Conclusion

Regarding the powers and position of the Indian President, there are two themes - one, that like the British Monarch, he is a ceremonial head, always bound to act on the advice of the Council of Ministers (especially so, after the 42nd and 44th amendments); the other allows the President discretionary powers which he has to exercise according to his own best judgement.

We have explored the scope of President's discretionary powers as we did not agree with the first school of thinkers. That the President has discretionary powers of his own has been established by reputed jurists and academicians and even by our former President, Shri R.V. Venkataraman in his Address. According to him, whenever there is a power failure, the 'Emergency Lamp' must be on and he considers President in the role of that 'Emergency Lamp'. In other words, he has made out a very well reasoned case for the exercise of discretionary powers by the President in case of failure of the political processes.

We have gone beyond the concept of 'Emergency Lamp' and are advancing the thesis that being the guardian of the

Constitution and of the interests of the Country, the President has to act even though there may not be any apparent failure of the constitutional or political processes.

Our study reveals that though the Constituent Assembly of India adopted the English model of Parliamentary Democracy to suit the federal polity with a large population, yet the features of the American model such as the process of election of the President, impeachment etc. were also included in our Constitution. That is why there is no unanimity regarding the position and powers of the Indian President among the jurists, legal pundits and academicians.

Our submission is that the constitutional provisions allow the President sufficient scope to exercise certain discretionary powers, which he ought to explore in case he is convinced that the party in power, may be with an overwhelming majority in Parliament, is jeopardizing national interests in pursuit of its narrow political ends, and its continuance in office, according to his judgement, is not in public interest.

So far the President's right to get information under Article 78 of the Indian Constitution is concerned, we found that the President is not expected to act on the advice of the Council of Ministers. Articles 74 and 78 of the Constitution are quite independent and do not condition each other.
In case the Union Government refuses to furnish any information sought by the President, this would be a breach of constitutional provisions. What the Prime Minister initially sends to the President is naturally for him to decide but once the President asks for information under Article 78, the Government cannot refuse to supply the information asked for. In fact, there cannot be any secrecy to be kept from the Head of the State.

Differences of opinion, attitude and temperament between the Head of the State and the Head of the Government are not without precedent in our Country. But the situation deteriorated during the time of Shri Rajiv Gandhi. The President's letter to the Prime Minister in 1987, complaining that the constitutional provision relating to the furnishing of information to the Head of the State had not been properly followed by him, somehow leaked out and got publicity in the press. Thereafter, the members of the Opposition started demanding a discussion on it in both the Houses of Parliament so as to know the whole truth of the matter. But the Presiding Officers of Parliament disallowed the requests for any discussion in any manner on the subject on the ground that the President's name could not be a matter of discussion under the Rules of Procedure.
But, to us, this is not the correct interpretation of the Rules of Procedure relating to Parliament. When the President in his letter challenged the veracity of the statement made by the Prime Minister in the House, it became a matter of utmost importance for our representatives in the Parliament to know the real position in this matter. But all discussion on such a crucial issue was suppressed on the flimsy ground that President's name could not be a matter of debate in the Parliament. We have called it 'flimsy' because there have been precedents where the Head of the State has been discussed in the State Legislature as well as in Parliament and also because the House is empowered to suspend a Rule of Procedure if the situation so demands. In our view the Presiding Officers failed to rise above their party loyalties and did not serve the interests of the people and the cause of democracy well.

So far Article 78 is concerned there are two views. One view which the Government took (and is supported by some academicians and lawyers) is that the President's right

2. See p.55 of the Chapter 'President's Right to get Information'.


to call for information is not unlimited and unrestrained. The other view which has been taken by Justice Krishna Iyer, Justice H.R. Khanna, Shri A.G. Noorani and others is that the President has been given the right to get information and seek for broad clarifications from the Government on any matter pertaining to administration under the Constitution of India.

The first view, we feel, does not represent the correct constitutional position. Article 78 is very wide in its terms and it imposes certain constitutional obligations on the Prime Minister in his relations with the President. It makes the President's voice decisive because it clearly says that it is not only the duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to the affairs of the Union but also to furnish such information relating to the administration of the Country as the President may call for.

Another point in support of our contention is that the President is constitutionally entitled to criticise the conduct of the Executive and for this purpose decisions of the Council of Ministers relating to the administration of the Country must be communicated to him.

Lastly, when the President's right to know becomes a matter of controversy, the impression gains ground that
the Government is trying to hide something. This was the impression created in the Country when the Government refused to part with the files concerning the HDW submarine and Bofors deals called for by the President. Thus, there should not be any secrecy between the President and his Government because he is not only a part of the Executive but also of Parliament.

Regarding President's relations with Parliament, we have made the following points. First, regarding his Address to the Parliament, the President of India is not always bound to read the whole of it. In fact it is not always possible/necessary for the President to read out in his address whatever the Council of Ministers want him to read because he is not merely a mouth-piece of them. The President's address should be such which is in accordance with the oath which he takes under Article 60 of the Constitution and if the Council of Ministers include anything in his address which violates his oath of office or makes derogatory references to the Head of the State, the President can omit that portion and there is no constitutional impropriety involved in it.

The President has also been empowered by the Constitution to withhold his assent from any bill, except
money bill, which has been passed by Parliament and submitted to him for his assent, for preventing the Government from imposing an undesirable law on the Country. Though the Constitution forty-second amendment defeated this purpose to some extent and made the President bound to act on the advice of the Council of Ministers in the exercise of his functions but this does not mean that the President will always be bound to exercise his functions on the advice of his Ministry. The 44th amendment added a significant clause to Article 74 and gave the power to the President to return to the Council of Ministers its own decision for reconsideration. Thus, at present he can withhold his assent from a Bill or return it to Parliament for reconsideration.

In 1987, the President Shri Zail Singh withheld his assent from the Mail Interception Bill and sent a note to the Government with the suggestion that its flaws be rectified. He thus indicated that he had certain reservations with respect to certain clauses in the Bill and that he would not give his assent to it in that form.

Shri Zail Singh's action was truly unprecedented as this was the first time the President had kept a Bill and had publicly expressed his reservations about it contrary to the ministerial advice.
Subsequently the Government submitted its explanations in regard to the suggestions it had received from the President for changes in the Bill. But the President did not accept that explanation and again sent a letter to the Communication Ministry expressing his total dissatisfaction with the Government's response. Thus Shri Zail Singh ruled out his consent to the controversial Postal Bill and kept it pending with himself till his tenure expired and then left it to his successor to decide the delicate issue.

Shri R. Venkataraman, his successor, not only withheld his assent from the controversial Postal Bill but also from the Salaries and Pensions of Members of Parliament (Amendment) Bill of 1990 because it was violative of Article 117(1).

It is a fact that no bill can be passed in Parliament unless it is supported by the majority. A President who can withhold his assent and return to Parliament a Bill which has already been passed with ministerial support cannot be regarded as a mere rubber stamp in the hands of his Ministry. It is thus evident that he does enjoy some real power in this regard.

The President has also been given the veto power in the case of state legislation, reserved for his consideration. Though America and Australia have opted for the federal form of Government, but no provision for
such reservation of State Bills for the consideration of
the President or the Governor-General has been provided in
their constitutions. Thus, it can be said that the
President of India plays a significant role in the field of
Legislation and is not always bound to act according to
the advice of the Council of Ministers in all cases.

While discussing the President in relation to the
Indian Parliament, we have also discussed Article 86 which
empowers him to send messages to the Central Legislature.
We consider it a potent weapon in his hands in case a
confrontation develops between him and his Council of
Ministers. To recall, in 1987 there were wide spread
rumours that the President was thinking of sending a
message to the Parliament to demand that his letter to
Shri Rajiv Gandhi be discussed. On the other hand, the
Prime Minister did not agree with that interpretation of
Article 86 and felt that the President should send a
message to Parliament only after seeking the assent of
the Council of Ministers.

But this again is not the correct constitutional
position. Occasions requiring the President to take an
independent line of his own cannot be altogether and
evently ruled out. The President's right of sending
messages would hardly fit in the general scheme of things if the President is supposed to act on the advice of the Council of Ministers. The only purpose behind this power of sending messages seems to be that he may send such of his views to the Parliament as may not be in agreement with those of the Council of Ministers.

Thus, it is certain that the power of sending messages is not exercised by the President on the advice of the Council of Ministers. This power gives to him an area upon which he must exercise active discretion. This provision provides wide scope for the President to put forward publicly an expression of his own views when he deems it necessary. We would like to add that nothing in the Constitution debars him from personally delivering his message, if the situation so demands.

So far the President's right to appoint the Prime Minister under Article 75(1) of the Indian Constitution is concerned, it is well accepted that when no single party or a combination of parties gets a clear majority in the election, the President plays an influential role in the selection of the Head of the Government. Moreover, when the Head of the Government resigns or dies a natural death or is assassinated and the vacancy is created, the President may play an important role in the selection of the Prime Minister.
Occasion for the real exercise of the power of appointment of a Prime Minister arose for the first time during the presidency of Dr. Radhakrishnan. The death of Shri Jawahar Lal Nehru in May, 1964 and later of Shri Lal Bahadur Shastri in January, 1966 brought their Governments to an end; the Congress party could not immediately indicate who were to be its leader in Parliament and as such head the Government. Therefore, the President exercised his discretion and appointed on both the occasions, Shri Gulzari Lal Nanda, he being the senior most Cabinet member, as the caretaker Prime Minister. The Congress Parliamentary Party later met to elect its leaders to succeed Shri Gulzari Lal Nanda, in 1964 and in 1966.

Similarly after Mrs. Indira Gandhi's assassination, an occasion arose for the exercise of Presidential discretion. The President, Giani Zail Singh, instead of asking the senior most Cabinet Minister to take over as caretaker Prime Minister straightaway invited Shri Rajiv Gandhi (without a day's experience as a Minister) to form a Government. This was in violation of the earlier
practice. Shri Gandhi was subsequently elected as the leader of the Congress Parliamentary Party.

The Indian President has also greater scope for the exercise of his discretionary powers regarding the selection of the Prime Minister when the majority party in the Lok Sabha splits and the Government resigns in anticipation of its defeat on the floor of the House. In fact such a situation developed in India in July 1979 and provided an opportunity to the President to exercise his authority independently. In fact, various decisions taken by him, when the Janata Government led by Shri Morarji Desai resigned, created important precedents.

Now, coming to the power of the President to dismiss the Prime Minister, it is well established that such a step can be taken by the former if the latter tries to stick to office even after a vote of no-confidence is passed against him or if he refuses to summon the Lok Sabha for proving his

3. Giani Zail Singh appointed Shri Rajiv Gandhi as the Prime Minister of India by violating the earlier practice which was followed at the time of appointment of Shri Gulzari Lal Nanda (as the caretaker Prime Minister) in 1964 and in 1966. On both these occasions, Shri Gulzari Lal Nanda was sworn in as the acting Prime Minister and subsequently the Congress Parliamentary Party elected its leader for Prime Ministership. In Shri Rajiv Gandhi's case, this practice was not followed because he was appointed as the Prime Minister before he was elected as the leader of the Congress Parliamentary Party.
majority. We submit that, apart from the above circumstances, the Prime Minister, though he enjoys majority (may be overwhelming) in the Lok Sabha can also be dismissed in some extraordinary situations.

Such an extraordinary situation developed when, in 1987, the President, Shri Zail Singh, sent a letter to the Government intimating his desire to be briefed about the developments relating to the scandals concerning the HDW submarine deal, the Bofors deal and the Fairfax affair.

But the Prime Minister, Shri Rajiv Gandhi, refused to give any information in regard to those deals to the President on the ground that these were technical and classified. He, in fact, was of the view that the Council of Ministers was supreme in regard to taking decisions on giving information to the President.

The President refused to accept that argument of the Prime Minister. Apprehension that the President was seeking reinterpretation of the constitutional provisions to divest Mr. Rajiv Gandhi of his office and bring down a duly elected Government, had spread round the Country.

Shri Zail Singh did not dismiss Shri Rajiv Gandhi but the controversy did provide food for thought to the constitutional pundits regarding the power of the President to
dismiss the Prime Minister in case the latter refuses to discharge his constitutional obligations/duties vis-a-vis the former.

As we have said, the President has certain reserve powers and he is obliged by his oath to exercise them. If he has reasons to believe that the Prime Minister is violating the basic principles of the Constitution or trying to subvert it or is indulging in such activities which are threatening the security of the Country or is practising bribery and corruption, our submission is that he can dismiss the Head of the Government even if he enjoys majority in the Legislature.

The President also exercises his discretion in the matter of dissolution of the Lok Sabha as he would not always accept the recommendation of the outgoing Prime Minister who has lost majority or has been defeated on the floor of the House. He would dissolve the Lok Sabha only if he is satisfied that no other leader can form the Government. In August 1979, the President accepted the recommendation of Mr. Charan Singh for the dissolution of the Lok Sabha because he himself was satisfied that no other leader could form the Government and the general election was the only alternative.

The President's power to dissolve the Parliament assumes extraordinary significance, in case he takes the most unusual
step of dismissing the Prime Minister. In such a situation, it is incumbent upon him first to explore the possibility of an alternative Government failing which to appoint a caretaker Prime Minister and then to dissolve the Lok Sabha so that the people have an opportunity to judge the rightness or wrongness of his decision.

To conclude, the makers of our Constitution neither wanted Prime Ministerial dictatorship sustained by a captive majority, nor a Presidential dictatorship. Moreover, it has not been our contention that the President has a right to dismiss the Prime Minister just because some information has been denied to him. To us, the real issue was not Article 78 and the President's right to seek and the Prime Minister's duty to give information under it, but that of endangering national interest - the real issue was corruption involving highest authorities and the attempts to confuse and thus conceal the facts from the Nation. If the President seeks to unravel those facts through his right under Article 78 and, if he feels that national interests are in jeopardy on the basis of those facts, he has not only a right but a duty, as per the oath he has taken, to dismiss such a Government and ask it to seek fresh mandate from the people.
The President is the symbol of national unity, political stability and continuity. His mandate is far more broadbased than that of the Council of Ministers. Therefore, he cannot remain a helpless and hapless spectator and allow the Constitution to be trampled or the interests of the Country jeopardized.