



FOUNDATION *for* RESTORATION of NATIONAL VALUES

ॐ सर्वे भवन्तु सुखिनः। सर्वे सन्तु निरामयाः।
सर्वे भद्राणि पश्यन्तु। मा कश्चित् दुःखभाग् भवेत्॥

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NEWSLETTER

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Role of Governors in Government Formation

By Gopal Ganesh, Vice-President, FRNV

Whenever there is a split verdict in a state election, the Governor of the State has a very important role to play. Whether the party commanding the largest number of seats should be invited to form the government or whether a post-election coalition (commanding the largest number of seats as a result) should be invited to form the government is the question. Some opine that a trial of strength in the newly convened House of Legislature should be the only option. We have seen the unseemly sight of newly elected members of legislatures being herded into safe resorts, to prevent them from being poached by the other side.

Admittedly, governors on various occasions, some of them quite recently, have chosen one or other paths. The resultant losers have leveled allegations of manipulation and courts are frequently called to adjudicate such disputes. Warring parties and their lawyers have quoted precedents in the form of earlier court rulings to buttress their claims. Who is correct? This question has been plaguing everyone in the aftermath of the recent Karnataka Assembly elections. That the Governor invited the leader of the largest single party to form the government and gave him 15 days to prove his majority, which the Supreme Court reduced to a couple of days and that the single largest party opted not to face the confidence motion is a matter of history. That the post election coalition was then invited to form the government and successfully won the vote of confidence in the House is again recent history. But the question of whether the procedure to be followed by the Governor should

be codified in order to remove the discretionary powers remains to be answered.

It is in this context that the following two articles which appeared in the newspapers after the Karnataka episode appear relevant. They have been reproduced here to stimulate discussion on this subject as it is one which is important for proper functioning of our democratic set up. Your views would be welcome.

India for Sale? What Karnataka has Flagged for us

The Karnataka episode is over - at least for the time being. We can blame the BJP, Governor Vajubhai Vala and B S Yeddyurappa. But the governors have been disgracing themselves for years. We have been going down this slippery slope for at least the past 50 years where Governors are partisan, bend rules, disregard norms and bring disrepute to the system.

Neither the Congress nor the BJP can claim to have clean hands in this matter. Congress began the perversion of various constitutional norms, particularly with the repeated use (around 100 times) of Article 356. Each party has suborned constitutional norms and practices for political ends.

Coming back to Governors: there are always some honourable exceptions - but they are few and getting fewer. But our politicians do not like them, so they tend to be appointed with reducing frequency. Most of our Governors are political hacks, sent into retirement in Raj Bhavans where they do the bidding of their political masters in Delhi.

I doubt that many of the Governors are familiar with the constitution and constitutional proprieties and too few of them stand up for what is right.

Karnataka Governor should have called the party or combination of parties that have the best chance of

forming a stable government first to form the government. Pre-poll and post-poll alliances, political differences, etc. are immaterial.

For instance, in 2010, the Conservatives and the Liberal Democrats in the UK formed a government after waging a brutal election campaign. In 2017, the Conservatives tied up with the small DUP, which opposes the Conservatives on many major issues, including Brexit. In 2017, in Germany, the parties fought a bruising campaign. No one had a majority and the government could not be formed for over six months until the two biggest formations tied up.

Why did that happen? So they could run a stable government, formulate policies and pass legislation, including the Budget.

First, let us take the judgements. We forget that we are Indians - the masters of *jugaad*. There is no judgement that we cannot get past. And each party will selectively quote only that judgement that suits it. Each party has top-of-the-line lawyers who will argue in favour of any position. After all, that's what lawyers do. Every few years, a new judgment will be required as our venal politicians and pliable Governors reach a new low. And we will have a new judgement - but the problem will remain.

And some have said: all these problems arise because we are saddled with this parliamentary system that is a legacy of the British Raj. But rather than blame the system, let us ask ourselves: how come the same system works in other Commonwealth countries like Australia, Jamaica, Canada, etc. Australia, in particular, has a history of coalitions and small majorities.

Leaving aside other Commonwealth countries, look at Germany, which also has a parliamentary democracy. In only one election (in 1957) out of 19 has one party - counting the perpetual alliance of CDU-CSU as one party - won a majority of seats in the Bundestag. But we have not heard of planes with legislators flying from Bonn (the old seat of government) to the ski resort of Zermatt in neighbouring Switzerland or being bussed from Berlin (the new seat of government) to Baden Baden, where legislators take the waters and wait for oodles of cash to come their way.

The reasons for our problems are just two and clear to identify.

First, if this game of parliamentary democracy has to be played, there is one *sine qua non*. The umpire must be neutral. Second, the players must not be on the take.

We need to get Governors out of this game. They are like the old "home country" umpires. Here is what I suggest -

Whenever a state election is held and there is no clear majority, the following should be done:

1. All elected members to assemble in the Vidhan Sabha two days after the declaration of results and be sworn in.
2. The House to be presided over by a Supreme Court judge, assisted by two senior High Court judges, each with at least 10 years' service.
3. The three judges to be selected at random - but to ensure that no judge who has any link with the state is in the 'pool' from which the judges are selected.
4. Each party that has members exceeding 10% of the strength of the House can nominate a member to lead the government.
5. The judges ask the members present to vote in an open ballot.
6. In the event that no single nominee gets more than 50% of the votes cast on the first ballot, there is re-balloting.
7. For the re-balloting, remove the member with the least votes and then re-ballot, and look for a member to get 50%+ and continue until you are down to two contenders. Or, after the first ballot, only the top three go into the second round. If no one gets more than 50% in the second round, then the top two go into the final ballot.
8. If, because of abstentions, no one gets support of more than 50% of the membership of the House, call fresh elections.

For Lok Sabha elections, we may need some modification to these rules.

It is all ideology and conscience - and not the nearby ATM - that leads to most defections. So, I thought, let us treat it like a Level 4 violation in cricket, the most serious violation.

So, the penalty? Disbarred from taking part in any election in the country for the next 10 years. But that is not all. This disbarment for 10 years to apply to all relatives of the disbarred person - the relatives being those defined under Section

56(2)VII of the Income Tax Act. Else, the person's wife or son would stand in his place and probably win and defeat the objective of the penalty.

It is clear that we just cannot go on in this way - suborning democracy, subverting the constitution, allowing money power to take over.

But if we cannot come up with a solution, there is a danger that we may descend from the great democracy our Founding Fathers bequeathed to us and degenerate into a giant kleptocracy.

In less than six months, on October 2, 2018, we begin celebrations of the 150th anniversary of the birth of the Father of the Nation. Perhaps this is the time to ask ourselves: is the present state of our democracy what the Mahatma lived for, worked for - and gave his life for?

Source: <https://www.ndtv.com/opinion/india-for-sale-what-karnataka-has-flagged-for-us-1854902>

Runaway powers: Discretionary authority of governors is too wide, rules must be codified for them

The drama in Karnataka over government formation, with the shadow of last year's Goa and Manipur cases looming large; yet much of the criticism overlooks entrenched practices and is made with the assumption that electoral manipulation started after BJP came to power in 2014. In 1967 Haryana's Gaya Lal, who changed parties thrice in a day, prompted Congress's YB Chavan to coin the term 'Aaya Ram Gaya Ram', and in 1980, the Indira-led Congress perfected the art of engineering defections by making Bhajan Lal switch sides with his entire legislature party (Janata). The tradition has continued after the anti-defection law came in, and use of governors as the Centre's proxies has been widespread, especially in small instability-ridden states.

The problem is with the system, not with a party – those in power could be tempted to turn things to their advantage, and those out of power may be desperate to have a state like Karnataka under their belt as a bargaining chip for leadership of an opposition front for 2019. So what's the solution?

First, we have to acknowledge the discretionary authority of governors is too wide. They are not required to invite the single largest party first in case of a hung House but can choose a party or

group (even a post-poll one) which will command a majority. That looks all right but, as the Goa, Manipur and Karnataka cases demonstrate, it can, at times, reduce a popular verdict to sham arithmetic.

If rules are in place on steps to be taken in a certain order, making clear which party/ group (pre- or post-poll) should be called first, second, third and so on, in case of a fractured mandate, they will bring in transparency, and though the process wouldn't be error-free, the errors will be akin to umpiring ones in cricket – they will even out in the end for the players and teams.

The other problem – of defections – has persisted because we legitimised en masse defections while shaming individual switchovers. The National Commission to review the working of the Constitution, set up by the Vajpayee government, had in its 2002 report stated that defections be disallowed altogether, and anyone wanting to shift would have to resign and recontest. This sane suggestion was drowned out amid protests over the Commission's formation. It was criticised as an attempt to 'saffronise' India and to 'constitutionally formalise majoritarian designs'. The label stuck, and the many reform-oriented steps in the panel's report were overlooked.

During the 2016 Arunachal Pradesh and Uttarakhand crises, the SC spoke of the role of governors and, asking them to desist from manipulation, indicated their powers should not remain unfettered. But isn't it a bad idea to sort out issues like floor tests and appointment and dismissal of CMs by referring them to the judiciary – either before or after midnight?

Instead of reaching a situation where we'd soon have to conduct floor tests in courtrooms, we have to immediately revive debate over the National Commission's report by keeping out ideological blinkers and look afresh at reports of the Administrative Reforms Commission and the Sarkaria and Punchhi commissions (both said the single largest party must have first claim) which suggested ways to work the Constitution more effectively and by eliminating corruption and political manoeuvring to the extent possible.

Source: <https://blogs.timesofindia.indiatimes.com/toi-edit-page/runaway-powers-discretionary-authority-of-governors-is-too-wide-rules-must-be-codified-for-them/>

NEWS & EVENTS

□ On June 13th & 14th, 2018, an activity with grade III to V and with grade VI to IX was conducted at Raja Ram Mohan Roy SKV, Hauz Rani. The activity was to understand the importance of preserving the environment. The theme was 'Best out of Waste'. In this activity, children prepared beautiful carry bags with the waste materials.



□ On June 18, and June 25, 2018, an activity was conducted with the students of grade 7 & 8 at GBSSS, New Ashok Nagar to promote values like love, care, compassion and honesty. The students were given case studies on real life situations and were asked to discuss in groups if they were in the same situations what would have been their response.



Dear Readers,

FRNV invites stories from its readers on deep-rooted values that have helped us in our everyday lives. Some of these stories will be featured in the next issue of our newsletter. So put your thinking caps on, recall the values integral to your life which you cherish and write to us at shilpi@valuefoundation.in.