of the framers of the Constitution regarding the Presidency in India and the essential characteristics of the office. The structure of the Presidential office has also been studied. Terms of office, Presidential succession, eligibility for re-election, conditions of office, the procedure of impeachment have been analysed with reference to the provisions of the Constitution. The

\(^{11}\) B.C. Das, *The President of India* (N. Delhi: S. Chand and Company Ltd., 1977).
relationship between the President, the Council of Ministers and the Parliament have also been discussed.

The Voice of Conscience\textsuperscript{12} by V. Shanker Giri is a useful source of information relating to the period of Shri Giri's election to the Presidency. Shri V.V. Giri has written a foreword which is helpful. The election of Shri Giri in 1969 was very controversial. It was a shift from party voting to the voice of conscience. The election represented the factional fight within the Congress. Mrs. Indira Gandhi, the Congress President, supported Shri Giri as against the Congress candidate and he was elected in spite of the opposition of the Congress syndicate. The election was challenged in the Supreme Court but the election was upheld. A controversial election led to a controversial President.

Indian Constitutional Documents\textsuperscript{13} by Shri K.M. Munshi are valuable sources of information and evidence on the role and position of the President in India's political system. Through these works, we learn about the working of the Constituent Assembly and how important members of the Assembly formulated their views on the President. These views as they


were presented in the Constituent Assembly and the reaction of the other members are vividly recounted in these documents. They are original and authentic, what is most important is that they present the point of view of the Patel group to which Shri K.M. Munshi belonged.

Shri Munshi has also included in these documents, the details relating to the controversy between Dr. Rajendra Prasad and Pt. Nehru on the actual role and position of the President. The documents also reveal how Shri Rajendra Prasad did not agree with Pt. Nehru and expressed his views publicly.

*The Crisis, Conscience and the Constitution*¹⁴ written by Shri M.V. Pylee is an analytical study. It deals mainly with those days when Shri Morarji Desai resigned and the decision making power shifted from the Council of Ministers to the President.

Shri Pylee is of the view that though the President is bound by the advice of his Council of Ministers, there are some extraordinary circumstances when he can act according to his own discretion. He also fixes two limits, an inner one within which the President is always acting on the

advice of the Council of Ministers, and an outer one beyond which he finds it impossible to form an alternative Ministry to carry on the administration. However, he also says, there is a grey area though narrow in which the President is his own master and is not bound by the advice of his Cabinet.

He is also of the view that Shri Sanjiva Reddy acted wrongly in inviting Mr. Charan Singh to form a Government in 1979. He has also criticised the President for not allowing Shri Morarji Desai to broadcast to the Nation immediately after he had resigned.

The Critical Problems of the Indian Constitution, has been written by Shri P.B. Mukherjee, the former judge of Calcutta High Court. He has argued in his book that the President cannot be regarded as a mere figure head because he has been given the real powers under the Constitution of India. To prove his viewpoint i.e. the President is not a mere constitutional head, he has analysed the various constitutional provisions relating to him (the President). His conclusion is that the election of the President, his oath and his impeachment make him different from that of the British Monarch.

Justice M.M. Ismail published his book, *The President and the Governors in the Indian Constitution*, in 1972. In his book, he describes in detail the various constitutional provisions regarding the powers of the President of India. After analysing the Supreme Court and High Courts judgements in regard to the real powers of the President, he concludes that the Head of the State is not a mere figure head and cannot be forced to accept each and every advice of the Council of Ministers.

The Correspondence and Select Documents of Dr. Rajendra Prasad have been edited by Shri Valmiki Choudhary. This is a large project and everything connected with Shri Rajendra Prasad seems to have been collected. It is useful for understanding Dr. Rajendra Prasad; it adds to our understanding of the relations between him and the Prime Minister, Pt. Nehru.

Shri Valmiki Choudhary published his book, *The President and the Indian Constitution*, in 1985. This is a

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comprehensive study of the functions of the President and the Governors of the States. According to the findings of this study, the President has a special responsibility in the matter of Centre-State relations besides ensuring free and fair elections, the independence of judiciary and the impartiality of the Union Public Service Commission. Also, the President has to discharge his responsibilities appropriately when matters of constitutional import arise in regard to these subjects. Shri Choudhary also points out that the first President of India has left behind a body of healthy conventions for the future Presidents to follow. Although, according to our Constitution they (conventions) do not have the force of law, they deserve to be collected and preserved as valuable records for reference and guidance when need arises. He also says that one in authority cannot get one's power merely for the asking; a dedicated diligent executive has to acquire the power vital for the conscientious discharge of his duties.

Some very useful literature pertaining to 1979 controversy has been made available by the people who played an active role as arbiter in the controversy that we have taken up for study. One book by Shri N. Sanjiva Reddy entitled, *Without Fear or Favour: Reminiscences and Reflections of a President* is of particular significance.

in this connection. Shri Reddy was the President of India from 1977 to 1982. His role as a President during the 1979 controversy is of particular importance. His own version of the events, though one sided, has been a source of immense value.

The President and the Parliament written by Dr. R.N. Misra is an informative study on the powers and responsibilities of the President in regard to the Parliament.

In this study, he has stressed that the principal role of the President is to prevent a Parliamentary Government from becoming a Parliamentary anarchy or a majority Government from indulging in constitutional excesses. He is also of the view that in the Prime Ministerial form of Government, the President is the only hope for the protection of the Constitution and the rights of the people.

He has also given illustrations of the situations in which the President can play an important role. These situations relate to the President's powers of summoning, proroguing and dissolving the Parliament.

Similarly numerous articles have been written on the position and powers of the President of India. Some of these

are as follows -

Madhu Dandavate has written a very useful paper entitled 'President, Prime Minister and Parliament' in 1987. In this Article he has proposed to examine the controversy between the Prime Minister and the President arising out of non-compliance by the former of Article 78 of the Constitution of India. After describing the confrontation between Shri Zail Singh and Shri Rajiv Gandhi, he infers that the Presiding Officers had wrongly interpreted the Rules of Procedure of the Parliament to prevent any discussion on the purported letter of the President, Shri Zail Singh.

He points out that the constitutional history of India and England give ample evidence of the role to be played by the Presiding Officers of Parliament in maintaining its (Parliament's) dignity and protecting its rights and privileges. His suggestion is that the Presiding Officers (of Parliament) should play a great role in allowing the members of Parliament to utilise this instrument (i.e. Parliament) to preserve, protect and defend the important provisions of the Constitution.

Shri K. Santhanam, former member of Parliament, in his Article entitled, 'The President of India',22 analyses the role and position of the President of India. He says that the President of India is the guardian of the Constitution and can reject any advice of the Council of Ministers which is likely to undermine seriously the Constitution of India.

According to him the President is the Head of the Executive of the Union and the Parliament. He also points out that in the matters of addressing Parliament, sending messages to either House in respect of a Bill or otherwise and dissolving the Lok Sabha, it is neither reasonable nor right to insist that the President should implicitly accept the advice of the Prime Minister.

Shri S.C. Gangal in his article 'President and the Prime Minister'23 has discussed the President's right to get information on all matters pertaining to the administration of the Country. The writer is of the opinion that in a national crisis, the President could not be expected to remain an inconsequential or utterly passive agent. His


suggestion is that the President's right to get information must be honoured according to the letter and spirit of the Constitution. He also says that the President must be given the respect or honour - as the highest functionary of the State.

Shri H.M. Jain has written a very useful article entitled 'Presidential prerogatives under the Constitution'. In this article, he has examined the role played by the first four Presidents. He has also discussed the 42nd and 44th amendment acts and their impact on the relationship between President and the Prime Minister. He has also given the examples of the role played by Governors in different States in the matter of appointment of the Chief Ministers.

The writer is of the opinion that in the matters of appointment and dismissal of the Prime Minister, the President must be guided by constitutional propriety and political imperatives. He also says that the President enjoys discretion in the matter of dissolution of the Lok Sabha though to a limited extent.

Shri V.R. Krishna Iyer in his article 'President and Information' analyses the President's right to get information under Article 78 of the Constitution of India in detail. He also discusses the Supreme Court judgement in Shamsher Singh's case in regard to the position of the President of India. He points out that the President's power to call for information is central to all his functions under the Constitution of India. He says that Article 78(b) activises the Rashtrapati, vitalises his real presence as constitutional sentinel and invests his high office with a West-minister relevance. Thus nothing justifies a constitutional iron curtain between the President and the Prime Minister and the former must be given information on all matters pertaining to the administration of the country.

Shri K.C. Markandan in his article 'The Office of the President of the Indian Union' has examined in detail the intention of the founding fathers of the Constitution of India regarding the powers and the position of the Indian


President. He has also analysed the relationship between the President and the Council of Ministers. The opinions expressed by the judges in R.K. Jayama Iyer's case and Ram Jawaya Kapur's case regarding the position of the Indian President have also been discussed.

But all these works are confined to a limited period and do not exclusively discuss the provisions and implications of Articles 75, 78 and 87 of the Constitution of India in detail and the controversies regarding the powers of the President that arose in 1979 and 1987.

The main focus of our study is to analyse the true nature of Indian Presidency as intended by the framers of our Constitution and as it has worked out during the last forty-four years with particular reference to the issues we have raised and the roles played by Shri Sanjiva Reddy and Shri Zail Singh in 1979 and 1987 respectively.

**Methodology** -

This study has attempted to analyse the scope and extent of Presidential powers from both historical and analytical points of view, based on both primary as well as secondary sources. Our exploration of the subject has taken us to the Constituent Assembly Debates to find out what the design of the makers of our Constitution was, to
debates in the Parliament, to the judicial decisions and to legal, academic and political viewpoints (as expressed in the newspapers and periodicals) on the questions raised in the thesis.

The present work comprises five chapters. The first chapter deals with the viewpoints of the makers of our Constitution regarding the scope and extent of Presidential powers. The two views regarding the position of the President, the impact of 42nd and 44th Constitutional Amendments on his position, the Supreme Court's and High Court's judgements in regard to the actual powers and position of the President have also been discussed.

The second chapter discusses the President's right to get information. It analyses in detail the causes of rift between the President and the Prime Minister in 1987, the publication of President's letter and the reaction to it and the past practice in India regarding right of the Head of the State to get information. It also refers to the views of the important segments of society regarding this right.

In chapter three, we have taken up the President's rights to approve the Bills, to send messages to Parliament and addressing it. A detailed analysis of the controversy between Shri Zail Singh and Shri Rajiv Gandhi regarding
the Postal Bill and to send messages to Parliament has also been made. The controversy regarding Hindu Code Bill has also been discussed.

Chapter four examines in detail the President's right to appoint/dismiss the Prime Minister. It also refers to the Constituent Assembly Debates, the practice in Indian States and the convention in other countries regarding the right of the Head of the State to appoint and dismiss the Head of the Government. In this chapter, the role played by the Indian Presidents in 1979, 1984 and 1987 are also dealt with in detail.

Chapter five deals with the President's power to dissolve the Lok Sabha. An attempt has also been made to analyse the practice in Indian states and the convention regarding the right to dissolve the Legislature. The questions relating to the dissolutions of the fourth and sixth Lok Sabha have also been discussed in detail.

Lastly, a conclusion has been written to re-assess the findings of this thesis.