

## CHAPTER - 4

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### PROBLEM OF FORMATION OF MINISTRY IN CASE OF FRACTURED ELECTORAL VERDICT

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The Constitution of India adopts the Westminster model of parliamentary government. Although the model adopted by the Indian Constitution is a slightly modified version of the Westminster model of government, one of these important modifications being replacement of monarchy by a republican presidency. The President of India is elected and not a hereditary monarch, yet, the position of the President under the Constitution of India, corresponds to that of the King or the Queen in England. This concept was borrowed from the Constitution of Eire and the framers of the Constitution have tried to assimilate the position of an elected President with that of a hereditary Monarch. The President of India, under the constitutional scheme is the Head of State. The real executive power is vested in the Council of Minister headed by the Prime Minister.

In the Westminster system where the Crown is the titular Head of State and the real executive power vests in the cabinet headed by the Prime Minister, the Crown appoints the Prime Minister, from amongst the members of Parliament, who is the actual Head of Government. The Prime Minister then selects his Cabinet, choosing its members from among the members of Parliament. The Prime Minister then recommends them to the Crown who then appoints the members of the cabinet. Led by the Prime Minister, the Cabinet is collectively responsible to the House of Commons.

Theoretically, though, the Crown has unfettered choice in selecting the Prime Minister. Actually, but, it is now fettered by the convention that has

evolved in England since 1688, that the Queen must call a person who is capable of commanding the confidence of the House of Commons.

The party system originated in England in the 17<sup>th</sup> century. Some attribute the origin of political parties in England to the period of Exclusion Crisis (1679-1681) when the terms Whig and Tory were used as party levels. Others attribute this to the Glorious Revolution (1688-1689), when the Whigs had initiated the process of political organization by holding political clubs, by coordinating tactics and strategy, by employing electoral agents, by adopting a sophisticated propaganda campaign with visual, audio, and printed media. By their propaganda campaign, they tried to mobilize the populace nationwide to support their platform through mass petition campaigns and political rallies. To counter the Whigs' challenge, the Tories also adopted many of the Whigs' organizational and propaganda techniques. The Whigs gradually transformed into and took the new name of "the Liberal Party" in 1832. The Tories, who had lost their clout during much of the 18<sup>th</sup> century, revived in later part of the 19<sup>th</sup> century and became "the Conservative Party". The later 19<sup>th</sup> century Britain witnessed emergence of new political parties representing the working class. Such parties, including the Independent Labour Party, Social Democratic Federation and others later on joined and formed the Labour Party. The seeds of the party system were sown since 1688 and ever since, in one form or other, the Prime Ministers were appointed by the Crown on party lines considering which party has the majority in the House of Commons.

This long practice of centuries had established a convention that the Queen must call the leader of that party which has a majority in the House of Commons. The reason is that the elections were conducted on party lines, and one party or the other had majority in the House of Commons. Thus if Crown chose some other person, rather than the leader of majority party in the House of Commons, the party in majority in the House of Commons would paralyse the government. Thus this convention crystallized and now it is a settled convention that the

Crown must invite the leader of the majority party in the House of Commons to form the ministry. This convention is based on the fundamental principle of cabinet government that the cabinet must have the confidence of the majority in the House of Commons.

This is an accepted rule and has been reasserted by constitutional authors. According to Bradley, where the elections result produces a clear majority for one party, the Sovereign has no discretion to exercise. The Crown must appoint that person as the Prime Minister “who is in the best position to receive the support of the majority in the House of Commons”.<sup>1</sup> According to O. Hood Phillips the Crown must appoint a “ministry that can hold the majority in the House.”<sup>2</sup> Dicey says, “The party who for the time being command a majority in the House of Commons, have (in general) a right to have their leaders placed in office.”<sup>3</sup> According to Wade, “the support of the party which may be expected to command a majority in the House of Commons is a condition precedent to acceptance of the office”.<sup>4</sup> Wade while discussing development of the principle of collective responsibility further says, “Accordingly there has been evolved since 1688 the rule of collective responsibility which rests upon convention alone.” Jennings says, “The King must invite the most influential leader of the party or group commanding a majority of the House of Commons to form a Ministry.” Jennings further says, “The Government is a body of party politicians selected from among the members of that party or group of parties which has a majority or can secure a majority in the House of Commons.”<sup>5</sup>

Harold J. Laski in his ‘Reflections on the Constitution’ says, the Cabinet remains, in essence, a committee of the party or parties with a majority in the

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1 See, Bradley, *Constitutional and Administrative Law*, 13th Edn., 2003.

2 O. Hood Phillips, *Constitutional Laws of Great Britain*, Sixth Edn., Sweet and Maxwell, London, 1946, p. 34.

3 A. V. Dicey, *The Law of the Constitution*, Elibron Classics, 2000.

4 See, E.C.S. Wade, *Constitutional and Administrative Law*, Ninth Edn., Longman, London, 1977.

5 Ivor Jennings, *Cabinet Government*, Cambridge University Press, 1959, p. 20.

House of Commons.<sup>6</sup> J. A. G. Griffith, says, "The Prime Minister is the leader of the political party which can command a majority in the House of Commons".<sup>7</sup>

According to Rodney Brazier<sup>8</sup>, the appointment by the Sovereign of a Prime Minister is an act done by virtue of royal prerogatives. In theory, the Queen could commission anyone she pleased to form a government. But in practice, such theory is entirely removed from reality, because of course today the royal discretion is subject to several limiting factors, the most important of which is that in making an appointment she should commission that person who seems able to command a majority in the House of Commons. Although the formal appointment of a Prime Minister is a prerogative act, the actual choice no longer normally lies with the Queen at all: in that sense the selection of a new Prime Minister does not depend upon any prerogative power. For, in most cases the identity of the politician who is to remain or is to become the Prime Minister is obvious.

Therefore, the choice of the Prime Minister by the Crown has become almost automatic in normal circumstances. Where an election produces an absolute majority in the House of Commons for one party, the leader of that party is invited to become the Prime Minister or if already Prime Minister, he or she would continue in office. The Crown has no choice and must invite the leader of party or group commanding a majority in the House of Commons to form a ministry. The Crown can no longer impose his personal wishes as against the majority in the House of Commons, in the choice of his ministers. The party which commands the majority in the House of Commons is entitled to have its leader appointed as the Prime Minister.

Under Article 75(1) of the Constitution of India, the President has the power to appoint the Prime Minister and under Article 164(1) the Governor has

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6 See, Harold J. Laski, *Reflections on the Constitution*, University of Manchester Press, 1951.

7 J.A.G. Griffith, *Parliament: Functions, Practice and Procedures*, Sweet and Maxwell, 1989, p. 20.

8 Rodney Brazier, *Constitutional Practice*, Clarendon, 1988, p. 6.

the power to appoint the Chief Minister of a State. However, apart from Article 75(3) and 164(2), which mention about the principle of collective responsibility of the ministers to the respective House, there is no other guidance provided as to whom the President or the Governor should appoint as the Prime Minister or the Chief Minister. However, since, the elections to the House of the People and the State Legislative Assemblies are contested principally by the political parties who set up their candidates at the election, this long standing convention has been duly accepted and followed in India. It is on account of this convention that the President and the Governor invite the leader of the political party which has obtained majority, to form the Government. The President appoints the Prime Minister and then the Ministers are appointed on the advice of the Prime Minister, who constitute the Council of Ministers. Similarly, the Governor appoints the Chief Minister and then the Ministers are appointed on the advice of the Chief Minister, who together constitute the Council of Ministers.

Following the general elections from 1952 through 1971 and then again in 1980 and 1984, the leader of the Congress Party which secured majority in the Lok Sabha were appointed as the Prime Minister. Thus following the first general elections in independent India held in 1952, Indian National Congress Party secured 364 seats out of 489 seats (74.4% seats) in the Lok Sabha. Hence, the President of India, Dr. Rajendra Prasad appointed the leader of the Indian National Congress Party, Jawahar Lal Nehru as the Prime Minister. This was followed in 1957 and 1962, when the Indian National Congress Party secured 371 seats out of 491 seats (75.1% seats) and 361 seats out of 494 seats (73% seats) in the Lok Sabha. Hence, the President of India, Dr. Rajendra Prasad appointed the leader of the Indian National Congress Party as the Prime Minister. During the life of the 3<sup>rd</sup> Lok Sabha, Jawahar Lal Nehru died. The President of India, Dr. Sarvepalli Radhakrishnan, then appointed the leader of the Indian National Congress Party Lal Bahadur Shastri as the next Prime Minister. In 1967 and 1971 general elections, the Indian National Congress Party secured 283 out of 520 seats (54.4% seats) and 362 out of 518 seats (69.9% seats) in the Lok

Sabha. The Presidents of India, Dr. Radhakrishnan and Dr. V.V. Giri, following the convention appointed Smti. Indira Gandhi, the leader of the Indian National Congress Party, as the Prime Minister in 1967 and 1971 respectively. In 1980 general elections, the Indian National Congress Party secured 353 out of 542 seats (65.1% seats). President, Neelam Sanjeeva Reddy also followed suit and appointed Smti. Indira Gandhi, the leader of the Indian National Congress Party, as the Prime Minister. In 1984 general elections also the Indian National Congress Party emerged as majority party in the Lok Sabha with 415 out of 543 seats (76.4% seats). President Zail Singh accordingly appointed Rajiv Gandhi, the leader of the Indian National Congress as the Prime Minister.

In States also, the aforesaid convention has been followed and the leader of the majority party in the legislative assemblies have been appointed as the Chief Ministers by the Governors. In this work we will consider the pattern of formation of ministry in six States, namely, the States of Uttar Pradesh, West Bengal, Andhra Pradesh, Bihar, Karnataka and Meghalaya.

In the State of Uttar Pradesh, in 1952, 1957, 1962, 1969, 1974, 1980 and 1985 elections, INC secured majority seats in the UP Legislative Assembly. Accordingly the leaders of INC, namely Govind Ballabh Pant (1952), Sampurnanand (1957), Chandra Bhanu Gupta (1962), Hemwati Nandan Bahuguna (1974), V.P. Singh (1980) and Narayan Dutt Tiwari (1985) were appointed by the respective Governors as the Chief Ministers. In the 1977 elections Janata Party obtained majority seats by securing 352 out of 425 seats and the leader of the Janata Party, Ram Naresh Yadav was appointed as the Chief Minister of UP. In the 1991 elections, the Bharatiya Janata Party secured majority seats and its leader Kalyan Singh was appointed as the Chief Minister. In 2012 elections, the Samajwadi Party emerged as majority party in the Legislative Assembly with 224 seats and accordingly the Governor appointed the leader of the party Akhilesh Yadav as the Chief Minister.

In the State of West Bengal, following the elections held in 1951, INC emerged as majority party with 150 out of 238 seats. Governor appointed Bidhan Chandra Roy, the leader of the party as the Chief Minister. Similarly, in the elections held in 1957 and 1962, INC was returned as majority party and accordingly the leaders of the said party, Bidhan Chandra Roy and Prafulla Chandra Sen were appointed as the Chief Ministers in 1957 and 1962. The period between 1967 and 1972 was a phase of fractured electoral verdicts, which we will discuss later in this chapter. In the 1972 elections, INC once again was returned as the majority party with 216 out of 294 seats and its leader Siddharth Shankar Roy was appointed as the Chief Minister. In the next seven assembly elections held in 1977, 1982, 1987, 1991, 1996, 2001 and 2006, the left front was returned as majority party and its leader Jyoti Basu was appointed as Chief Minister in 1977, 1982, 1987, 1991, 1996, 2001 whereas Buddhadev Bhattacharya in 2006. The 2011 elections returned All India Trinamool Congress led by its leader Mamta Banerjee as majority party and she was appointed as the Chief Minister.

In the State of Andhra Pradesh, following the elections held in 1955, INC emerged as majority party with 119 out of 196 seats. The Governor appointed Neelam Sanjeeva Reddy, the leader of the party as the Chief Minister. Similarly, in the elections held in 1962 (177 out of 300 seats; Chief Minister-Nellam Sanjeeva Reddy), 1967 (165 out of 219 seats; Chief Minister - K. B. Reddy), 1972 (219 out of 287 seats; Chief Minister - P.V. Narasimha Rao), 1978 (175 out of 294 seats; Chief Minister - M.C. Reddy) the aforementioned leaders of INC were appointed as the Chief Ministers. Following the 1985 elections, the Telugu Desam Party emerged victorious with majority seats (201 out of 294 seats) and accordingly N.T. Rama Rao, the leader of the Telugu Desam Party was appointed as the Chief Minister. 1989 saw a turn and INC again emerged as the majority party with 181 out of 294 seats. The leader of the party, M.C. Reddy was appointed as the Chief Minister. In 1994 and 1999 the Telugu Desam Party emerged as the majority party with 216 and 180 seats respectively (out of 294)

and its leaders N.T. Rama Rao and Chandra Babu Naidu were appointed as Chief Ministers in 1994 and 1999. In 2004 and 2009 INC emerged as the majority party with 185 and 156 seats respectively (out of 294) and its leaders Y.S. Rajashekhara Reddy and Konijeti Rosaiah were appointed as Chief Ministers in 2004 and 2009.

In the State of Bihar, the elections held in 1952, returned INC as the majority party securing 210 out of 318 assembly seats and accordingly the leader of the party Krishna Singh was appointed the Chief Minister. The same trend continued in the 1957 and 1962 assembly elections with INC returning as majority party. The period between 1967 till 1972 was a spell of fractured verdict. INC again emerged as majority party in the 1972 elections whereafter Kedar Singh of INC was appointed as the Chief Minister. Following the elections in 1977 wherein the Janata Party emerged as majority party, its leader Karpoori Thakur was appointed as the Chief Minister. In spite of majority his government could not survive its full term because of defections and the House had to be dissolved premature. The subsequent elections in 1980 and 1985 had INC as the majority party and its leaders namely Jagannath Mishra and Bindeshwari Dubey were appointed as the Chief Ministers. The 1990 elections resulted in a fractured verdict with Janata Dal 122, INC 71, BJP 39 and CPI and CPIM 29 seats. The 1995 elections in Bihar returned Janata Dal with a majority (167 seats) and Lalu Prasad was again appointed as the Chief Minister. The elections held in 2000, 2005 (February) and 2005 (October) returned hung assemblies. The elections of 2010 also returned a hung assembly with BJP securing 91 and JDU 115 seats. However, in view of the pre-poll alliance, the leader of the alliance Nitish Kumar was appointed as the Chief Minister.

In the State of Karnataka, the assembly elections held in 1952, 1957, 1962, 1967, 1972 and 1978 returned INC as the majority party. Accordingly the leaders of INC, K. Hanumanthaiah (1952), S. Nijalingappa (1957), S.R. Kanthi (1962), S. Nijalingappa (1967) D. Devaraj Urs (1972) and again D. Devaraj Urs (1978)

were appointed as the Chief Ministers. The 1983 elections produced a hung assembly. In mid-term elections held in 1985, the Janata Party secured majority seats (139 out of 224 seats) and its leader Ramakrishna Hegde was appointed as the Chief Minister. In the next election held in 1989 INC emerged majority party and its leader Veerendra Patil was appointed as the Chief Minister. 1994 elections returned the Janata Dal as the majority part with 115 out of 224 seats and its leader H.D. Deve Gowda was appointed as the Chief Minister. In the subsequent elections held in 1999, INC secured the majority and its leader S.M. Krishna was appointed as the Chief Minister. The 2004 election returned a hung assembly with BJP 79, INC 65 and the Janata Dal (Secular) 58 seats. Dharam Singh, the leader of Janata Dal Secular was appointed as the Chief Minister. There was a change in incumbency and H.D. Kumaraswamy of the Janata Dal (Secular) was appointed as the Chief Minister, but the government could not maintain the majority support in the House and ultimately President's rule was imposed and the assembly dissolved in 2007. In 2008, BJP emerged as single largest party with 110 out of 224 seats. Its leader B.S. Yeddyurappa was appointed as the Chief Minister. The next elections held in 2013 returned INC with majority and its leader Siddaramaiah was appointed as the Chief Minister.

The State of Meghalaya is a laboratory of fractured electoral politics. The State was created in the year 1972. Since the creation of State of Meghalaya in 1972, only the first general elections held in 1972 has given a clear mandate to any political party when All Party Hill Leaders Conference (AHLC) was returned with a clear mandate of 32 out of 60 seats and its leader W.A. Sangma was appointed as the Chief Minister. All the assembly elections thereafter till date have given fractured mandate. In 1978 elections, the party performance was as follows: AHL-16. INC-20. HSPDP-14, Independents-10. Ignoring the rule of largest single party, D.D. Pugh, the leader of AHL was appointed as the Chief Minister. After the 1983 elections, the party position was as follows: AHL-15. INC-25. HSPDP-15, PDIC-2, Independents-3. B.B. Lyngdoh, the leader of INC was appointed as the Chief Minister. After the 1988 elections, the party position

was as follows: AHL-2. INC-22. Hill Peoples Union-19, Independents-9, other smaller parties-10. W.A. Sangma, the leader of INC being the single largest party was appointed as the Chief Minister. After the 1993 elections, the party position was as follows: AHL-3. INC-24. HSPDP-8, Hill Peoples Union-11, HSPDP-8, Independents-10, other smaller parties-4. S.C. Marak, the leader of INC being the single largest party was appointed as the Chief Minister. The 1998 elections presented the following party position: BJP-3, INC-25, HSPDP-3, UDP-20, Independents-5, other smaller parties-4. B.B. Lyngdoh, the leader of UDP, the second largest party in the Assembly was appointed as the Chief Minister. After the 2003 elections, the party position was as follows: BJP-2, INC-22, NCP-14, UDP-9, HSPDP-2, MDP-4, independents-5 and other smaller parties-2. D.D. Lapang, the leader of single largest party INC was appointed as the Chief Minister. Following the 2008 elections, INC emerged as the single largest party with 25 seats and NCP (15) as the second UDP as the third largest party. However, after post-poll coalition bargaining, Dr. Donkumar Roy, the leader of UDP was appointed as the Chief Minister. The 2013 elections returned INC just short of clear majority (29 seats out of 60) with UDP as the second largest party. Dr. Mukul Sangma of INC was appointed as the Chief Minister.

The parliamentary form of government works successfully only if there are not more than two strong parties. Multiplicity of political parties is detrimental to functioning of the parliamentary system of government as it divides the electorate and causes instability in the government. An analysis of the electoral process in India from 1951 till the day reveals that Indian electoral politics is witnessing a great transition from majoritarianism to pluralism. Before 1947, there was a political goal of getting freedom from the British Empire. After independence, the aim of the national leaders was consolidation and national integration. This phase of consolidation led to single-party rule at the Union and in most of the States. However, since, 1977 the phase of pluralism emerged. The existence of diverse castes, religions, communities, and linguistic and regional groups led to proliferation of political parties on parochial lines. Establishment of

a federal structure has further compounded the problem by causing “multiple-bipolarism”<sup>9</sup>. The electoral politics has been fractured into parochial lines, translating itself into fractured electoral mandates. Fractured mandate, coupled with political defections and political alignments and realignments of political parties have made the problem of choosing a Prime Minister or a Chief Minister a complex constitutional exercise and has also led to extreme instability in the ministries.

Fractured electoral mandates produce short-lived and ineffectual governments and it also poses a complex problem before the President and the Governor in appointing the Prime Minister and the Chief Minister. With the Indian electorate repeatedly delivering fractured mandate, where no political party has been returned with a majority in the House, the process of ascertaining the factum as to who commands a majority in the House has become growingly complex. In such situations the President and the Governor are required to exercise their judgment and discretion as to who amongst the several aspirants to the office of the Prime Minister and the Chief Minister has the best prospects of forming a stable ministry and secure and retain the confidence of the House of the People. But the past experience shows that the judgments of the President and the Governor on many occasions were correct while on many occasions incorrect. The judgments of the President in appointing the leader of single largest party as the Prime Minister succeeded in 1991, 1998, 2004 and 2009 and the Prime Ministers so appointed were able to provide the nation with stable ministries. On the other hand the judgments of the President in appointing the leader of single largest party as the Prime Minister in 1979, 1989 and 1996 did not succeed and the Prime Ministers were not able to provide stable ministries and their governments collapsed pre-mature.

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9 Eswaran Sridharan, “Coalitions and Party Strategies in India’s Parliamentary Federation”, *The Journal of Federalism*, 33:4, (Fall 2003), Publius.

Problems occur in case of fractured electoral verdict, where the electorate has not returned any political party with an absolute majority in the House of the People. The Constitution provides no guidance to President even in such situations. Authors like Granville Austin<sup>10</sup> and Archana Sinha<sup>11</sup> are of the opinion that this is an important omission in the Constitution of India, which though voluminous and deals minutely even with the matters relating to day-to-day administration has not made any provision with regard to this area of major political concern as to whom the President should invite to form the government in case of hung parliament. Evatt calls it a “dangerous uncertainty” in the area<sup>12</sup>. Rodney Brazier says, “It seems all this that there are no rules about Government formation from the hung Parliament. Such uncertainties in an area of major importance in the constitution may cry out for regulation...”.<sup>13</sup>

In such situations the President is required to exercise his discretion and his judgment as to who amongst the several aspirants to the office of the Prime Minister has the best prospects of forming a stable ministry and secure and retain the confidence of the House of the People. The President has to exercise his constitutional discretion. Similar is the case with States, where the Governor has to exercise his constitutional discretion. Constitutional conventions are the means whereby the discretionary authority of the governmental organs are guided and regulated. The President and the Governor, thus can seek guidance from the conventions as occurring in Britain.

But no convention has been established even in the United Kingdom to deal with situations of hung parliament. The British Parliament, in the twentieth century, faced hung Parliament on three occasions, 1923, 1929 and 1974. In all

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10 Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, 1966.

11 Archana Sinha, *Crisis of a Hung Parliament : The Role of the President*, Vikash Publishing, New Delhi, 1999.

12 H.V. Evatt, *The King and His Dominion Governors (1936)*, Routledge, New York, 2013.

13 Rodney Brazier, *Constitutional Practice: The Foundation of British Government*, Clarendon, 1994.

the three situations, the party leaders resolved the crisis by resorting to minority governments.<sup>14</sup> Moreover, can British experience be outrightly cloned and adopted to resolve our problems? In the famous *S. R. Bommai* case, Kuldip Singh, J., accepted Sir Ivor Jennings' well known formulations that in order to establish a convention three questions must be asked: *first*, what are the precedents; *secondly*, did the actors in the precedents believe that they were bound by a rule; and *thirdly*, whether there is a good reason for the rule?<sup>15</sup> Thus, in adopting the British experience of 1923, 1929 and 1974, we must ask the question "is there a good reason for the Rule?". In 1979, Chaudhary Charan Singh, being the leader of the largest single party in a Hung Parliament, was appointed as the Prime Minister, his government could not secure the confidence of the House of the People. In 1989, in another situation of a hung parliament, V. P. Singh, the leader of the largest single party was appointed as Prime Minister. But his ministry also could not survive for more than a year. In 1996 again, after a hung parliament was returned with BJP as the single largest party in the House, Atal Bihari Vajpayee, the leader of the BJP was appointed as the prime minister. But his government could not secure a majority in the house. On the other hand, in the hung parliament of 1991, P. V. Narasimha Rao, the leader of the largest single party was appointed as the Prime Minister and his government secured and retained the confidence of the House for its full 5-year term. In 1998, again no majority party emerged in the House and the coalition led by BJP was invited to form the government and having thus got a majority was able to secure the vote of confidence in the House of the People. Again in 2004 and 2009, Man Mohan Singh, the leader of the Indian Congress Party, which emerged as the largest single party was appointed as the Prime Minister and his Ministry survived full term.

Thus the experience shows that the British precedents of appointing the leader of largest single party in the House as the Prime Minister did not succeed

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14 *Ibid.*

15 *S.R. Bommai vs. Union of India*, (1994) 3 SCC 1.

in India in 1979, 1989 and 1996 whereas the same succeeded in 1991, 1998, 2004 and 2009. Rodney Brazier, an accomplished common law commentator, has said that the British precedents especially those in which a minority administrations were formed have to be approached with caution as they were political accommodations arrived at as the result both of the political realities of the day and of the personal relationships between the party leaders. Accordingly these precedents should not be considered as being rule-constitutive.<sup>16</sup>

The approach of the Governors in various States in appointing Chief Ministers in hung Assemblies has also been uncertain and the Governors, instead of following a uniform pattern, have been exercising their discretion in varying manners. In reality, however, the Governor has no option except to invite the leader of the party or combination of the parties which has emerged with clear majority in the legislative assembly to form the ministry. If, at the end of an election, one party or a pre-existing coalition of parties secures a stable majority in the Legislative Assembly and is able to elect its leader, the Governor's role in the choice of the Chief Minister is formal and non-controversial. But his role in the ministry-making assumes importance when no party obtains a clear majority in the legislature. Should he invite the leader of the largest single party in the Legislative Assembly to form the government, irrespective of the consideration whether or not such a party commands a stable majority? In such a situation the extent of the support behind the ministry will be tested on the floor of the House. Or, should he appoint a person about whose capacity to command a stable majority in the Legislative Assembly he is reasonably satisfied? No single formula prevailed with the Governor and they applied different stands in different States under similar circumstances. In Madras, the result of the first general elections showed that no party was able to secure an absolute majority in the State Legislative Assembly. The Congress, however, emerged as the largest single party with a strength of 155 in a House of 321. The Governor nominated

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16 Rodney Brazier, *Constitutional Practice: The Foundation of British Government*, Clarendon, 1994.

C. Rajagopalachari, a member of the Legislative Council and then invited him to form the government. Thus a Congress ministry, under the leadership of Rajaji, who was then the “prospective head” of the Congress Party in the State Legislative Assembly was installed in power. The non-Congress parties formed the United Democratic Front which enjoyed the support of the majority of the members in the Assembly. When they with 166 legislators collectively approached the Governor Sri Prakasa with a claim to allow the Front to form the ministry, the Governor said; “I am not going to recognise the combination of groups. I am going to call that party which in the elections emerged as the largest single party, if not, the absolute majority party, the biggest party.” Thus Sri Prakasa adopted ‘largest single party’ criterion for purposes of extending invitation to form the government. The Raj Pramukh of PEPSU invited the leader of the Congress Party to form the government in 1952 although it had only 26 seats out of 60. In the same year, in Travancore-Cochin the leader of the Congress party which was the largest single party in the legislature was invited to form the ministry. The Congress there secured 44 seats in a House of 108. Again in 1957, in Orissa, the Congress secured 56 seats in a House of 140 and emerged as the largest single party. The Governor of the State, Bhim Sen Sachar, invited Hari Krishna Mahatab, the leader of the Congress Legislature Party to form the government.<sup>17</sup>

The practice of inviting the leader of the largest group was not, however, followed in Kerala in 1965. In the mid-term elections held on March 4, 1965, in Kerala, none of the political parties managed to secure an absolute majority. The CPI(M) emerged as the largest single party having a strength of 40 in a House of 133. E.M.S. Namboodiripad, the leader of the CPI(M) Legislature Party, was not given an opportunity to try to form the ministry. The Governor reported to the President that it was not possible for a representative government to come into existence as a result of the elections to the State Assembly and recommended the

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17 Sibransjan Chatterjee, *Governor's Role in the Indian Constitution*, Mittal Publications, New Delhi, 1992, pp. 110-127

issue of a proclamation under Art. 356 of the Constitution. This was done in spite of the fact that Namboodiripad declared his willingness and ability to form the government with the support of the left democratic parties in the State, i.e., SSP, CPI, RSP, etc. The denial of an opportunity to the leader of the largest single party to try to form a government became an issue of intense political controversy through out the country. In Rajasthan, after the Fourth General Elections, it was found that no single party could obtain a stable majority in the Assembly. The party position in the 184-member State Assembly immediately after the election was: Congress-89, Swatntra-49, Jana Sangha-22, SSP-8, CPI-1, and independents-15. The non-Congress parties got together to form the United Front or Samyukta Vidhayak Dal (SVD) and expressed their desire to the Governor to form a coalition government with the help of some Independent legislators. But the Governor, Sampooranand invited Mohan Lal Sukhadia, the leader of the Congress Legislature Party which was the largest single party, to form the ministry on March 4, 1967. Defending this step, the Governor said that the Congress had secured 88 seats (the effective strength of the Congress was 88 as one of its members was returned from two constituencies), while all the Opposition combined had only 80 legislators. He argued that the Independents should not be counted while testing the relative strength of the contending political parties, because "the people do not know their policies". As a protest against the decision of the Governor, there took place wide spread violence and agitation in Jaipur. The law and order situation in the State rapidly deteriorated. Consequently, Sukhadia expressed his unwillingness to form the government. On Sukhadia's refusal, the Governor did not call upon the leader of the SVD to form the ministry. On March 13, 1967, the President's rule was proclaimed in Rajasthan and the assembly was kept in suspension. On March 15, 93 members of the Assembly presented themselves before S. Radhakrishnan, the President of India, to prove that the SVD had a clear majority in the State Legislature. Y.B. Chavan, the Union Home Minister, was present when the legislators met the President of India. This method of parading of MLAs before the President was adopted for the first time in India. A memorandum signed by all the 93 members

was submitted to the President. As time passed, political horse trading began. The ranks of the SVD began to shrink. On April 25, the President's rule was revoked and on April 26, Mohan Lal Sukhadia was sworn in as the Chief Minister of Rajasthan. This time, however, the attempt of the Congress at capturing power with the help of 'Independent' legislators was not opposed by the Governor, nor was it branded undemocratic or unconstitutional.<sup>18</sup>

In UP also, following the Fourth General Elections, no party could get an absolute majority. The Congress was the largest single party securing 198 seats in a House of 425. The leaders of seven opposition parties sent a joint letter to the Governor urging his "help to establish a non-Congress government in the State". Their contention was that all the opposition parties were agreed on formation of a non-Congress government and that the combined opposition strength including the independents was more than that of Congress. So the opposition, and not the Congress, should be given an opportunity to form the government. The Governor, however, invited C.B. Gupta, the leader of the Congress party to form the ministry.<sup>19</sup>

In Bihar, mid-term election was held in 1969. None of the parties had a clear majority in the Legislative Assembly. The Congress was, however, the largest single party. The Governor, Nityananda Kanungo, invited Hari Har Singh, the leader of the Congress party, to form the ministry.<sup>20</sup>

In the mid-term election held in West Bengal in March 1971, the CPI(M)-led United Left front (ULF) secured 123 seats in the 277-member House and was the largest group in the Assembly. The Congress (R) obtained 105 seats. The position of other parties was : Congress (O)-2; Bangla Congress-5; SSP-1; PSP-3; RSP-3; Muslim League-7; Jharkhand-2; Jana Sngh-1; and ULDF-25. In a letter addressed to the Governor of West Bengal on March 15, 1971, Jyoti Basu,

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18 *Ibid.*

19 *Ibid.*

20 *Ibid.*

leader of the United Left front, requested the Governor to invite him for ministry-making in the State on the ground that ULF was the largest single group of members (123 in the newly elected Assembly). Almost simultaneously, the Governor received letters from both Congress (R) and Congress (O) leaders and also from leaders of a few other parties asking him not to call upon the CPI(M) or the ULF to form any ministry because it did not command a stable majority in the Legislature. There were thus two sets of demands before the Governor – one by the ULF claiming the right to form a ministry on the ground that it was the largest single bloc in the assembly, and the other opposing this demand without proof of an absolute majority. In this situation, the Governor S.S. Dhawan in a reply to Basu's letter requested him to give a reasonable proof of his majority. Dhawan in his letter to Basu (dated March 15, 1971), wrote that as long as the State was under President's rule by virtue of a proclamation under Art. 356 of the Constitution. He had no power to invite any party or group of parties to form a ministry. The first essential step was the withdrawal of the proclamation by the President. Clause (2) of Art. 356 provided: 'any such proclamation may be revoked by a subsequent proclamation'. This could only be done by the President on the receipt of a report by the Governor of a State or otherwise. The sole question before the Governor was whether on the material before him he would be justified in making such a report to the President. Dhawan was of opinion that he would not be so justified. "Suppose he [the President] accepts my report", observed Dhawan, "and revokes the proclamation under Article 356, and subsequently it transpires that you do not command a majority in the House and no other party is willing or able to form a ministry. In that case, the President will have every reason to feel that his Governor had submitted a misleading and inaccurate report. Therefore, in a State which is under President's Rule the question whether the largest single party or group commands an absolute majority must be decided by the Governor before submitting his report under clause (2) and cannot be left to be thrashed out in the Legislative Assembly..... In particular if the other parties write to the Governor alleging that the party (or Group) concerned does not command a majority, the Governor will act

improperly if he makes a premature report to the President under clause (2) without making a proper inquiry.” But the ULF refused to furnish proof of its absolute majority in the Assembly. Basu, in another letter addressed to the Governor on March 16, 1971, reiterated his former stand and said, “You [Dhawan] are assuming the powers of the legislature which is a clear misuse of your powers as the Governor. The main consideration which should weigh with you is whether there is a reasonable probability for a ministry to be constituted and the rest should be left to the legislators. In the prevailing situation I assert that such a government can be formed.....”<sup>21</sup> The Governor, in his rejoinder to Basu’s letter, clearly told him, “....In this situation [in the prevailing situation] I.....cannot accept without further proof your assertion that there is a reasonable probability of your being able to form a ministry which will command a majority in the Assembly.”<sup>22</sup> The Governor accordingly did not call the leader of the ULF to form the government. In the meantime, the Congress (R), Bangla Congress, Muslim League, SSP, PSP and Gorkha League formed a democratic Coalition and Ajoy Mukherjee was elected leader of this coalition. Furthermore, the CPI, Forward Bloc and Congress (O) assured their support to any government led by Mukherjee. The latter, during his interview with Dhawan, claimed the right to form a ministry since he had a clear majority in the Assembly. The Governor requested him to furnish convincing proof that the Democratic Front and its supporters had a majority. On March 30, 1971, Mukherjee accompanied by the leader of the Congress (R) handed over to the Governor letters addressed to him by leaders of several political parties declaring their support for a ministry led by him. The Governor, after proper inquiry, invited Mukherjee to form a new ministry in West Bengal. He, in a broadcast from the Calcutta Station of the All India Radio on April 1, 1971, said that he was satisfied that the six-party Democratic Coalition and the three supporting parties had a majority in the State legislature, and accordingly submitted a report to the President of India

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21 *Ibid.*

22 *Ibid.*

recommending the termination of the President's Rule in the State. The ministry led by the Democratic Coalition took office on April 2, 1971.<sup>23</sup>

In this connection, it may be recalled, as has already been noted, that under similar circumstances the Governor of Bihar acted otherwise. In Bihar the mid-term election result of 1969 did not yield any clear majority of any party. Harihar Singh, the leader of the Congress Party, which was the largest single party in the assembly, was entrusted with the task of forming the government. When Sudhin Kumar, the convener of ULF, in his letter to the Governor regarding the claim of CPI (M) dominated ULF to form the ministry in West Bengal, attracted the notice of Dhawan to the action of the Governor of Bihar, Dhawan just bypassed the matter and replied that he did not "think it proper to comment on the action of a respected colleague".<sup>24</sup> After the mid-term election of 1969 in West Bengal, Dharmaveera, the then Governor of West Bengal, was reported to have made a public statement that he would have called Jyoti Basu as the leader of the largest single party to explore the chances of forming the government if Basu had not already declared that the leader of the United Front should be called by the Governor. Thus in fairly similar situations the two Governors acted differently.<sup>25</sup>

Dhawan, however, further pointed out that there was a difference between a State in which the government was being carried on in accordance with the Constitution and a State which was under President's rule. It was only in a State which was not under President's rule and government of which was being administered in accordance with the provisions of the Constitution that the fact of being 'the largest single party' could be taken as *prima facie* evidence of the ability of the party to command a majority in the Assembly. Even in such case, it was *prima facie* evidence only and rebuttable by other evidence.<sup>26</sup>

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23 *Ibid.*

24 *Ibid.*

25 *Ibid.*

26 *Ibid.*

After the fall of the Second United Front Government in West Bengal in March, 1970, Dhawan invited Jyoti Basu for a discussion with him regarding the possibility of the formation of an alternative popular ministry in the State. Basu claimed his right to form the ministry, but refused to place before the Governor the names of the members whose support he expected in the event of the CPI(M) forming a government. He reiterated his stand that the strength behind the new ministry would be judged only on the floor of the Assembly. Dhawan rejected his contention and clearly told Basu that he could not be allowed to form the ministry unless the Governor was convinced of the majority support behind the CPI(M) and his allies in the State Legislature. The Governor, then, got in touch with other parties like the Congress (R), CPI, Bangla Congress and Forward Bloc, to ascertain whether they were willing and able to form a new government. All of them, however, informed the Governor of their unwillingness to try to form any alternative ministry. In this situation, the Governor was left with little option but to recommend the imposition of President's rule.<sup>27</sup>

In the mid-term poll held in March, 1971, no party in Orissa could secure an absolute majority in the newly elected Assembly as in West Bengal. The Congress (R), however, emerged as the largest single party. On March 21, 1971, S.S. Ansari, the Governor of Orissa, invited the Ruling Congress Legislature Party leader, H.K. Mahatab, to explore the possibilities of forming a popular government in the State. Mahatab accepted the invitation and met the Governor. He, unlike Jyoti Basu, did not claim that he should be allowed to form the Government as his party was the largest single one in the Assembly. As the Congress (R) could not come to an understanding with the Utkal Congress on certain basic issues and consequently was unable to satisfy the Governor of its majority support, the Governor did not invite the Congress (R) leader to form the ministry. In the meantime, an "Orissa United Front Assembly Party" consisting of Swantranta, Utkal Congress and Jharkhand Party was formed under the leadership of Biswanath Das, a former Governor of Uttar Pradesh. These three

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<sup>27</sup> *Ibid.*

parties in combination had the support of 72 members in the 140-member State Assembly. The Governor was obviously satisfied by the UF claim of majority support and invited Das to form a new ministry on 31 March, 1971. Das accepted the invitation. Although the ministry-making in Orissa was delayed, still the Governor acted very cautiously and judiciously by inviting Das to form the ministry. It may be mentioned in this connection that it was for the first time that the claim of a Congress leader was bypassed particularly when he was keen to form the government.<sup>28</sup>

In Gujarat, after the resignation of Hitendra Desai on March 31, 1971, the Governor asked Kantilal Ghia, the leader of the Congress (R) Legislature Party, to explore the possibility of forming an alternative government. Ghia requested the Governor to allow him some time for consultations. On April 6, 1971, the Congress (R) leader called on the Governor and expressed his inability to submit any list of his supporters. Consequently, the Governor did not invite Ghia to form the ministry, because he was not convinced of the majority support of Congress (R) in the Assembly. Ghia, however, demanded the imposition of President's Rule temporarily to enable him to demonstrate his majority in the Assembly. But the Governor rejected his demand and invited Hitendra Desai again to form a new ministry.<sup>29</sup>

In the election to the Legislative Assembly of Assam in February, 1978, no political party succeeded in securing a majority of seats in the Legislature. The Janata Party, however, emerged as the largest single party. The Governor invited Golap Chandra Barbora, the leader of the Janata Legislature Party, to form the ministry. Barbora claimed that he was in a position to form a stable government with the support of the CPI(M) and like-minded Independents. The Janata ministry was sworn in on March 7, 1978. It may be pointed out that during that period the Janata Party was in power at the Centre. In Maharashtra, however, the

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28 *Ibid.*

29 *Ibid.*

leader of the largest single party was not invited to form the ministry. In the elections to the Legislative Assembly of Maharashtra, which were also held in February 1978, the Janata Party secured 99 seats in the 288-member House and emerged as the largest single party. The Congress (S) and the Congress (I) which gained 70 and 62 seats respectively agreed to form a coalition ministry with the help of the Independents. On March 4, 1978, V.R. Patil and N.K. Tirpude, leaders of the Maharashtra Congress (S) and Congress (I) Legislature Parties respectively, presented jointly to Sadiq Ali, the Governor of Maharashtra, a list of 148 legislators who had pledged support to their ministry. Patil also informed the Governor that the names of two more legislators would be submitted on March 5, 1978. At the same time, the Janata Party and its allies presented a list of 145 members and claimed that it had a majority support. On March 5, the legislators of the Congress (S) presented themselves at the Raj Bhawan in their bid to convince the Governor that they commanded the majority. The names of the five legislators figured in the lists submitted by both groups. The Governor called them to his chamber and personally verified their loyalty. After being convinced of the majority support of the Congress (S)-Congress (I) combine, the Governor invited Vasant Rao Patil, the leader of the Congress (S) Party, to form the government.<sup>30</sup>

No party emerged with even a working majority in elections to the 60-member Manipur Assembly held in January 1980. The Congress (I) emerged as the largest single party securing 13 seats. R.K. Dorendra Singh, the leader of the Congress (I) Legislature Party, was invited to form the ministry. During the same period the Congress (I) under the leadership of Indira Gandhi came back to power at the Centre.<sup>31</sup>

In Assembly elections of May 1982, no political party or alliance was able to secure an absolute majority in Himachal Pradesh and Haryana. In Himachal

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30 *Ibid.*

31 *Ibid.*

Pradesh the Congress (I) was the largest single party securing 32 seats in 68-member House. The BJP had a strength of 29 members in the newly elected House. Ram Lal, the Congress (I) leader of the Himachal Pradesh Congress (I) Legislature Party, was invited by the Governor to form the ministry. The BJP had no complaint against the Governor. A.B. Vajpayee, the BJP President, was reported to have said that his party would have no objection to the Congress (I) being invited to form the ministry in Himachal Pradesh and that it would play the role of Opposition for which it was chosen by the people in the Assembly election. In Haryana, however, the Governor's role in allowing the Congress (I) to form the ministry became the subject of heated controversy and criticism. The Congress (I) got 36 and the Lok Dal-BJP alliance secured 37 seats in the 90-member House. Both the alliance and the Congress (I) staked their claims to form a ministry. The Congress (I) claimed the first chance to explore the possibility of ministry-making on the plea that it had emerged as the largest single party in the elections. Its argument was that the Lok Dal-BJP alliance though commanding more seats fought the election on separate symbols and without a common programme. On the other hand, Devi Lal, the leader of the alliance, claimed that he was in a position to form the ministry with the help of the Independents and submitted to the Governor names of four of his Independent supporters. Under such circumstances, on May 22, 1982, G.D. Tapase, the Governor of Haryana, asked Devi Lal to present before him at the Raj Bhawan all the legislators who stood for the alliance at 10 a.m. on May 24, 1982. On May 23, 1982, in the evening, the Governor, however, invited Bhajan Lal, the leader of the Congress (I) Legislature Party to form the government. Without making any delay, Bhajan Lal was sworn-in as the Chief Minister of Haryana. At the time of the swearing-in he did not claim a majority support in the House and submitted a list of supporters which, according to the Governor himself, contained 42 or 44 names. At least 46 members were needed for a bare majority in the House of 90. In fact, the action of the Governor was unusually hasty because the decision to invite the leader of the Congress (I) Legislature Party to form the ministry had come a day before Devi Lal was supposed to

demonstrate his strength before Tapase on May 24, 1982, in the morning. On May 24, Devi Lal, accompanied by 45 legislators, met the Governor and demanded that Bhajan Lal be dismissed immediately and the new Assembly summoned immediately to test the strength of the parties. The Governor was also reported to have been hackled during the heated dialogue with the legislators. On the same day (in the afternoon) the Opposition leaders presented a memorandum to Sanjiva Reddy, the President of India, and demanded the immediate dismissal of Tapase, the Governor, for his "unconstitutional" act. The President of India was reported to have expressed concern over the happenings in Haryana. It cannot be gainsaid that the Governor knew very well that he was going to install a minority government, because he himself conceded that Bhajan Lal had given him a list of supporters containing "42 or 44" names, whereas at least "46" was necessary for a bare majority. Tapase, however, took the plea that he had followed "the largest single party" criterion in inviting Congress (I) to form the ministry. On the analogy of the stand taken by Tapase, it was the CPI(M) in Kerala which was entitled to be administered the oath of Chief Ministership of the State. In the Assembly elections in Kerala which were also held in May 1982, although the Congress (I)-led United Democratic Front captured 77 seats in a House of 140, the CPI(M) emerged as the largest single party with 25 seats besides three Independents sponsored by it. The UDF comprised various parties which followed different ideologies. Nevertheless, Karunakaran, the leader of the UDF, was invited by the Governor to form the government, because the Front secured a majority of seats in the assembly. The criticism that the Governor allowed Bhajan Lal to form the ministry in order to please the central leadership of the Congress (I) cannot, indeed, be dismissed so lightly.<sup>32</sup>

In the Assembly elections held in February 1983, the voters of Meghalaya, as in 1978, elected an Assembly in which no single party had an absolute majority. The Congress (I) was the largest single party securing 25 seats in the 60-member House. The position of the other parties was: All Party Hill Leaders'

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32 *Ibid.*

Conference – 15; Hill State People’s Democratic Party – 15; Public Demands Implementation Convention – 2; and three Independents. Captain Sangma, the leader of the Meghalaya Congress (I) Legislature Party, staked his party’s claim to form the ministry on the ground that the Congress (I) emerged as the largest single party. The APHLC, HSPDP and PDIC formed a new alliance namely “United Meghalaya Parliamentary Party” and elected B.B. Lyngdoh as the leader of the alliance. On February 28, 1983, Lyngdoh submitted to the Governor a list of 32 legislators supporting the UMPP and claimed his right to form the government. On March 1, the Governor invited Lyngdoh to form the ministry.<sup>33</sup>

*Largest Single Party Criterion Followed\**

Year	State	Largest Single Party
1952	Madras	Congress
1952	PEPSU	Congress
1952	Travancore-Cochin	Congress
1957	Orissa	Congress
1967	Rajasthan	Congress
1967	Uttar Pradesh	Congress
1969	Bihar	Congress
1978	Assam	Janata Party
1980	Manipur	Congress (I)
1982	Himachal Pradesh	Congress (I)
1982	Haryana	Congress (I)

\*No single party could secure an absolute majority in the elections.

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33 *Ibid.*

*Largest Single Party Criterion Not Followed\**

Year	State	Largest Single Party/Group
1965	Kerala	CPI(M)
1967	West Bengal	Congress
1967	Punjab	Congress
1971	West Bengal	CPI(M)-led United Left Front Congress (R)
1971	Orissa	Congress (R)
1978	Maharashtra	Janata Party
1982	Kerala	CPI(M)
1983	Meghalaya	Congress (I)
1990	Manipur	Congress (I)

\*No single party could secure an absolute majority in the elections.

In Meghalaya 'the largest single party' formula was not followed. Likewise in Manipur, the Congress (I) was not allowed to form the ministry although it emerged as the largest single party in the elections to the Manipur Assembly held in February 1990.<sup>34</sup>

Since the inauguration of the Constitution, the Governors seem to have adopted different criteria in similar situations in various States in assessing the prospect for the formation of a stable government. Instead of playing the role of a constitutional head, a comparative study of their actions indicate their partisan character.<sup>35</sup> The practice of inviting the leader of the largest party had generally been followed when the state unit of the central ruling party emerged as the largest single party. The leader of the largest single party was invited by the Governors to form the ministry in Madras, PEPSU and Travancore-Cochin in 1952, in Orissa in 1957, in Rajasthan and Uttar Pradesh in 1967, in Bihar in 1969, in Assam in 1978, in Manipur in 1980 and in Himachal Pradesh and

34 *Ibid.*

35 *Ibid.*

Haryana in 1982. In all these States excepting Assam the Congress [or Congress (I) since 1980] emerged as the largest single party. In Assam in 1978, the Janata Party was the largest single Party. At that time the Janata Party was in power at the Central Government. By contrast, the formula of 'largest single party' was not followed in Kerala in 1965, in West Bengal in 1967 and again in 1971, in Punjab in 1967, in Orissa in 1971, in Maharashtra in 1978, in Kerala again in 1982, in Meghalaya in 1983 and in Manipur in 1990. In Kerala (in 1965) the CPI(M) emerged as the largest single party. In West Bengal (in 1971) the CPI(M)-led United Left Front was the largest single bloc in the Assembly. They, however, were not allowed to form the ministry. Although the Congress was the largest single party in West Bengal and Punjab in 1967, it was not invited to form the government mainly because the respective State units of Indian National Congress were not willing to be installed in power. In Punjab the Governor invited Gurnam Singh, the leader of the People's United Front (comprising non-Congress parties), to form the ministry only after Gian Singh Rarewala, the leader of the Congress Legislature Party, had told the Governor of his inability to form the government. Similarly the West Bengal Pradesh Congress Committee in a statement issued on February 23, 1967, declared its decision not to form the government. The statement ran as follows: "Since it [the Congress] has failed to secure an absolute majority in the Assembly, the party should go into the Opposition in accordance with the tenets of parliamentary democracy." Had the provincial units of the Congress Party in West Bengal and Punjab been interested in forming the government, they could have easily done so, as was done by their counterparts in Rajasthan and U.P. during the same period. There are, however, instances, though very limited in nature, where the Governor did not invite the State unit of the ruling party at the Centre to form the ministry, even if it emerged as the largest single party and expressed its willingness to do so. In 1971 the claim of H.K. Mahatab, the leader of the Orissa Congress Legislature Party, which was the largest single party, to form the government was not accepted by S.S. Ansari, the Governor of Orissa, as the former could not convince the latter of his majority support in the Assembly.

Likewise, in 1978 Sadiq Ali, the Governor of Maharashtra, did not invite the Janata Party to form the ministry although it was the largest single party. At that time, it may be noted, the Janata Party was in power at the Centre. In 1983 the claim of the leader of the Congress (I), whose party was the largest in the Meghalaya Assembly, was bypassed. Barring a few exceptions, however, the general trend seems to be that the Governors normally have shown favour to the State units of the ruling party at the Centre provided they were willing to be installed in power.<sup>36</sup>

As seen above, the approach of the Governors in appointing the Chief Ministers in fractured electoral verdicts have been differing. Some Governors in certain circumstances followed the 'largest single party' formulae, while the other Governors in similar circumstances ignored the 'largest single party' rule. The exercise of the discretion and judgments of the Governors in appointing Chief Ministers had mixed results. While some Chief Ministers were able to secure and retain the confidence of the House and provide the State with stable ministries, other Chief Ministers either could not even secure the confidence of the House and in some cases though could secure but could not retain the confidence of the House, and the ministries could not survive their full terms and President's rules had to be imposed. Ultimately, the Assembly had to be dissolved and fresh elections had to be called for.

There should be no automatic commissioning of the leader of the largest single party to form the government without ascertaining the view of any other member or members. It, however, may be said that the government might hope that the largest single party, after being put in office, might acquire outside support and thereby command majority. The question is, if it can acquire support after being put in office, it can offer inducement for the acquisition of support, which it could not do earlier. A procedure which opens the door to such a state of affairs would be destructive of healthy democracy. The majority must come into

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36 *Ibid.*

existence as a result of considerations of the policy and ideals by which the country is to be governed, and not be brought about by power politics. Hence the argument that the extent of support behind such a ministry can be tested by summoning the legislature as early as possible, ignores the fact that under present political conditions in India the appointment of the leader of the largest single party as Chief Minister gives him an unfair advantage in securing the support of Independents members and also those belonging to other party or parties. Such a practice opens the floodgate to defection which is a chronic disease afflicting our present day body politic. Of course, to curb this unhealthy practice of defection and horse-trading, the Anti-Defection law was brought about by way of the Constitution (Fifty Second Amendment) Act, 1985, which seeks to curb political defections by making members of Parliament and State Legislatures liable to be disqualified under certain circumstances, has come into force.<sup>37</sup>

Hence the view that the Governor should endeavour to appoint a person as Chief Minister who has been found by him, as a result of his soundings, to be most likely, to command a stable majority in the legislature, appears to be logical. The Governor, in carrying out his soundings, should bear in mind that his duty is to ascertain the party or coalition commanding the majority, and not to create one. It would be a safer course for the Governor to proceed to consult the parties in order of their strength in the legislature. This would largely avoid criticism of his "soundings". It is conceivable that there may be found members, who are willing to support a government formed by any one or two or more parties. Nevertheless, they may have a preference as to the party with which to form a government. It would be the duty of the Governor to ascertain the wishes of the Independent members also. Thus the "satisfaction" of the Governor that the person whom he is inviting for appointment as Chief Minister is the leader of the party or group of parties which commands a clear majority in the House is a condition precedent for such invitation. The Committee of Governors has agreed with this view. In its report on the role of Governors the Committee

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37 *Ibid.*

recommended: "The Governor has ..... first and essentially to satisfy himself that the person whom he invites to form the government commands majority support in the Legislature. Obviously, he must satisfy himself only on the basis of an informed and objective appraisal of the prevailing situation in the Assembly. For that purpose, nothing prevents him from consulting the leaders of different parties or groups; in fact, in most circumstances, it may be necessary for him to do so."<sup>38</sup> There is, therefore, a scope for the exercise of independent judgment by the Governor in the selection of a Chief Minister in case of inability of the political parties to secure an absolute majority in the Assembly; and that is desirable in the interest of smooth functioning of democratic machinery. The Study Team (appointed by the Administrative Reforms Commission) on Centre-State Relationships suggested: "Where .... it is not absolutely clear whether any party or a combination of parties has a majority, the Governor can find himself in a position in which he has to exercise his own judgment. His decisions, in such delicate situations, are crucial and can have far-reaching consequences."<sup>39</sup>

The choice of Chief Minister does not pose any problem for the Governor, when there is clear majority of a political party after a general election. With the weakening of the Congress Party and its fragmentation, the State-level political situation has increasingly become complex and fractured. It is in a situation of political fragmentation and unclear majority of a single party or of even a coalition of parties that the Governor has to make a careful choice. His choice has been found to be conditioned at times by national level political forces. The choice of Chief Minister is a political choice which is likely to assume critical significance in times of State level political fluidity.

Absence of constitutional guidance to the President and the Governor in the matter of appointment of the Prime Minister and the Governor thus has the major ill consequence that the Prime Minister and the Chief Minister are not able to

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38 *Ibid.*

39 *Ibid.*

provide stable ministries and they lose confidence of the House mid-term. The major fallouts being frequent disruptions and lack in continuity in implementation of policies and programmes of government and frequent snap polls.

The President or the Governor, as such, has to apply his discretion and the only guidance available to the President or the Governor is his best judgment as to who has the best chance of forming a stable ministry and securing the confidence of the House. The President and the Governor must appoint that person who is in the best position to receive the support of the majority in the House of Commons. However, the problem is that in a case of fractured mandate leading to a hung parliament, how is the President and the Governor to determine “who is in the best position to receive the support of the majority in the House”.

This problem is further exacerbated with the emergence of coalition politics, wherein political parties form pre-poll and also post-poll alliances and represent themselves as common fronts.<sup>40</sup> De Smith says invite the person most likely to be able “to form a government with reasonable prospect of maintaining itself in office” and that “that person will normally, but not invariably be the leader of the largest party in the House of Commons”<sup>41</sup>. Marshall envisions a possible difficult choice between a person able to form a majority coalition and the leader of the largest, but minority party<sup>42</sup>.

In a case of fractured electoral verdict, there are four possible choices before the President, viz., (a) Invite the leader of a coalition (there can again be two situations, either invite the leader of a pre-poll coalition or that of a post-poll coalition), (b) Invite the leader of the largest single political party, (c) Form a

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40 Subhash C. Kashyap, *Coalition Government and Politics in India*, Uppal Publishing, New delhi, 1997.

41 S.A. De Smith, *Constitutional and Administrative Law*, 5th ed. by H. Street and R. Brazier (1985).

42 Geoffrey Marshall, *Constitutional Conventions: The Rules and Forms of Political Accountability*, Clarendon Press, 1984.

national government, or (d) Dissolve the House and call for re-election. Again, while exercising the option of inviting the leader of a coalition, the President has to set a priority as to whom to invite first, the leader of a pre-poll coalition or that of a post-poll coalition. The next big question before the President is as to how to ascertain which of the leaders has the best chance of forming a stable ministry and securing the confidence of the House of the People. The President in the process has to play a pro-active role, which has again been criticized on the ground that the Presidential institution is above the process of choosing the Prime Minister.

However, it is down to the fact that fractured electoral mandates produce short-lived and ineffectual governments and it also poses a complex problem before the President in appointing the Prime Minister and before the Governor in appointing the Chief Minister. However, Vernon Bogdanor,<sup>43</sup> after reflections on the role of the British Monarch in the event of a hung parliament in Britain, believes and insists that a hung parliament is a "political problem, not a constitutional one". According to Bogdanor the fundamental convention of parliamentary government - that government must retain the confidence of the House of Commons - would remain unaltered by hung parliament.

Although it is the constitutional duty of the President to act impartially in making the right choice, the circumstances of a hung parliament may force the President to exercise a certain degree of discretion which has the potential to lead to accusations of political bias. With the rival claims and counter-claims of political leaders, exercise of discretion by the President has become a difficult exercise and has also been subjected to criticism. The high office of the President is sought to be dragged into factional politics, which in turn is having telling effect upon the dignity of the office itself. Considering the sensitivity of the matter, Robert Blackburn, Professor of Law at King's College, London has

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43 Vernon Bogdanor in Alex Brazier and Susanna Kalitowski, eds., *No Overall Control? The impact of a Hung Parliament on British Politics*, Hansard Society, 2008.

written that the choice of the Prime Minister is not, and should not be a personal matter for the Monarch of the day. He said, “It is unreal politically and inappropriate constitutionally to acknowledge – and indeed to advocate – a personal discretionary power for a hereditary monarch to operate as the means for determining the outcome of the general elections. There needs to be, and is already in existence, an established procedure and basis for the resolution of who will be Prime Minister after a general election that produces a House of Commons with no overall majority for a single party.

In their report prepared for the Institute of Government, Professor Robert Hazell and Akash Paun suggest that the golden rule is not to draw the Monarch into controversy or political negotiations.<sup>44</sup>

Rodney Brazier is also of the opinion that after an inconclusive general elections, “the guiding lights should be: political decisions politically arrived at”<sup>45</sup>

Absence of clear guidance either in the Constitution or in the conventions for the President and the Governor in the matter of appointment of the Prime Minister and the Chief Minister is a major omission having major consequences. An unguided discretion has been given under the Constitution to the President and the Governor in the matters of appointment of Prime Minister and Chief Minister and such unguided constitutional discretion is susceptible to misuse and it subverts the democratic process especially in cases of fractured electoral verdicts and consequent hung parliaments and legislative assemblies, resulting in short-lived ministries and frequent snap polls.

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44 Robert Hazell and Akash Paun, *Making Minority Government Work: Hung Parliaments and the Challenges for Westminster and Whitehall*, Institute for Government, 2009

45 Rodney Brazier, *Constitutional Practice: The Foundation of British Government*, Clarendon, 1994.