

Election of the President of India-A Juridical Critical Study

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Abstract: The President of India is the head of state of the Republic of India. The President is the formal head of the executive, legislature and judiciary of India and is the commander-in-chief of the Forces. The President is indirectly elected by the people through elected members of the Parliament of India (Lok Sabha and Rajya Sabha) as well as of the state legislatures (Vidhan Sabhas), and serves for a term of five years. Historically, ruling party (majority in the Lok Sabha) nominees (for example, United Progressive Alliance nominee Shri Pranab Mukherjee) have been elected or largely elected unanimously. Incumbent presidents are permitted to stand for re-election. A formula is used to allocate votes so there is a balance between the population of each state and the number of votes assembly members from a state can cast, and to give an equal balance between State Assembly members and the members of the Parliament of India. If no candidate receives a majority of votes, then there is a system by which losing candidates are eliminated from the contest and their votes are transferred to other candidates, until one gains a majority. The Vice-President is elected indirectly by members of an electoral college consisting of the members of both Houses of Parliament in accordance with the system of Proportional Representation by means of the Single transferable vote and the voting is by secret ballot. Although Article 5 of the Constitution of India states that the President can exercise his or her powers directly or by subordinate authority, with few exceptions, all of the executive authority vested in the President are, in practice, exercised by the popularly elected Government of India, headed by the Prime Minister. This Executive power is exercised by the Prime Minister with the help of the Council of Ministers. The President of India resides in an estate in New Delhi known as the Rashtrapati Bhavan (which roughly translates as President's Palace). The presidential retreat is The Retreat in Chharabra, Shimla and Rashtrapati Nilayam (President's Place) in Hyderabad. The 13th and current President is Pranab Mukherjee elected on 22 July 2012, and sworn-in on 25 July 2012. He is also the first Bengali to be elected as the president. He took over the position from Pratibha Patil who was the first woman to serve in the office.

Keyword: Election; President of India; Juridical Study; Transferable Vote System; Emerging Trends.

INTRODUCTION

India achieved independence from the United Kingdom, on 15 August 1947, as a Dominion within the Commonwealth of Nations. However, this status was only a temporary measure, as India's political leadership did not consider it appropriate for the new country to share a monarch with the former colonial power.

The monarch was represented in India by a Governor-General. The first person to hold this office was Warren Hastings, and the last was Viscount Mountbatten of Burma who was replaced by C. Rajagopalachari as Governor-General of the Union of India in 1948, the only ethnic Indian to hold the office of Governor-General. In the meantime, the Constituent Assembly of India (under the leadership of Dr. B. R. Ambedkar) was in the process of drafting a completely new constitution for the country. The Constitution of

India was eventually enacted on 26 November 1949, and came into force on 26 January 1950.

Under the new constitution, India became a republic. The office of Governor-General and role of the King were swept aside, being replaced by the new office of President of India. Dr. Rajendra Prasad became the first President.

Despite its changed status, India's leaders desired the country to remain a member of the Commonwealth. Previously a change to republican status had been seen as incompatible with continued membership, but negotiations with the other Commonwealth members resulted in recognition of the British monarch as a ceremonial Head of the Commonwealth, despite the end of the King's role in India's constitutional system. This precedent was followed in subsequent decades by other countries that achieved independence from the United Kingdom.

CONSTITUTIONAL PROVISIONS

Certain provisions of the Constitution of India deals with the procedure for election of the President of India. Article 53 provides that the executive power of Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

1. Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

2. Nothing in this article shall-

- a. Be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or
- b. Prevent Parliament from conferring by law functions on authorities other than the President.

Article 54 talks about the Election of President:

The President shall be elected by the members of an electoral college consisting of-

- a. The elected members of both Houses of Parliament; and
- b. The elected members of the Legislative Assemblies of the States.

[Explanation. In this article and in article 55, State includes the National Capital Territory of Delhi and the Union territory of Pondicherry.]

Article 55 talks about the Manner of election of President:

1. As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

2. For the purpose of securing such uniformity among the States inter se as well as parity each state is entitled to cast at such election shall be determined in the following manner; -

- a. Elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;
- b. if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;

c. each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

3. The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot. [Explanation: In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published: Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.]

Article 56 talks about the Term of office of President

1. The President shall hold office for a term of five years from the date on which he enters upon his office: Provided that -

- a. the President may, by writing under his hand addressed to the Vice-President, resign his office;
- b. the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61.
- c. the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

2. Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

Article 57 talks about the Eligibility for re-election.

A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution be eligible for re-election to that office.

Article 58 talks about the Qualifications for election as President

1. No person shall be eligible for election as President unless he –

- a. is a citizen of India;
- b. has completed the age of thirty-five years, and
- c. is qualified for election as a member of the House of the People.

2. A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

[Explanation: For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.]

PROCEDURE FOR ELECTION:

The Constitution provides for the election of the President by the system of proportional representation by means of the single transferable vote. The Constitution also provides for weighting of votes in the election of the President based on two fundamental principles. First, to secure as far as possible, uniformity in the scale of representation of different States of the Union, which emphasises the similarity in the status of the States and the Union? Secondly in order to secure parity between the States as a whole and the Union to meet idea of federal compact. For the purpose of securing such uniformity and parity the following method is laid down. This method makes the Presidential election complicated.

In order to secure uniformity in the scale of representation of the different States it is provided that every elected member of the Legislative Assembly (Vidhan Sabha) of a State has to cast as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of elected members of the Assembly, and if, after taking the said multiples of one thousand, the remainder is not less than five hundred, the votes of each member referred to above are further increased by one. To put it in simpler words, each member of the Electoral College who is a member of a State Legislative Assembly will have a number of votes calculated as follows:

Total Population of the State

----- Divided by 1000

Total number of elected members in the Legislative Assembly.

Fractions exceeding one half being counted as one.

The following illustrations explain the method of calculation:

(i) "The population of Andhra Pradesh is 43,502,708. Let us take the total number of elected members in the Legislative Assembly of Andhra Pradesh to be 294. To obtain the number of votes which each such elected member will be entitled to cast at the election of the President we have first to divide 43,502,708 (which is the population) by 294 (which is the total number of elected members), and then to divide the quotient by 1,000. In this case the quotient is 147,968.3945. The number of votes which each such member will be entitled to cast would be 147,968.3945/1000 i.e. 148.

(ii) Again, the population of Punjab is 1,35,51,060. Let us take the total number of elected members of the Legislature of Punjab to be 117. Now applying the aforesaid process, if we divide 1,35,51,060 (i.e. the population) by 117 (i.e. the total number of elected members), the quotient is 115821.0256. Therefore, the number of votes which each member of the Punjab Legislature would be entitled to cast is 115,821.0256/1000 i.e. 116.

Each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

Total number of votes assigned to the elected members of the State Assemblies

Total number of elected members of both Houses of the Parliament

Fractions exceeding one-half being counted as one.

For the Presidential election, the population of a State is taken to be the population at the last preceding census.

PROPORTIONAL REPRESENTATION

Article 55(3) of Indian Constitution requires that the President should be elected in accordance with the system of proportional representation by means of the single transferable vote.

The underlying principle of proportional representation is to prevent the exclusion of minorities from the benefits of the State, and to give each minority group an effective share in the political life. The aim of proportional representation is to give every division of opinion among electors corresponding representation in national or local assemblies. In the ordinary mode of election known as "straight voting system", what happens is that a candidate getting the support of the numerically largest group is elected, although the combined strength of all other candidates representing different other parties may far outnumber his supporters. The result is that the elected candidate cannot be said to represent the opinion of the majority of the electorate as a whole. The following illustrations will amply reveal this fact.

In Nandigram South (Midnapore) constituency of the West Bengal State, the following is the ledger of polling:

P.C. Jena (Congress) 15,320

Bhupal Panda (Communist Party) 14,926

I.C. Mahapatra (Jan Sangh) 5,204

K.L. Bera (KMPP) 3,184 38,634

It may be noticed that though 23,314 people voted against the Congress and only 15,320 in favour of it, yet the seat went to Congress.

This kind of anomaly is sought to be avoided by the system of Proportional Representation, and it is claimed that if this system is practised all the parties or shades of political opinion amongst the electorate will secure the number of seats in the elected body according to their respective strength amongst the electorate.

SINGLE TRANSFERABLE VOTE SYSTEM

The best known form of Proportional Representation is that of the "Single Transferable Vote", which means that each elector has only one vote, irrespective of the number of seats to be filled up. For instance, if there are six seats to be filled up, the elector does not cast six votes but indicates six successive preferences, by marking his first preference and the succeeding preferences with the appropriate numerals against the name of candidates printed on his ballot paper.

QUOTA OF VOTES

In the ordinary straight voting system a candidate who secures the highest number of votes is declared elected, while under the Proportional Representation system any member who secures the necessary quota of votes is declared elected. There are several ways of finding out the quota, but the most common method is to divide the total number of valid votes cast by the total number of seats in the constituency plus one and add one to the quotient. The formula may be represented as follows:

Total number of valid votes cast

Quota = -----
----- +1

Total number of seats to be filled +1

Supposing there are 100 valid voting papers and four seats are to be filled up. In order, therefore, to determine the quota 100 is divided by 4 plus 1, i.e. 5 and the quotient arrived at, namely 20, is increased by one so that the quota is 21. After the quota is fixed, any candidate whose total number of first preference votes is equal to or exceeds the quota is forthwith declared elected.

DISTRIBUTION OF SURPLUS VOTES

Each successful candidate's surplus votes of first preferences which are now of no use to him, are transferred to other candidates proportionately to the second preferences indicated on the whole of his papers (except that the second preferences

shown for any other candidate already elected are ignored and the third preferences on those papers taken instead). The point is that every vote shall be made effective and not allowed to go waste, while under the ordinary system of representation, the votes of many electors are of no use.

ELIMINATION OF THE BOTTOM CANDIDATE

If all the seats are filled upon this second count, the election is completed. But if all the required number of candidates do not reach the quota by the distribution of surplus first preferences votes of the candidates who have received more than the quota, the process is reversed by dropping out the candidate who has the least number of first preferences. The whole of his votes are transferred to the other not yet elected candidates in accordance with the next available preferences shown on his papers (next available means next excluding candidates already elected). If this does not suffice to fill the remaining seat or seats, the process is repeated by the exclusion of the candidate now at the bottom of polls and the transfer of his votes as a whole in accordance with the next available preferences shown on his papers. Eventually in this way all seats are filled.

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PROPORTIONAL REPRESENTATION

In the case of the election of the President and the Vice-President there is, however, only one member to be elected. In this case, the Government of India has, nevertheless, prescribed the manner in which the proportional representation is to work. The method prescribed is generally known as the "alternative vote" in a single-member constituency. The following illustration would explain it more fully.

The total number of valid votes is 15,000 and there are four candidates, A,B,C,D. Suppose, they have polled votes as follows:

A 5,250
 B 4,800
 C 2,700
 D 2,250

In the ordinary system of election by simple majority vote, A would be elected forthwith since a voter in this system marks only one preference and as such no question of counting any further preferences, say the second or the third, arises. In the case of the "alternative vote system" it is, however, not so, as it may be that the second best candidate may be declared elected, as against the candidate who might have secured the majority of first preference votes. In the illustration mentioned above the quota will be -

15,000
 ----- +1 = 7501
 1 + 1

No candidate who secures less than 7,501 votes can, in this case of election through the system of proportional representation, be elected. It thus follows that if a candidate is able to secure 7,501 or more first preference votes in his favour, he is immediately declared elected and there does not remain any need to take a second or subsequent count. But if, as in the given case, no candidate has secured this quota, the subsequent preferences have to be counted, until a candidate securing the prescribed limit of votes is found out. The Presidential and Vice-Presidential Election Rules 1952 prescribes the procedure for counting up the subsequent preferences as follows:

"- If at the end of the first or any subsequent count, the total number of votes credited to any candidate is equal to, or greater than, the quota, or there is any one continuing candidate, that candidate is declared elected.

- If at the end of any count, no candidate can be declared elected -

(a) exclude the candidate who upto that stage has been credited with the lowest number of votes;

(b) examine all the ballot papers in his parcel and sub-parcels, arrange the unexhausted papers in sub-parcels according to the next available preferences recorded thereon for the continuing candidates; count the number of votes in each such sub-parcel and credit it to the candidate for whom such preference is recorded; transfer the sub-parcel of all the exhausted papers; and

(c) see whether any of the continuing candidates has, after such transfer and credit, secured the quota. If, when a candidate has to be excluded under clause (a) above, two or more candidates have been credited with the same number of votes and stand lowest on the poll, exclude that candidate who has secured the lowest number of first preferences votes, and if that number also was the same in the case of two or more candidates, decide by lot which of them shall be excluded.

All sub-parcels of exhausted papers referred to in clause (b) above, shall be set apart as finally dealt with and the votes recorded thereon shall not thereafter be taken into account."

It would, therefore, be seen that in case where no member has obtained the quota votes fixed for election, the prescribed method of transfer of votes follows a process of elimination of the candidate who is at the lowest rung in the order of polling according to the first preference and so on, till at last such a candidate is found who has obtained the quota of votes or if there is no such candidate, all candidates except one are, one after the other, eliminated from the field. The candidate who survives the process of elimination is in such a case returned as the President or Vice-President, as the case may be.

An application of this process to the illustration given above would reveal that D will be the first to be eliminated, and the second preferences recorded in the 2,250 ballot papers on which he has obtained the first preference will be transferred to the

remaining candidates, namely A, B, and C. Supposing in these 2250 ballot papers the second preferences are recorded as follows:-

In favour of A 300

B 1050

C 900

These will be transferred and added to the first preferences in favour of A, B and C as follows:-

A $5,250 + 300 = 5,550$

B $4,800 + 1050 = 5,850$

C $2,700 + 900 = 3,600$

Now in the second count, therefore, C having obtained the last number of votes is eliminated and 3,600 votes secured by him are once again transferred to A and B in the order of third preferences recorded thereon. Suppose the third preferences on the 3,600 ballot papers recorded in favour of A and B are 1700 and 1900 respectively the result of this second transfer would then be as under:

A $5,550 + 1,700 = 7,250$

B $5,850 + 1,900 = 7,750$

B having, therefore, in this case secured the quota of votes is elected and it is no longer necessary to count the fourth preference. The illustration thus shows that although B had secured lesser number of first preferences votes as compared to A, yet B is elected by virtue of the second preferences obtained by him. This apparently anomalous result is justified on the reasoning that if the views of the electors are assessed through the doctrine of proportional representation it is clearly revealed that B is preferred and supported by a numerically larger number of electors than A and as such he is the one elected by a majority.

The present system of election for the President has been adopted under the Constitution of India, in order to maintain the neutrality of the head of State, which both the ceremonial functions in any federation and the specific powers under a parliamentary system demand and also to render it acceptable to as wide a body of opinion as possible. But it should be remembered that the presidential office can be kept above political turmoils only if the majority party at the Centre willingly consults minority parties also before a nomination is announced. This is desirable because, despite the provision that for the election of the President the

votes of the members of Parliament be equal to those of the Assemblies of all the States taken together, the possibility cannot be set aside that State Legislatures may at any time be dominated by parties other than the party in power at the Centre and in such a case they might be able to defeat a nominee of the majority party at the Centre.

TENTH PRESIDENTIAL ELECTION, 1992

The term of the Eighth President Shri R. Venkataraman was to expire on 24.07.1992. Tenth Presidential Election was to be held before that date. The Electoral College consisted of elected members of Lok Sabha (543), Rajya Sabha (233) and 25 State Legislative Assemblies (3972). Thus the total electors were 4748. Each Member of Parliament had 702 votes and the number of votes for each Member of the State Legislative Assemblies differed from State to State on the basis of the population. The lowest value of votes was for the MLAs of Sikkim State (07) and the highest value of votes was for the MLAs of Uttar Pradesh (208). The value of votes was calculated on the basis of 1971 census. At the time of this election the Legislative Assemblies of J&K and Nagaland were under dissolution.

Following were the number of votes polled by the candidates:-

1. Dr Shanker Dayal Sharma 6,75,864
2. Shri G.G. Swell 3,46,485
3. Shri Ram Jethmalani 2,704
4. Kaka Joginder Singh Urf Dharti-Pakad 1,135

PREFERENCE FOR INDIRECT ELECTION

The process of election of the President of India is original and no other Constitution contains a similar procedure. The question was considerably debated in the Constituent Assembly. It was argued by many members that the electoral college consisting of the elected members of Central Legislature as well as those of the Legislative Assemblies of the States was not sufficiently representative of Peoples' will. Some members, therefore, favoured the system of direct election by the people instead of an indirect round-about

method, because such a system would be most democratic and it would make the President a direct choice of the nation. This was, however, not accepted. The main reasons which influenced the deliberations of the Constituent Assembly for determining indirect Presidential election are:

(1) Firstly, in a country following the Cabinet system of Government, the office of titular Chief Executive is a technical one, to the extent that its duties are largely prescribed by other authorities (usually by the Legislature), which requires specific competence for the performance of its duties from the incumbent. Very few voters can be competent to judge wisely of the technical abilities of the candidates for any particular office of this type, having specific, limited and defined functions.

(2) Secondly, if the direct election of the President were adopted, the Presidential candidate who has to carry on an election campaign from one corner of the country to another will certainly be put up by some party or the other, which may cause political excitement and generate party feelings. Thus the man elected to the Presidential office through this means will never be able to forget his party affiliations. So the ideal of getting a non-party man outside the turmoil of party passions and reasonably respected by all factions to assume the role of the head of the State will be defeated. Further, as India is almost a sub-continent with crores of enfranchised citizens, it would be impossible to provide an electoral machinery for the purpose of smooth and successful Presidential election.

(3) Lastly, a directly elected Chief Executive may not be content with his position of a mere constitutional head and can claim to derive his authority directly from the people. So, if he wanted to assume real power, it would lead to a constitutional deadlock and an inevitable clash with the Cabinet or real executive. This would definitely produce a confusion of responsibility.

Such a contingency had happened when under the French Constitution of 1848 the President of the French Republic, Louis Napoleon, was elected by the direct vote of the people, and by exploiting this system, he had overthrown the Republic to establish the empire with himself as emperor. To prevent the recurrence of such a contingency, the

French people in their later constitutions discredited and abandoned the system of electing the head of State by the direct vote of the people.

MIDDLE COURSE

A middle course was chosen by the framers of the Indian Constitution in order to make the Presidential office more broad-based. The electoral college for Presidential election has been expanded so as to include the elected members of the State Assemblies all over India, which means that the President is chosen by the nation as a whole, indirectly, through the elected representatives of the people and is thus not the representative of a particular constituency but of the nation. Through this device he is also not necessarily to be a man of the majority party in Parliament. This has also the additional advantage of investing the President with greater moral independence and authority which would have not been possible, had he been a man virtually elected by the majority party in Parliament.

This indirect election of the President of India takes place with the participation of both directly elected members of Lok Sabha and Legislative Assemblies, and indirectly-elected members of Rajya Sabha. Each citizen of India is represented in Parliament and the State Legislative Assembly, because, the members of Lok Sabha and MLAs are elected on the basis of universal adult suffrage. The members nominated by the President have no right to vote in this election. Similarly, the members of the Legislative Councils of the State Legislatures, wherever they exist, have also been excluded from the electoral college.

ROLE OF SUPREME COURT

An election to the Office of the President can be called in question by means of an election petition presented to the Supreme Court. Such election petition should be presented by a candidate or twenty or more electors joined together, and may be presented at any time after the date of publication of the declaration containing the name of the returned candidate at the election under Section 12 (of the Presidential and Vice-Presidential Elections Act, 1952), but not later than 30 days from the date of such publication. Subject to these provisions, the Supreme Court, under

Article 145 of the Constitution, may regulate the form, manner and the procedures connected with such election petitions.

In the case of *Dr. N. B. Khare vs Election Commission Of India*, the petitioner describing himself as an intending candidate for the Presidential Election filed a petition in the Supreme Court under Art. 71 (1) of the Constitution of India impugning the election of the President, but it was returned by the Registrar of the Court on the ground that it was not in conformity with the provisions of the Presidential and Vice-Presidential Elections Act, 1952, and the Rules of the Supreme Court contained in Or. XXXVII-A. On appeal to the Court it was contended for the appellant that (1) the petition was founded upon doubts as to the validity of the election and, in consequence, was not covered either by the Act or the Rules of the Supreme Court, (2) the Act and the Rules in question were void on the ground that they derogate from the jurisdiction conferred on the Supreme Court under Art. 71(1) and (3) in any case, the petitioner has a right as a citizen to approach this Court for relief whenever an election has been held in breach of the constitutional provisions.

Held that Art. 71(1) merely prescribes the forum in which doubts and disputes in connection with the election of the President and Vice-President would be enquired into, but the right to move the Supreme Court as well as the procedure therefore, are determined by the Act of Parliament as authorised by Art. 71 (3). Accordingly the Act and the Rules in question are valid, and the petitioner has no rights apart from those given by the statute to file an application for setting aside an election.

EMERGING TRENDS

The Presidential election is not free from difficulties. Election of the President can be held even if some seats in the Electoral College are vacant. Such election cannot be called in question on the ground of any vacancy existing for whatever reasons, among the members of the Electoral College electing a person either as President or Vice-President. Further, a President in office can change the composition of the Electoral College by dissolving one or more hostile Legislative

Assemblies under Article 172(1) or 174(26) or under 356(1) of the Constitution of India.

Under such circumstances how can there be uniformity in the scale of representation? Is it under "as far as practicable?" Article 71(4), therefore, may be construed as repugnant to the purposes embodied in Article 55(4). Further, Article 55 is conspicuously silent on whether there will be representation of all or each State in the Presidential election, although there is vacancy in the electoral College. It only provides for "the different States." Since there is no guarantee to ensure non-vacancy in the Presidential Electoral College, the phrase, "the elected members of Legislative Assemblies of States" means only those who are actually in office at the time of Presidential Election.

The elected members of a suspended Assembly are entitled to take part in the Presidential election. For example, the MLAs of Rajasthan participated in the Presidential Election in 1967 though the Assembly was kept under suspended animation under Article 356(1) (c) of the Constitution.

So also the MLAs of Bihar had cast their votes in the Presidential Election of 1969. But holding of election at a time when the House of the People stands dissolved could be simply a dangerous practice. In view of these possible mischiefs, neither the Constitution nor the Eleventh Amendment provided for any remedy against creation of calculated or premeditated vacancies in the electoral college.

The framers of the Constitution have not provided against election of the President by a lame-duck Electoral College. It is generally expected that a newly-elected Electoral College will elect the President but the new Electoral College might not have come into existence when the Presidential Election is due or the term of the House of People is extended under Article 83(2) of the Constitution. If the term of the House is extended, the President may be elected by the lame-duck Electoral College. Under Article 56(1)(c), the President continues in office until his successor enters upon the office. It can neither be extended nor postponed under normal circumstances.

The Presidential election must be held before the expiration of his term of office. The Election Commission shall issue the notification on or as soon as conveniently may be, after, the sixtieth day before the expiration of the term of office of the out-going President or Vice-President, as the case may be. The election of the President must be completed within the time fixed by Article 62(1). Thus, the time limit is mandatory.

In case of death, resignation or removal by impeachment, the election of the President by the lame-duck Electoral College is imperative. There is scope for the exercise of discretion by the Election commission of India in favour of the party in power by completing the election by the lame-duck Electoral College within the prescribed period of sixty days. But there should be a categorical provision in the constitution prohibiting such Presidential election by the Electoral College.

However, the architects of the constitution intended an extensive electoral college as a necessary institutional prerequisite for their own conception of the office. The Presidential constituency is wider than the constituencies meant for electing the members of the Union Parliament. It also does not embrace the entire national electorate. Consequently, the incumbent does not remain responsible to the Union Parliament alone. Being indirectly elected, the President is not likely to develop political ambitions so as to provide alternate political leadership. The nature of composition of the Presidential Electoral College has made him the golden thread of Federal relationship. In the context of the recently-emerging federal trends of the Indian constitutional system and the radical changes in the political scene after 1967, the Presidential office is pregnant with possibilities of far-reaching consequences and even as the actual balancing-wheel of our federal polity.

CONCLUSION

In the end we may conclude by saying that subject to certain criticisms the constitution of India aptly provides for the just and fair election procedure of the President of India. The framers of the constitution have looked into the issue arising out of presidential elections and found a middle

course for excellent implementation of electoral process to the election procedure of the President.

An election to the Office of the President can be called in question by means of an election petition presented to the Supreme Court. Such election petition should be presented by a candidate or twenty or more electors joined together, and may be presented at any time after the date of publication of the declaration containing the name of the returned candidate at the election under Section 12 (of the Presidential and Vice-Presidential Elections Act, 1952), but not later than 30 days from the date of such publication. Subject

to these provisions, the Supreme Court, under Article 145 of the Constitution, may regulate the form, manner and the procedures connected with such election petitions.

Thus the constitution as well as legislative provisions of the Presidential and Vice – Presidential elections Act, 1952 provide for a check on the election procedure for any misconduct or injustice. Thus the presidential elections are made sure to be free of any biasness or unjustified methods being adopted by means of political pressure.

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