CHAPTER THREE

PRIME MINISTER'S RELATIONSHIP WITH
THE PRESIDENT
THE CONSTITUTIONAL SETTING:

The Indian constitution has left scope for controversy on a segment of the relationship of the President with the Prime Minister. Article 52 vests the executive power of the Union in the President and empowers him to exercise it directly or through officers subordinate to him. In the same vein, Art 74 contemplates a Council of Ministers with the Prime Minister at its head to aid and advise the President in the exercise of his functions. But on certain matters, the President is enjoined to consult the Election Commission, the Chief Justice of India and the Governor of a State. Further, he is authorised to appoint the Prime Minister and with his help, make all important appointments. All these propositions are, however, construed in the context of the mechanics of "limited

1. The Constitutions of the Federal Republic of Germany, 1949; Italy, 1947; Ireland; the Fifth Republic of France; and Japan, 1947, specifically mention that the President will have a limited role to play on his decisions and orders will be countersigned. On the other hand, discretion has been allowed to the President explicitly in the Constitution of Malawi, 1966 and many other constitutions. Our Constitution has permitted 'elasticity' on this point consciously. For reasons, Santhanan K., constituent Assembly Debates (Government of India, constituent Assembly official Report) Vol. VII, 30 December, 1948, p.1155.

2. For relevant articles, see Articles 103, 124(4), 143(1), 124(2) and 217(1).
Dr. B. R. Ambedkar expected that no case would arise when the President would be called upon to discharge his functions without the advice of the Prime Minister or his Cabinet. According to him, the President was to be a 'figurehead' and if he acted without the advice of his ministers, he violated the constitution and could be impeached on this ground. Several distinguished members of the house, namely, H.V. Kamath, P.S. Deshmukh, K. Hanumanthaiah, Alladi Krishnaswami Aiyar besides Jawaharlal Nehru and Sardar Vallabhbhai Patel broadly endorsed this conception of the office. Rajendra Prasad had some doubts in his mind but in his valedictory speech, he said, 'the convention under which in England the kind acts... will be established in this country also, and the President....... will become a constitutional President in all matters'.

As President of the Constituent Assembly, Dr. Rajendra

8 Ibid. Vol XI p. 988;
Frasad felt that the innocuous phrase 'aid and advice' and its character should be properly spelled out somewhere in the constitution. But the draft constitution or the present constitution did not lay down in clear terms that the President was bound to accept ministerial advice. Specific provision to that effect was to be made in the proposed Instrument of Instructions but subsequently, the proposal was withdrawn and this aspect of the matter was left to be regulated by conventions. Naturally, therefore, the scope and extent of Presidential power became a matter of controversy among lawyers, jurists, academics and politicians. The fact that even its first incumbent Rajendra Prasad had some doubt lent edge to the controversy. The result was the emergence of two broad schools of thought on the subject of Presidential power in India.

In response to Rajendra Prasad's queries, in 1947, B.N. Rau opined that the President was bound by the advice.

11 Constituent Assembly Debates (Government of India, Constituent Assembly Official Report) Vol VIII, pp.215-16
12 Ibid: Vol X, pp.369-71
of the Council of Ministers in all cases. But soon after assuming the office, Rajendra Prasad enquired of the Prime Minister if the President of India might act independently of the advice of his ministers and gave detailed references of the spheres in which he might act so. Subsequently, he specified that the President had the right to address and send messages to parliament, to assent or withdraw assent to a Bill passed by Parliament and to return a Bill to Parliament if it is not a Money Bill. But the two legal luminaries of the time, M.C. Setalvad and A.K. Aiyar did not approve of Rajendra Prasad's interpretation. M.C. Setalvad held that by the Constitution, the President is required to act in all matters with the aid and advice of this Council of Ministers; has no prerogatives and is in this respect weaker than the British monarch. Relying upon British practice and conventions, A.K. Aiyar took a similar

13 Rau B.N: The President and the Cabinet', The Hindu (Madras) 14th May, 1957.
18. stand and quoted Sir Ivor Jennings and other British authorities to substantiate his stand. The judgments of Supreme Court in Kallu Sahib Ram Jawaya Kapur and others v. The State of Punjab and of Andhra Pradesh High Court in the Iyer, I.I.C case confirmed the earlier views. The views of two judges in a recent judgment of the Supreme Court in a Punjab case has tilted the balance all the more in their favour.

The debate on Presidential powers, however, became a public issue, when some months before laying down office, in a speech to the Indian Law Institute, President Rajendra Prasad asked, 'how far we are entitled to invoke and incorporate into our written constitution by interpretation

20 All India Reporter (New Delhi) 1955-40, pp. 549-56 particularly p.556.
21 All India Reporter (New Delhi) 1958-Vol. 45 pp. 643-7 particularly p.645. The Andhra Pradesh High Court order said in interpretation of Art.74 of the constitution of India'....the function of Ministers or Council of Ministers is not merely giving advice; they can take decisions which ‘must take effect’. That is the meaning of ministerial responsibility to the House of the people and being the executive head, all executive action is taken in the name of the President p.645.
22 Times of India (Delhi), 21 August, 1974.
the conventions of the British Constitution which is an
unwritten Constitution K. Santhanam and K.M. Munshi changed
then clearly expressed views in the Constituent
Assembly and thought that the President was not just a
figurehead. Already Gledhill had drawn a picture of an
'autocratic' President protecting a 'constitutional' takeover
of power by the President.

Coming after a decade of governmental experience,
Rajendra Prasad's speech created such sensation and
misgivings in the country that Bhupesh Gupta felt persuaded
to table a motion for a constitutional Amendment Bill in
the Rajya Sabha seeking to amend Article 74 and other
articles of the Constitution so as to make the advice of
the Council of Ministers binding on the President in the
exercise of his powers. Discussion on the Bill showed
that many members wanted the former elasticity with regard
77
to President's powers to continue. The Government

24 Munshi, K. M: The President Under the Indian Constitution,
(Bharatiya Vidya Bhawan, Bombay, 1963) p.96
25 Alan Gledhill: The Republic of India (Stevens & Sons,
26 India Parliamentary debates Rajya Sabha, Rajya Sabha
preferred to evade the issue by saying that 'the so-called controversy' is less real and more academic.'

With the gradual weakening and ultimate passing away of Jawaharlal Nehru, with growing dissension in the Congress, its diminished majority in parliament and the emergence of non-Congress coalition governments in some states after the fourth general election, some new dimensions of the power of the President came to be underlined. The frequent use of ordinances and promulgation of emergencies under Art. 356 and even under Art. 352 by the party in power at the centre emphasised the need for an impartial and a non-partisan Head of State. The Presidential elections held in 1967 and 1969, added to the relevance of the controversy. During the 1969 conflict, even the Prime Minister seemed to believe that the many undefined and untested powers of the president could be used to clip the wings of a Prime Minister. The need for an active presidency was felt by some opposition

30 Bhupesh Gupta: National Candidate: V.V. Giri, New Age, (New Delhi) Vol. XVII.
leaders. Demands for dismissal of the Prime Minister by the President when the government was reduced to a minority in Parliament in November-December, 1969 and for refusal of the request for dissolution of Parliament were vocally made. Suggestions were made that the President should have withheld assent to certain bills. After the Allahabad Court judgment against the Prime Minister, some opposition leaders waited upon the President to dismiss the Prime Minister or to request her to resign.

It appears that a third school of thought on presidential powers has emerged. While accepting that the President in India is a constitutional head, this school seems to believe that the President has certain "reserve or

31 Choosing a President, The Economist, (London) 15 April 1967. N.C. Chatterjee demanded that the President should exercise independent judgement and be dynamic. His demand was criticized by Mohan Kumaramangalam, The Statesman, (Calcutta); 3 May, 1967.
32 Noorani, A.B: Conventions of our Constitution Indian Express (New Delhi) 4 May 1971.
'residuary' powers. Dr. B.R. Ambedkar had mentioned that the President of India will have no functions, but two prerogatives: to appoint the Prime Minister and to dissolve the House. Obviously, in the exercise of these two "functions" or 'prerogatives', the President was granted some discretion. The third school cites many other situations or instances in which the President should have to interfere, for example, to protect the constitution, to see that the Cabinet has the confidence of Parliament, to see that the ministry is not arbitrarily flouting the wishes of the people, etc.; this school believes that in the event of a council of Ministers losing the confidence of the House or being bent upon subverting the constitution, the


President has 'certain residuary powers' and may be obliged by the oath to exercise them. No constitutional impropriety is involved in this action. In fact, according to a scholar, when there is danger to the constitutional system, the President, should 'step in and see that the country does not suffer'. However, this school of thought has not been able to suggest how their ideas can be reconciled with the theory and practice of parliamentary government.

From the strictly constitutional point of view, Munshi's interpretation seems correct. But what ultimately

35 Searl, H. M., Constitutional Law of India, a critical commentary (Tripathi, Bombay 1967) P. 773
37 R e c t. v. Parliamentary Democracy of India (The World Press, Calcutta, 1965) p. 73
38 The following comments on the President's constitutional position, made by India's Supreme Court, in Ram Jawaya v. State of Punjab (1955) are significant: "Under Article 53 (I) of our Constitution, the executive power of the union is vested in the President, but under article 75 there is to be a Council of Ministers with the Prime Minister at the head to aid and advise on his functions. The President has thus been made a formal head of the executive and the real executive powers are vested in the Ministers or the Cabinet. The same provisions obtain in regard to the government of states; the Governor occupies the position of the head of the executive in the state, but it is virtually the council of ministers in each state that carries on the executive Government. In the Indian Constitution therefore we have the same system of parliamentary executive as in England, and the council of Ministers, consisting as it does of the members of the Legislature, is like the British Cabinet - 'a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part".
matters is the personality of the President as well as his personal relationship with the Prime Minister. So far, the constitution has worked smoothly because of the cordial relationship between the President and the Prime Minister and because the same political party, namely the Congress, has been in power both at the Centre and in the States ever since the Constitution came into force in January 1950.

India's first President was Dr. Rajendra Prasad, a veteran Congressmen and a close associate of Mahatma Gandhi. Before the attainment of freedom, Rajendra Prasad had served as the Congress President for three terms and as a member of the Congress President for three terms and as a member of the Congress Working Committee for a number of years. He was Minister of Food and Agriculture in the Interim Government of India set up in September 1946 but resigned the post on being elected President of the Constituent Assembly. His election as President of the Indian Republic in January 1950 was opposed by the late Professor K.T. Shah, an eminent economist. But Rajendra Prasad was elected by 2,096 votes out of the total of 3,486 votes cast.

39 In Kerala, however, the communist party was in power for a brief period of twenty-seven months in 1957-9.
Rajendra Prasad and Pandit Jawaharlal Nehru had been intimate colleagues in the congress for many decades and both had great respect and affection for each other, although their outlook on political and economic problems was not always identical. While Jawaharlal Nehru favoured radical and rapid reforms in the country’s economic and social structure, Rajendra Prasad wanted to go slow so that the Government could carry public opinion with it. It was, therefore, unsurprising that sometimes differences arose between the President and the Prime Minister on certain major issues.

Rajendra Prasad was succeeded by Dr. S. Radhakrishnan who had served as Vice-President of India since 1952. As scholar, professor and philosopher, he had won great renown both in India and abroad. He had also been India’s Ambassador in Moscow for three years. Within a few months after his election as President of India came the massive invasion by China in October 1962, and the President, therefore, proclaimed Emergency in November under Article 352 of the Constitution.

During the four years he has been president, Dr. Radhakrishnan has shown courage and statesmanship of a high order. He made no secret of the fact that the Chinese invasion had greatly hurt the prestige of India. In a speech in Bombay in January 1963, he described India's reverses in NEPA as 'a matter of sorrow, shame and humiliation'. His speeches in the United States and the United Kingdom, which he visited in 1963, helped to create a better understanding of India's foreign policy, and strengthened India's friendship with the Western world.

As in the case of India's first President, Jawaharlal Nehru and Dr S. Radhakrishnan also got on together very well indeed. In his Republic Day message in January 1964, Radhakrishnan expressed his pleasure and that of the people of India in Jawaharlal Nehru's rapid recovery from his illness, and paid a warm tribute to the Prime Minister's leadership. The President said: 'He has brought a modern, secular and scientific outlook to our difficult and diverse problems and has, indeed reflected the national purpose over these years. More than anyone, our Prime Minister has helped us to put us on the right track in our quest for national integration and orderly growth.' And on the death
of Jawaharlal Nehru, the President, in the course of a broadcast to the nation, said:

Pandit Jawaharlal Nehru held the office of the Prime Minister of our country ever since the dawn of independence; and in the long years of his premiership tried to put our country on a progressive, scientific, dynamic and non-communal basis. His steadfast loyalty to certain fundamental principles of liberalism gave direction to our thought and life... He used the existing social and political institutions and breathed into them a new spirit, a new vigour.

The constitution has vaguely defined the powers of the President as head of the state in relation to the Prime Minister. All the Prime Ministers at one time or another had to face a situation where in their respective Presidents had differences with them over policy matters. However, the logic of the Cabinet form of government and the dynamics of the office under study tended to resolve such differences in favour of the position taken by the Prime Ministers. Perhaps, the sagacious President like Rajendra Prasad on his part, was not sure whether he

41 Ibid : 108
could successfully make a public issue of his differences. As for Jawaharlal Nehru, his concern for the proprieties of public conduct inclined him to a similar course. Nevertheless, it was no secret to knowledgeable people in Delhi that Nehru looked upon Prasad as a revivalist.

Rajendra Prasad had presided over the constituent assembly with remarkable ability invariably heading his energies towards giving India a sound workable constitution. Soon after assuming the Presidentship of the Republic, he raised a few points of constitutional importance. Rajendra Prasad wrote to Jawaharlal Nehru on 15th September 1951 that he had the power to with-hold assent to bills at his discretion, to dismiss a ministry or a minister, to order a general election and as the Supreme Commander of the defence forces to send for the Military Chiefs and ask for information about defence matters.

43 Das, Durga. India—From curzon to Nehru and after. (Collins clear Type Press, London 1969) p.332
This was a flagrant attack on the conventions which underlie the Cabinet form of government, and there can be little doubt that it was inspired by the Hindu Code bill which had just been introduced in the provisional parliament. This bill would have largely invalidated Hindu personal law and was to Rajendra Prasad a conservative Hindu extremely distasteful. He maintained that "the provisional parliament did not have the authority to enact such a legislation because it was indirectly elected and its members lacked the public 'mandate of the general elections'.

Jawaharlal Nehru sought the advice of the attorney general, N.C. Sethia, who gave two contradictory opinions. Sethia in his first note on October 1950 said that the President had the right to dismiss his ministry and dissolve parliament if he was convinced that it did not truly reflect the opinion of the people. When the controversy flared forth with a new intensity, after Rajendra Prasad's letter dated 18 September 1951, Jawaharlal Nehru was aghast to find that the president was claiming

the right to dissolve parliament as conceded by Setalvad in 1950. The breach had to be repaired, and Setalvad was asked to prepare a fresh note which reveals a pathetic attempt on his part to wriggle out of the position he had taken a year ago. Now his opinion on the same question was different. The note dated 24 September 1951 said: "The powers of the President cannot be exercised by him without the concurrence of his ministers." It further held that like a constitutional monarch, he could exert his influence in other ways. He could dismiss a minister but he could not get rid of a ministry and order elections. The power to hold elections in his own discretion was not, according to the letter of law, but given to him and it could be exercised as a reserve power if the President felt strongly that parliament did not reflect the political balance in the country. The President could not send for the service chiefs, but he could send for the Defence Minister and direct him to make enquiries. Setalvad further maintained

45 Pandit, H.N: The Prime Minister's President (S. Chand and Co., Delhi, 1974) p.68
46 Durqadas: Sardar Patel's Correspondence (Navajivan Press, Ahmedabad, 1972) vol. VI, p.332
47 Ibid p.332
Despite the differences, the Prime Minister, however, gave full respect to the office of the President. He exchanged letters with the President and discussed with him all the important matters relating to general administration. However, the Prime Minister pointed out that his discussions with the President were not because of the offices they held but because they had been old friends and close associates. Friendship as the basis of exchange of letters and discussions on important matters of state is hardly convincing since the Prime Minister is bound by convention to keep the President informed of what goes on, and in turn the President has the privilege to encourage, to warn and to advise.

The instances mentioned clearly indicate that precise relationship between the Prime Minister and the President had not been fully established. If furthermore, indicates an attempt on the part of the Prime Minister to contain the efforts of the President, to maintain an independent opinion on policy matters and to force him merely echo the

52 The Hindustan Times (New Delhi) 8 July 1959
53 The Hindustan Standard (New Delhi), 4 May 1953
policies laid down and expounded by the Prime Minister. During this early period of independence the occupants of the two offices were in the grip of a personality clash; there are a few indications that their differences had some ideological basis. The developing nature of the relationship between the Prime Minister and the President is also highlighted by the postures assumed by Dr. S. Radhakrishnan who was elevated to the Presidency in 1962. As already discussed Dr. S. Radhakrishnan had been Jawaharlal Nehru’s choice for the Presidency.

In 1962, Dr. S. Radhakrishnan became the President of the Indian Republic. It was a big relief to Jawaharlal Nehru for he wanted to get rid of a traditionalist President. But to the great dismay of the Prime Minister, Dr. S. Radhakrishnan, the new President, was staunch in his views as Rajendra Prasad was. Upto now Jawaharlal Nehru, was strong but he became weak both in the government and the Party when in October 1962 India suffered defeat at the hands of China. The anger of the people fell on the defence minister, V. K. Krishna Menon, who was one of Nehru’s close associates. There was pressure on Jawaharlal Nehru from all groups to oust Menon. Even Dr. S. Radhakrishnan sent
an indirect message to Jawaharlal Nehru to drop him. Nehru, however, did not want to dismiss him since he felt that the latter was implementing his policy. Ultimately, the will of the people prevailed and Menon was compelled to resign. No doubt, the President did not directly play any significant role in the ouster of Menon, yet his open and outspoken remarks on the policies and performance of the Prime Minister indicate the dynamic nature of the Emerging relationship between the two functionaries. At times Dr. S. Radhakrishnan would criticize government's policy. During the Chinese aggression, he observed, "Our credulity and negligence are responsible for this defeat." On the same day, he blamed the government for the widespread incompetence and mismanagement of resources. He consolidated his position further during the Pakistan aggression and the national language crisis in 1965.

Jawaharlal Nehru died in 1964, and for a short period Gulzarilal Nanda became the caretaker Prime Minister, ultimately handing over to Lal Bahadur Shastri who was the

55 Ibid P. 81
real choice of the congress party. The equation between Lal Bahadur Shastri and Dr. S. Radhakrishnan was good and no confrontation took place and none had to face any trouble. Moreover, during Lal Bahadur Shastri’s short tenure of eighteen months when he was busy with war with Pakistan no occasion arose for the Prime Minister to have any differences with President.

Mrs. Indira Gandhi became Prime Minister in 1966 and the period from 1966 to 1969 is significant in the sense that her hold on the organization was weak and she tried her best to consolidate her position. As pointed out earlier, she nominated Zakir Hussain for the office of the President since she did not want to give Dr. S. Radhakrishnan a second term because of her attempts to impose his views on her. It was with the death of President Zakir Hussain that new developments took place. In July 1969 an ordinance on bank nationalisation was promulgated by the acting President C. J. Hidayatullah and it was followed by an Act of Parliament. This act was challenged and struck down by the Supreme Court. It was again passed by parliament with amendments suggested by the court. The privy purses bill failed to carry the majority in the Rajya Sabha. V. V. Biri,
President of India at that time, was away in Russia. The Prime Minister sent an emissary to Russia with an ordinance derecognising the princes to be issued by the President. It was duly issued but was later struck down by the Supreme Court. In 1974 in disregard to the wishes of the opposition Mrs. Indira Gandhi nominated Fakhruddin Ali Ahmed to contest the Presidency of the Indian Republic and he won the elections in the first preferential voting. In 1977, after his death Morarji Desai nominated Sanjiva Reddy and he was elected unopposed. In 1982, in order to have a very weak president Mrs. Indira Gandhi nominated Zail Singh as a presidential candidate. Giani Zail Singh said that he could even sweep the floor and repair shoes if the Prime Minister, Mrs. Indira Gandhi desires it.

The Prime Minister is generally appointed from among the members of the Lok Sabha as is the case in Great Britain from where the concept of the parliamentary form of government has been borrowed. But the President can appoint any person as the Prime Minister even from the Rajya Sabha since the constitution is silent on this point.

56 Tribune (Chandigarh) 28th May, 1982.
matter. Moreover, one can also appoint a person as Prime Minister who is not the popular choice of the members of Lok Sabha. However, this state of affairs can only continue for a period of six months. Earlier even the assurance of Yunus Saleem in the parliament to sponsor a bill to ensure that a Prime Minister is chosen from the Lok Sabha and not from the Rajya Sabha has not yet been honoured. The President can use his judgement regarding the appointment of the Prime Minister when no party has a clear majority in parliament. The constitution places high hopes on the President. He is expected to appoint that person as the Prime Minister who is the choice of the

57 This was done in the case of Smt. Indira Gandhi in 1966.
58 No such case has been experienced in India, till 1978. The parliament is to meet at least once in six months. In July 1979, the president appointed Charan Singh as Prime Minister and asked him to summon parliament on August 20, 1979 to prove his majority. Since he was sure that he will not be able to show majority, he resigned on 20th morning before facing Lok Sabha. The Lok Sabha was dissolved and he was asked to continue till the proper government is formed. He continued upto 13th July 1980.
59 This was done in 1967 when Mrs. Indira Gandhi was in minority because of Congress split and she was allowed to continue on the plea that she was the leader of the single largest party.
majority party. But when there is controversy about the majority, the President assesses the situation. This was done by Sanjiva Reddy when he ignored the claims of Janata Party and called Charan Singh to form the Government.

The majority party in parliament in the first meeting elects its own leader and the President is informed of its choice. The leader is then formally invited to form the government. Jawaharlal Nehru was always elected leader since he was an undisputed choice of the party. Also he was a charismatic leader. In fact, the massive mandate to the congress party during Nehru's period as Prime Minister was because of his personality. Sometimes the incumbent of the office builds up his successor. Some times the persons use different devices to get at the succession. Jawaharlal Nehru knew that Indira Gandhi was not strong enough at that time to have the responsibility of the Prime Ministership that is why during his illness he called Lal

60 Pal, R.N: op.cit p. 155
61 Durga Das, op.cit p. 387
62 Mrs. Indira Gandhi had started winning over young MPs and during Nehru's life-time calling them at least twice a month to her resident over tea. Interview with Lalit Sen, fact corroborated by C.L. Nanda.
Bahadar Shastri as minister portfolio to help him. This
may or may mean for the future leadership of the
party for Lal Bahadur Shastri. In the case of both Lal
Bahadur Shastri as minister without portfolio to help him.
This indicated Nehru's choice for the future leadership of
the party for Lal Bahadur Shastri and Indira Gandhi there
was a contest within the party for the leadership. Both
Harish Chandra (1971) and Indira Gandhi (in 1980) were
selected unexpectedly. Harish Chandra was elected with the help
of Irani and Dr Prabhat Marayan. Chanan Singh was
declared leader by the party.

The constitution leaves it to the President to appoint
the Prime Minister. However, his discretion is limited by
several practical constraints. It is expected of him to
appoint that person as the Prime Minister who has the
majority support in the Lok Sabha. He may or may not be
the member of parliament. In case he is not, he must attain
membership within six months of his appointment. The
President must be satisfied that the person concerned will
not be rejected by the Lok Sabha. Since Art.74 of the
Indian Constitution has used the word 'shall', so the
office of the Prime Minister cannot remain vacant. On the
death of Jawahar Lal Nehru, President Radhakrishnan
immediately administered the oath of office to Bulsari Lal
Nanda, the seniormost member, though Nanda was never a candidate for the Premiership. Lalamaj, Krishna Menon and others raised a hue and cry that the constitution does not provide for such a system. But the President made it clear that Art.74(1) makes it clear beyond doubt that such an office can never remain vacant. Since then there is a convention that at the death of the Prime Minister, the senior-most member would be administered the oath of office as a stop-gap arrangement. This system was also followed at the time of Lal Bahadur Shastri's death.

The study made so far clearly shows that the political structure of the country provided ample opportunity for the Prime Minister to emerge stronger than the President. He was politically weak up to 1951 when the organization was strong and he was strong up to 1962 when the organization was with him and there was no confrontation. He was politically weak from 1962 till death because both the party and the Indian President had become stronger. Lal Bahadur Shastri became strong after war with Pakistan. Indira Gandhi was weak till 1969 when she splitted the party. She became strong from 1971-74 when she could not maintain law, order could not stabilise prices and did not
hold elections in Gurarat since she knew she would lose it ultimately in 1975 when elections were held she lost it. In order to control the government and the party apparatus she imposed emergency in 1975. In 1977 when general elections were held she could not even win her own seat and her party men revolted against her. In the context of developing and dynamic relationship between one Prime Minister and the President, it would be desirable here to have a brief discussion of constitutional provisions. The provisions in respect of aid and advice and the dissolutions of Lok Sabha are of special significance.

The Constitution of India provides that the Prime Minister will perform the following duties.

(a) to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Indian Union and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

45 Constitution of India Art.70(a), (b) & (c).
(c) if the President so requires, to submit for the consideration of the council of ministers and matter on which a decision has been taken by a minister but which has not been considered by the council.

Article 74 (I) of the constitution says that there shall be a Prime Minister with a council of ministers to aid and advise the President. The question arises whether advice given by the Prime Minister and council of ministers would be binding on the President or not. There are two schools of thought in this respect. One school, headed by K. Santhanam, holds the view that since it is an advice, it is not at all binding on the President. K. Santhanam maintains that there is no constitutional obligation for the President to abide by the advice tendered by his council of ministers and that he could even act contrary to their advice with impunity the moment he gets to know that the government will not be able to get a majority of two thirds of the total membership of the two houses of parliament to have him impeached.

64) Markanda, K.C. the Office of the President of the Indian Union: A Probe into the intentions of the Founding Fathers, Journal of constitutional and Parliamentary studies, July-September (New Delhi), 1969 p.64
The constitution does not specifically say whether the advice would be binding or not, but since it is only an advice, it is not necessary that the President must accept it. He is under oath of office to abide by the constitution and if he feels that the advice given to him by the Prime Minister is contrary to the spirit of the constitution, he could very well reject it. Even the draft constitution under Art.61(a), now known as Art.71(4) does not lay down any specific condition. On the contrary, there are constitutional experts like Dr.B.R.Ambedkar who maintain that if the President violates the advice of the Prime Minister, it would be tantamount to violation of the constitution and that there is not the slightest doubt about it. The powers and functions of the Prime Minister today are, indeed, modelled on the pattern of the British Constitution but the office under each of the Prime Minister has worked with certain modifications as was necessitated by the needs of the country.

The two articles are the result of different theoretical assumptions. Whereas Article 74(1) is formulated on the basis of the principle that in a parliamentary form of government, the head of the state is a legal fiction and he carries out the "aid and advice" tendered to him by the Prime Minister and the Council of Ministers, Article 86(1)(b) gives the President the power to dissolve the Lok Sabha, thus introducing an element of arbitrariness which does not conform to the theory of a parliamentary form of government. This happened in 1979 when the President dissolved the Lok Sabha in accordance with his own judgement. These provisions can lead to tension between the Prime Minister and the President. Nevertheless this "aid and advice" theory in a parliamentary democracy is invariably a compulsion for him.

The British constitution is quite clear on the theory of aid and advice; however, our constitution is silent on this point. Dr. B.R. Ambedkar gave reasons for not mentioning the word "the President must accept the advice tendered." He

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66 The Tribune (Chandigarh) 27th August, 1979.
67 Constituent Assembly Debates: (Government of India, Constituent Assembly Official Report); Vol VII, 30 December, 1948; p.1160
believed that the relationship governing the mandatory acceptance of aid and advice should be governed by conventions in consonance with the theory of a parliamentary form of government.

Dr. B. R. Ambedkar seems to be of the view that the President should order dissolution of the house on the advice of the Prime Minister or suomoto, only when he thinks that the house does not represent the wishes of the people. Dicey and Lord Hugh Cecil are of the view that it is not essential for the sovereign to accept invariably the advice of the minister in respect to the House of Commons. In Britain the power to advise the crown to dissolve the House of Commons had been exercised by the Cabinets. But lately it has come to be vested in the Prime Ministers. In England there are only two prerogatives, which the king or the head of state may exercise—the appointment of the Prime Minister and the dissolution of the parliament. The king must invite the leader of the majority party, that is the Prime Minister to recommend the dissolution of Lok Sabha. There could be three situations when dissolution of Lok Sabha could be demanded. First when the Prime Minister is in majority. In such cases, the recommendation of the
Prime Minister is binding. Secondly, when the Prime Minister is the leader of the single largest party in the Lok Sabha, in this case also the President accepts the advice. Thirdly, when the Prime Minister loses majority support. His recommendation cannot be accepted since he has lost the majority support. In India the only occasion when the President of India was advised to dissolve the house arose in 1970 and 1979. As a result of the Congress split of 1969, the Prime Minister no longer enjoyed absolute majority in the Lok Sabha. However, the Prime Minister continued in office as leader of the single largest party with the support from outside the government of parties such as the CPI, DMK, Jharkhand and Akali party. In 1970 when the advice to dissolve the Lok Sabha was tendered, the President could have explored the possibility of forming an alternative government instead of accepting the advice for the dissolution of the house by the leader of the largest party, the Prime Minister. In 1979 the President explored the possibility of forming a national government and came to the conclusion that he cannot. In India these two are the only cases when the Prime Minister advised the President to dissolve Lok Sabha, and it was accepted. If this could be
accepted as a procedure or convention. It is possible that a comparison with the conventions prevalent in other Commonwealth countries may give a better insight of the problem like that of the conservatives of England. In India, too, there are certain constitutional experts who hold that the President should go by his own judgement when he finds that the Prime Minister does not enjoy the support of the majority. In 1970 when the Prime Minister sought dissolution and it was granted, she became controversial since she used it as a power weapon. Moreover, the political structure of the country had also made her powerful. Besides, she was the leader of the single largest party which, exclusively, had formed the government. On 21 December 1970 Mrs. Indira Gandhi sought the dissolution but V.V. Giri refused it saying that she should send the recommendations of the council of ministers and not merely of her own as provided in Art. 74(1). The President was right in demanding so and after getting the formal recommendations he granting it.

The Prime Minister advises the President for the dissolution of even state assemblies. A new trend in Indian
federation has come into being. The President was advised by Morarji Desai to dissolve nine state assemblies and same was done. However, the President did not accept the advice of the fifth Prime Minister Charan Singh, to dissolve Haryana and Himachal assemblies. If the Prime Minister is defeated on the floor of the house and after his defeat he asks for dissolution and wishes to go to the electorate, such a dissolution should not be granted, since he no longer reflects the wishes of the majority. Even in such circumstances, the President can become a source of controversy. It would be better if some independent body be formed to give advice to the President, so that he could use his powers in a proper way.

After the coming of Mrs. Indira Gandhi into power in 1980 there was a perceptible change in President’s style of functioning. The dismissal of nine state governments and particularly the dismissal of two governors, namely, Prabhu Das patwari and Raghukul Tilak, the governors of Tamil Nadu and Rajasthan respectively shows that he acted in a subdued manner for some time. However, of late he has made certain
speeches which have annoyed the Prime Minister to some extent. For example: his advice to the Government of India to transfer more powers to the states and asking the solicitor general to inform the Supreme Court that the Chief Justice had not discussed with him the transfer of some of the judges of the High Court created lot of embarrassment for the government. His observation about deteriorating law and order situation, increasing prices, unemployment and corruption and the practice of nominating the chief ministers which has hurt the Prime Minister and that is the reason why she paid President back in his reason why she paid President back in his coins when at Cancun in Mexico she reported that President was a "party

70 Mrs. Indira Gandhi asked Zail Singh to convey to the President that in view of the several agitations in the country it was not proper for the President to make such a speech particularly. The very fact that instead of conveying her feelings directly, she authorised the Home Minister to do so shows that both of them have drifted apart. The Tribune, (Chandigarh), November, 26, 1981, p.4

71 Ibid, p.4

72 President N. Sanjiva Reddy criticised the practice of nominating the chief ministers and state party presidents by the central leadership. It was not the practice of Nehru. He used to leave the choice to the party and only a central observer was sent. The Times of India (Bombay) January 3, 1981 p.1
President" and forced the President to visit soviet union where he felt slighted because of Brezhnev's absence from a banquet an affair for which Mrs. Indira Gandhi refused to register a protest as desired by the President. Again the President was to go to Sri Lanka but the Prime Minister did not agree. At a latter stage, she however, withdrew her opposition in this respect. It may also be mentioned here that in 1959 and again in 1960 when President Eisenhower and Queen Elizabeth invited Rajendra Prasad to visit U.S.A. and England respectively, Jawaharlal Nehru did not agree but subsequently, he did not object Dr. S. Radha Krishnan's tours to Western countries. This was done by Jawaharlal Nehru because Rajendra Prasad had joined issues with him on the powers of the president.

These developments show that the relations between the President and Prime Minister were not cordial and that is the reason why she had stopped meeting the President once a

73 Kuldip Nayar: President and Prime Minister Tribune, (Chandigarh) November 26, 1981 p.4
74 Ibid: p.4
75 Ibid: p.4
76 Pandit H.N: opcit., pp 11-12.
week a practice started by Jawaharlal Nehru and followed by Morarji Desai. Since it is the constitutional duty of the Prime Minister to keep the President well informed about the state of affairs and the Prime Minister had stopped performing this duty hence, the President started sending his comments in writing, a practice with some times was used by Rajendra Prasad as well. In fact Mrs. Indira Gandhi had adopted this policy even at the time when Dr.S.Radha Krishnan was the President. So far as Dr.Radhakrishnan was concerned he was the Prime Minister’s President.

77 It was customary for the Prime Minister on returning from trip abroad to meet the president. Mrs. Indira Gandhi has seldom done this, President Sanjiva Reddy did not expect it. He did not change his programme to go to Hyderabad and Bangalore when Mrs. Indira Gandhi was about to return with 24 hours from a tour of Bulgaria, Italy and France. The Tribune (Chandigarh) November 26, 1981, p.4.

78 Constitution of India; Article 78.

79 President Sanjiva Reddy adopted this practice right from the days when Janata party was in power. His argument is that his job is to guide and warn and if it is done in writing no body can say that he failed to discharge his duties. The Tribune (Chandigarh) November 26, 1981 p.4.

80 Munshi I.M. Dr. The Indian constitutional Documents (Bhartiya Vidya Mandir. Bombay, 1967) vol.1 appendices 112, 114, 118-119.

81 According to Dr. Radhakrishnan: “If Nehru told him half of what was really going on, Shasiri told him only a third and Mrs. Indira Gandhi less than a fourth it would have been different”. During 1965 conflict with Pakistan the President had no information about plans of armed forces to march into Lahore sector. Dr. Zakir Hussain also expressed similar views. Sharma L.N. op.cit. p.61 Even Nehru did inform Dr. Rajendra Prasad about the threatened resignation of general Thimayya. Munshi I.M. op.cit. p.600.
Sri Lal Bahadur Shastri and Mrs. Indira Gandhi by and large honored Dr. B. Radhakrishnan and that was why in some of speeches, the President criticised the government policies. Dr. Zakir Hussain, V.V. Giri and Fakhruddin Ali Ahmed were more or less rubber stamps in the hands of the Prime Minister. V.V. Giri signed the proclamation of failure of constitutional machinery in 1970 when he was in USSR. It was only at the fag end when his tenure was about to be over that he sometimes criticised the policies of the government. Fakhruddin Ali Ahmed signed the proclamation of emergency in 1975 without a proper recommendation of the council of ministers.

In India, if we give absolute powers to the Prime Minister, it would be dangerous, as he can always employ it as a dangerous weapon to frighten the M.P.s. Indian masses are often led not by ideology but by slogans. Moreover, ours is a poor country. This weapon should not be given to the Prime Minister for constant use.

The entire discussion on aid and advice may be redundant in the light of the 42nd Amendment Act 1975 whereby the president must accept the advice of the Prime Minister. However, the coming into power of Janata Party, the earlier position of the president vis-a-vis aid and advice has been revived.
Art. 75(2) provides that the Prime Minister would hold office at the pleasure of President. If this Article is read in a normal way, it would imply that the President can dismiss the Prime Minister at any time.

Article 80(3) of the Indian Constitution provides for the continuation of the Lok Sabha for five years and not longer except in an emergency. It clearly envisages an earlier dissolution. Article 75 (2) empowers the President to dissolve the House of the people from time to time which presumably means that he can do it any time. Article 74 expects the President to be normally advised by the council of ministers in the exercise of all his powers under the constitution. It is argued that the President could be impeached if he dismisses the Prime Minister in an arbitrary and unconstitutional manner. But two-third majority of parliament is required to make the impeachment effective. On the other hand, the President commands this majority, he can dismiss any Prime Minister. It would neither be wrong nor illegal but it could land the President in difficulty if he takes this action,
against the wishes of the political parties and public opinion. In case a unpopular ministry tries to misuse its position and powers, the President may dismiss the ministry. So long as a new and stable ministry which commands the confidence of parliament does not come into existence, the President acts as the chief executive. His principle role then according to H.M. Munshi, is "to prevent a parliamentary government from becoming parliamentary anarchy, or a majority government from indulging in constitutional excesses." The rightist parties had put forth a demand to the President for the dismissal of the Prime Minister in 1969. According to them, the President has the power to do so under his oath of secrecy. Moreover, they argued, the President must dismiss a Prime Minister who is functioning contrary to the spirit of the constitution as this is an obligation placed upon him by his oath of office, otherwise the President would be failing in his duty and there could be a possibility of demand for the removal of the President. Generally speaking the President must immediately remove a

H.M. Munshi, H.M. "The President Under the Constitution" (Dhartiya Vidya Bhawan, Bombay, 1963) p.26
84 Constitution of India: Article 60.
Prime Minister against whom a vote of no confidence has been passed. In India such an eventuality has not arisen so far. However, when the Prime Minister and President are from different political parties, such an eventuality can easily arise.

Much depends, however, on the personality of the occupant of the office. The first President, Rajendra Prasad, was a very simple man as compared to Jawaharlal Nehru. Jawaharlal Nehru was able to make his office sufficiently important by reducing the office of the President to a mere rubber stamp. The President has invariably acted upon the advice of the Prime Minister on all matters and the Prime Minister has become the real executive head.

The President and the Prime Minister are also complementary to each other. Neither can work independently. The President, even working within the constitution, cannot function without the Lok Sabha or the council of ministers. Since both the constitution and Lok

Sabha would be on the side of the Prime Minister as the leader of the majority party. Similarly, the Prime Minister has also to depend upon the President because of the latter's constitutional powers. The framers of the constitution did not foresee these dangers while framing the constitution. In India, no doubt, the nature of the army is different, still we must keep these dangers in mind.

The developing and dynamic relationship of the President and the Prime Minister depends upon a number of factors. The structural framework of the office of the Prime Minister provides for the aggregate power or potential powers which could be converted into the net power or effective power. This conversion process is largely dependent upon not only the party support enjoyed by the occupants of the two offices but also on the qualities of leadership they possessed. In India the structural framework of the office of the Prime Minister, the party support and the qualities of leadership and personality have favoured a Prime Minister, and the Prime Minsters under study have been able to tilt the balance of power in their

86 Pal., R. N. Dri: op. cit., p. 170
favour his arise their relationship with the President. The Prime Ministers were appointed by the President without giving him any scope for manoeuvring in this respect and no occasion was allowed to arise wherein the President could use his Pleasure to dismiss a Prime Minister. Rather, in India, the Prime Ministers have emerged as a deciding factor in majority party's choice of the Presidential candidate. There are only two occasions when the Prime Minister on the recommendations of his council of ministers advised the dissolution of the Lok Sabha and the President raised no objection and acceded to the Prime Ministerial request. There hardly ever arose an occasion when the aid and advice given to the Presidents by the Prime Ministers was ever turned down despite the Presidential statements made on times such as Republic Day or Independence Day or on or before the forums of constitutional experts criticising the policies and performance of the government.

87 Ibid: p:21