

The Role of the President of India During Formation of Government: A Critical Appraisal of Constitutional Provisions

Dr. Biswajit Chatterjee¹

I. Analogy of British Monarchy:

There is an analogy with the British system as to the formation of Government under our constitution. Thus for the proper understanding of this subject we will have to look into the Monarchy in England. The British political system is in form Monarchical. But it is a limited or constitutional Monarchy as opposed to an absolute or strong Monarchy. That is to say the Governmental powers which as a matter of legal form are vested in the Queen are in practice exercised according to the laws, customs and conventions of the constitution.² The sovereign chooses the Prime Minister. Conventions ensure that in most cases the choice is formal, for the sovereign is expected to send for the leader of the party or group of parties that has, or can control a majority in the House of Commons.³ The nature of Queen's choice necessarily depends upon the State of parties in the House of Commons. The simplest case is that in which a party has a clear majority. The Government must clearly be formed out of that majority and, if it has a recognized leader, he will be the Prime Minister.⁴ Thus in 1855 Queen Victoria, who preferred **Derby**, was constrained to appoint **Palmerstone**; and in 1880 she reluctantly appointed **Gladstone** although she would have preferred **Harington**.⁵

The rule is that on the defeat and resignation of the Government at Queen should first send for the leader of the opposition. There is thus a long series of precedents covering more than a century. In each case, the Monarch has sent for the leader of the opposition. The rule has its corollary that before sending for the leader of the opposition the Monarch should consult on one.⁶

There are exceptional circumstances when the sovereign really has to exercise a personal discretion within limits; and this is perhaps the most important function of the

¹ Secretary to the Vice-Chancellor, University of North Bengal.

² O. Hood Phillips, Constitutional and Administrative Law, 6th Ed, 1973, at 25.

³ Id at 277.

⁴ Sri Ivor Jennings, Cabinet Government, 3rd Ed, at 24-25.

⁵ Id at 277.

⁶ Sir Ivor Jennings, Cabinet Government, 3rd Ed, at 32-40.

sovereign at the present day. There may be more than two parties in the House of commons with no one party having an absolute majority, either as a result of general election or on a defeat in the commons of a Government that has already been granted a dissolution; and the question whether one of the minority parties if so which, will be able to carry on Government with the support of one of the other parties or whether a coalition shall be formed. The sovereign then may consult all interested parties with a view to the formation of a Ministry that can hold a majority in the House.⁷

Here one important question still remains that is where no party has a clear majority in the House of Commons will the Crown then be guided by the choice of the outgoing Prime Minister, who has lost the confidence of the House, in the matter of selecting his successor? In practice then Crown has taken the advice of the outgoing Prime Minister in 1924, 1929 and 1935.⁸ But **Lowell**, writing in 1912 described any right of a Prime Minister who has lost the confidence of the commons, to nominate his successor as ‘improper, absurd and grotesque.’⁹ An example of the Crown not seeking such advice was in 1923 when **George V** did not invite **Bonar Law** to recommend his successor. In fact there is no constitutional obligation upon the Crown to consult the outgoing Prime Minister, in the matter of finding out his successor. So when no party has a clear majority in the House of Commons the King must then use his own judgment as to which leader he would summon, subject only to the condition that the person summoned must be able to command a majority by some coalition or compromise with the other parties.¹⁰ **George V** took the initiative in the formation of the National Coalition Government under **Ramsay MacDonal** in 1931 when economic crisis caused the minority labour Government to break up. The king consulted the conservative and liberal leaders, each of whom had a considerable following in the House and then entrusted **MacDonal** with the task of resuming office as head of a coalition.¹¹ On the other hand, when **Baldwin’s** minority conservative Government was defeated in the House in 1924 not long after a general election, the King did not seek any advice before sending for **Ramsay Macdonal**, the leader of the second largest party.¹² **Neville chamberlain**, the Conservative Prime Minister resigned in 1940 when he realized that he had lost the confidence of his own party as well as of the labour party. A Coalition Government was needed. The possible

⁷ O. Hood Phillips, Constitutional and Administrative Law, 6th Ed, 1973, at 278.

⁸ Keith, Constitutional Law, 1939, at 146.

⁹ Lowell, Government of England. Vol.I, 1912, at 34: See also Keith, British Cabinet system, 1952, at 36.

¹⁰ D.D.Basu, Commentary on Constitution of India, Sarkars & Sons Pvt. Ltd. Calcutta, 1965, 5th Ed, Vol.2, at 416.

¹¹ O. Hood Phillips, Constitutional and Administrative Law, 6th Ed at 278.

¹² Id 279: See, Nicolson, King George the Fifth, at 382-386.

choice of a successor then lay between **Winston Churchill**, First Lord of the Admiralty and **Lord Halifax**, Foreign Secretary. The labour party was willing to serve under **Churchill** but not **Chamberlain**. **Chamberlain** then tendered his resignation. In an informal discussion as to his successor the King suggested **Lord Halifax**. But **Chamberlain** told the King what **Lord Halifax** had said “I asked **Chamberlain** his advice” the King recorded “and he told me **Winston** was the man to send for ... I sent for **Winston** and asked him to form a Government.”¹³

In 1923 **Bonar law**, the conservative Prime Minister was so ill that he sent his resignation to **George V**. The choice of successor lay between **Lord Curzon**, foreign Secretary and former viceroy of India, a statesman of brilliant gifts and vast experience, and **Mr. Baldwin** who although recently was appointed as the Chancellor of the Exchequer, had little political experience and was not well known either inside or outside the House. After the King or his private secretary had consulted **Lord Balfour** (former Prime Minister) and **Lord Salisbury** (Lord President of the council) and members of the Government party, the King choose **Baldwin** both on personal ground and because he was in the Commons, although the latter reasons emphasized in breaking the news to **Curzon**.¹⁴

In effect owing to the fundamental principle of Cabinet Government that the Cabinet must have the confidence of the majority in the House of Commons, the choice of the Prime Minister by the Crown has become almost automatic, in normal circumstances, and the King must invite the leader of the 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. This does not mean, however, that there is no scope for the exercise of Individual judgment by the Crown in the matter under any circumstances whatever. On the other hand, the appointment of the Prime Minister, as has been already seen is one of the few cases where the King has still left to him some degree of personal discretion. He uses his discretion only in exceptional situation. But even then, the convention is that the sovereign should not take interest in any particular party but should maintain his impartial position.¹⁵ The first business of the Prime Minister after he himself is appointed is the selection of his colleagues. Of course, the

¹³ See, Wheeler – Bennett, King George VI at 438-445.

¹⁴ Robert Blake, The Unknown Prime Minister, 1955 at 514-527: See also, Harold Nicolson, King George the Fifth; at 375-379.

¹⁵ D.D.Basu, Commentary on Constitution of India, Sarkars & Sons Pvt. Ltd. Calcutta, 1965, 5th Ed, Vol.2, at 438.

appointment is formally made by the King, but the King is not expected to interfere with the Prime Minister's selection of Ministers.¹⁶

II. Invitation to Form Government:

Our constitution has clearly envisaged the form of Government but it is silent as to the mode of formation of Government. In other words the constitution does not clearly lay down, to whom the president shall send invitation to form Government; whom the President shall invite for the formation of Government. The constitution says that there shall be a Council of Ministers.¹⁷ The President shall appoint the Prime Minister and other Ministers on the advice of the Prime Minister.¹⁸ The provision relating to the states are almost similar.¹⁹

We have adopted a Cabinet form of Government on the line of British Model. The convention of Cabinet Government is that the head of the Executive would call upon the leader of the majority party or a person capable of commanding majority in the legislature to be the Prime Minister and to form the Cabinet. Though our constitution does not expressly require the President to call upon the leader of the majority party, the rule of responsibility in Article 75(3) will restrict the choice of the President as in England, and it is only in marginal cases that there will be any scope for the President's individual judgment.²⁰

i) When Single Largest Party has Majority in the House:

The well established rule of English convention is that the Crown must invite the leader of the party in majority in the House of Commons to form the Government. In other words in normal circumstances, the King must invite the leader of the party or group commanding a majority in the House of Commons to form a Government.

In India this convention has been applied at several times and it has become a well established rule so far as the formation of Government is concerned under our constitution. When a single largest party has majority in the House, the President must invite the leader of the party to form the Government. In other words if after a general election the party in power or any party returned with a clear majority it becomes the constitutional duty of the President to invite the leader of the party to form Ministry. Similarly the Governor of the

¹⁶ Id at 439.

¹⁷ See, Article 74(1).

¹⁸ See, Article 75(1).

¹⁹ See, Article 164(1).

²⁰ D.D.Basu, Commentary on Constitution of India, Sarkars & Sons Pvt. Ltd. Calcutta, 1965, 5th Ed, Vol.2, at 441.

states must invite the leader of the single largest party when that party has a clear majority in the Assembly. In this regard the Report of Sarkaria Commission says that;

“The leader of the party which has an absolute majority in the legislative assembly should in variably be called upon by the Governor to form a Government. This is a time honored convention of a Cabinet form of Government. There is no controversy in this regard.”²¹

ii) When Single Largest Party is in Minority:

In this regard the rule of English convention is that when no single party controls a majority in the House of Commons, the King must use his own judgment as to whom he should summon. He would then summon a leader who in the King’s estimate is capable of controlling a majority by entering into a coalition or compromise with some other party.²² Similarly when the single largest party in the minority our President has to use his own judgment as to whom he should summon. He would then summon a leader who in his estimate is capable of controlling a majority in the House whether by a coalition or compromise with some other parties. He may first invite the leader of the single largest party and ask him to show majority within a reasonable time.

But there is no rule that the President is bound to call first the leader of the single largest party. What is needed on the part of the President is that he must explore all the possibilities of finding a person who could form a coalition or compromise with the help of two or more parties and command the support of the majority of the House.²³ The same rule applies to the states and the Governor has to act accordingly. In *H.S. Jain v. Union of India*.²⁴ a full Bench of Allahabad High Court held in regard to formation of Government that Article 163(1) had to be read along with Article 164(2). Inviting the leader of the largest party to form Government is not necessary even if it was a convention. The Court also stressed that convention cannot override the specific provision of the constitution.

It must be noted that the constitution does not require that a person must prove or establish his majority in Lok Sabha before he is invited to be the Prime Minister. The President may first invite and appoint him and thereafter ask him to prove his majority or

²¹ See, Sarkaria Commission Report No. 4.14.01.

²² Keith, British Cabinet System, 1952, at 32.

²³ V.N. Shukla, Constitution of India, Eastern Book Company, Lucknow, 1994, 9th Ed, at 343.

²⁴ *H.S. Jain v. Union of India* (HCFB) ALR 1997 (29), at 160.

seek vote of confidence in the Lok Sabha within a reasonable period.²⁵ This is what the President did in appointing **Charan Shing** in 1979, **V.P. Singh** in 1989, **Chandra Shekar** in 1990 and **P.V. Narasima Rao** in 1991, **Atal Bihari Vajpayee** in 1996, and **H.D. Deve Gowda** in 1996 and again **Atal Bihari Vajpayee** in 1998.²⁶

III. Hung Parliament and Appintment of Prime Minister:

‘Hung Parliament’ in common parlance, is understood when no political party after general elections on dissolution of House enjoys absolute majority in Lok Sabha. Electorate does not choose to return a single party with absolute majority.²⁷ Strictly and technically, the term “Hung Parliament’ in U.K. is applied to a situation where Parliament is unable to throw up any Government or unable to take any decision.²⁸ Such a situation could arise in India only in the extremely unlikely event of no party or leader being able or willing to form a Government after a general election. Merely because a single party is not returned to the Lok Sabha with absolute majority, it does not become a Hung Parliament. If some parties can come together and a coalition government or even a minority government is formed and commands the support of the members of Lok Sabha there is nothing ‘Hung’ about it.²⁹ The Readers Digest Dictionary defines Hung parliament “as a parliament wherein no party has won a working majority.”

The result or the consequence of a Hung parliament is either a minority Government or a coalition which can command a majority in the House. One question that is still relevant relates to the meaning of the term hung parliament. Is it the consequence only of general elections or can it be also the result of political development in a given situation?³⁰ For example, if a majority Government is reduced to the status of a minority Government because of the defections or splits in the ruling party which is permitted in the constitution itself³¹ as well as endorsed by the judicial process. What results as a consequence of such defections or splits is the fact of the majority party or a coalition being reduced to that of a minority. As such the fact of having a minority Government immediately after the election or having a minority Government as a result of the defections or splits in between should not make any

²⁵ *Dinesh Chandra. v. Chaudhury Charan Sing*, AIR 1980, Delhi 114.

²⁶ See, *The Statesman*, 27th April 1999, p. 16, Calcutta.

²⁷ R.K. Mahajan, “Hung Parliament – Retrospect & Prospect,” *IBR*, vol. XIX (1&2), 1992, at 17.

²⁸ Subhash. C. Kashyap, ‘Constitutional Implication of Hung Parliament.’ *IBR* vol. XXV(3) 1998, at 37.

²⁹ *Id* at 40.

³⁰ Gautam Narasimhan and Jayanta Mehta, “Hung Parliament” under the Indian Constitution: A Study in the light of Contemporary Development, ‘*IBR* vol.XXV(3), 1998 at 45.

³¹ See, Schedule X to be Constitution of India.

difference. In other words, the meaning of the term in the Indian context should be expanded to as to include both. Taking both together, it may be said that the term hung parliament need not be the consequences only as a result of the general elections, but should also include the consequences of any split or defections through which the ruling party or the coalition is reduced to a minority.³²

The question remains as to what the President must do in the case of hung parliament? In other words whom, the president shall invite and appoint as the Prime Minister? This is undoubtedly a situation incomparable to one where a single largest party commands the majority of the House. In Britain in the case of hung parliament the King exercises his discretion. Following the same, Indian President also acts in his direction. In other words, hung parliament affords him an opportunity to exercise his personal discretion. There have been arguments to the effect that even this personal discretion should be guided by the constitutional provision and nations' interest.³³ There have been argument that he must explore all the possibilities and options both carefully and responsibly to install a responsible and stable Government. He must explore all the possibilities in finding a person who could form a coalition or compromise with the help of two or more other parties and command the majority of the House. On finding such a person, the president shall appoint him as Prime Minister and give him a reasonable time to prove his majority. The governing principles to determine the presidential choice is the viability of an incoming regime and not the simple arithmetic of inviting the largest party. The 'viability' test as opposed to the largest party arithmetic leaves the president with three choices.³⁴

- (1) The party or combination with a working majority (the minority test).
- (2) The party or combination with an assured absolute support even if it is short of a working majority (the absolute support test).
- (3) In the absence of choices 1 and 2, the largest party or combination even if it does not possess a working majority (The most viable minority Government test).

The president cannot move the choice no. 3, whilst the possibilities of choices 1 and 2 are manifest. The viability test accords with common sense and practice. Taking cue from

³² See IBR 8, vol. XXV(3), 1998, at 46.

³³ Ankit Majumdar and Ashim Food, 'Coalition hung parliament; political problems and political solution', IBR vol. XXV (3) 1998, at 65.

³⁴ Gautam Narasimhan and Jayanta Mehta, "Hung Parliament" under the Indian Constitution: A Study in the light of Contemporary Development, 'IBR vol. XXV(3), 1998 at 69.

the Government of India Act 1935, the Instrument of Instructions proposed for schedule V of the Draft constitution of 1948; mandate that the person who is most likely to command a stable majority be invited.³⁵

The viability test, it may be argued places under importance on the institution of Presidency and may even have delighted critiques like **P.B. Mukherji** by recognizing the discretion in a proactive President.³⁶ It may be argued that these apprehensions are misplaced. On a reading of Article 60 of the constitution and given the postulate that Article 75(1) is an exception to Article 74,³⁷ the president is but to act in a manner to ensure stability which seems to elude the polity at large in the present.³⁸

Since independence, Congress was retaining absolute majority in the parliament. In 1967 scene in Indian polity changed to a considerable extent. National Emergency was imposed in 1975 and lifted in 1977 after the declaration of Lok Sabha Election results. Janata Dal came into power. But power struggle within the party led to fall of the Janata Government headed by **Sri Morarji Desai**, Prime Minister who had to resign as different parties withdrew their support to the Janata Government. **Mr. Charan Singh** formed separate group and Congress Party pledged the support to the Government formed by him. President of India invited him to form the Government and he was appointed as the Prime Minister of India. He was given sometime to prove his strength which he could not do so because the support was withdrawn by the Congress on 20.8.1980 and thus he had to resign.

Questions relating to the condition imposed by the President asking **Mr. Charan Singh** to prove the majority within a limited timeframe at that time were also taken to the courts. The High Court of Calcutta did not decide on the competence of the President in imposing such a condition, but avoided the question by saying that the condition of seeking confidence within a limited period was an act of highest priority in view of the situation then prevailed.³⁹ The High Court of Delhi went one step further and held that the appointment of

³⁵ Id at 70.

³⁶ P.B. Mukherji, 'The Critical Problems of the India Constitution', (1967), at 26-27.

³⁷ Even Krishna Lyer, a great Votary of the Westminster model endorses this is his opinion in *Samsher Singh. v. State of Punjab*, AIR 1974 SC 2192.

³⁸ Gautam Narasimhan and Jayanta Mehta, "Hung Parliament" under the Indian Constitution: A Study in the light of Contemporary Development, 'IBR vol.XXV(3), 1998 at 69.

³⁹ *Madan Murari v. Chaudhuri Charan Singh*, AIR 1980 Cal 95.

Mr. Charan Singh and the time given to prove the majority on the floor of the House were not only proper but also constitutional and unobjectionable in view of Articles 75 and 85.⁴⁰

Such situations have arisen also in 1989 at the time when **Sri V.P. Singh** was invited to form the Government and when **V.P. Singh's** Government fell down in 1990, another split up group headed by **Sri Chandra Shekhar** was invited to form the Government. The split up group was from the Janata Dal. **Sri Chandra Shekar** formed the Government with the support of Congress party. The support was also later on withdrawn and General Elections were held in May 1991. **Congress I** appeared as the largest party although failed to secure majority needed for forming Government. **P.V. Narasima Rao** as the leader of the largest party was invited by the President and appointed as the Prime Minister. **Narasima Rao** with the help of other regional parties formed his Government and completed his tenure. The 11th Lok Sabha Election 1996 produced the somewhat peculiar result in which no single party could secure majority for the formation of Government Individually. B.J.P. appeared as the largest single party and the President invited **Mr. Atal Bihari Bajpayee** as the leader of the single largest party (B.J.P.) to form the Government. He was appointed as the Prime Minister by the President and was given sufficient time to prove majority. But this Government could only last for 13 days as it failed to secure confidence at the floor test. In the meantime Janata Dal, leftists and little other party combined together and formed National Front and selected their leader **Mr. Deve Gowda**. He was invited by the President and appointed as the Prime Minister. He secured the confidence of the House and Congress this time supported the Government. Interestingly **Deve Gowda** was removed subsequently and **I.K. Gujral** as the head of the National Front became the Prime Minister and continued for few months.

In 1997, support was withdrawn by the Congress (I) and the National Front Government was reduced to a minority. The result was mid-term poll in which B.J.P. returned with victory; although little short to reach majority. But this time **Atal Bihari Vajpayee** was able to secure the support of several other political parties and confirmed majority and thus he was appointed as the Prime Minister.

While constituting the **XII Lok Sabha Dr. Sankar Dayal Sharma** seems to have glossed the first two options and directly exercised the third choice in inviting the largest

⁴⁰ *Dinesh Chandra v. Chaudhuri Charan Singh*, AIR 1980 Cal 114.

party.⁴¹ The result was for all to see a 13 day Government. While constituting the **XII Lok Sabha, Dr. Narayanan**, in asking the B.J.P. to adduce documentary proof of its claim of majority has cemented the first and the second options available.⁴²

IV. Sequence of Events (During 1989-1999) at the Back Drop of Coalition Government Prior to Dissolution of the Xii Lok Sabha and the Role Of President:

Since 1989, coalition Governments seems to have emerged as the bane of our multi-party democracy. The country's first brush with motley governance came after Morarji Desai's Janata Party Government fell, barely two years after it assumed power, in July 1979 due to serious differences among its constituents. That was when Chaudhry Charan Singh headed the country's first minority coalition Government, which had to bow out within a few days (28 July 1979 – 14 January 1980), after the Congress withdrew support. Following is a chronology of the jinxed phase that set in after Rajiv Gandhi's Congress failed to muster an absolute majority in the 1989 general elections:⁴³

December, 1989: V.P. Singh heads the National Front coalition with outside support from BJP.

- 1st November, 1990: BJP withdraws supports after L K Advani's arrest during his controversial rath yatra. V. P Singh loses confidence vote on 7 November, resigns.
- 16th November, 1990: Chandra Shekar, Prime Minister at the head of another coalition with Congress support, wins vote of confidence.
- March 4th, 1991: Chandra Shekhar quits after Congress withdraws support over alleged surveillance of Rajiv Gandhi by Haryana police.
- June 1991 – May 1996: A period of relative stability as P V Narasimha Rao's Congress Government completes of five-year term.
- 16th May, 1996: A. B. Vajpayee led coalition Government sworn in, but resigns 13 days later unable to muster a simple majority.
- 1st June, 1996: H D Deve Gowda's United Front coalition assumes office with outside support from Congress.

⁴¹ See, Viability test and options 1,2 and 3, Supra at 63.

⁴² Gautam Narasimhan and Jayanta Mehta, "Hung Parliament" under the Indian Constitution: A Study in the light of Contemporary Developments, 'IBR vol.XXV(3), 1998 at 70.

⁴³ See, The Statesman, 27th April 1999, p. 16, Calcutta.

- 11th April 1997: Gowda resigns after losing trust vote as Congress pulls out.
- 1st April 1997: I K Gujral heads another United Front Government supported by Congress and wins confidence vote the following day.
- 28th November, 1997: Congress withdraws support and Gujral resigns, preferring not to seek a vote of confidence.
- 19th March 1998: Vajpayee's coalition Government takes over after the general elections.
- 28th March 1998: Vajpayee wins trust vote with crucial last minute support from TDP.
- 14th April 1999: AIADMK withdraws support. President asks Vajpayee to seek a vote of confidence.
- 15th April 1999: Vajpayee moves vote of confidence.
- 17th April 1999: Vajpayee loses the trust vote by a single vote, resigns.

In April 1999 the role of the President came into question amongst the media and the constitutional lawyers when one of the coalition partners in the B.J.P. led Government withdrew support which led to the dissolution of the Lok Sabha after a couple of luck drama.

The role of the President was criticized by many people.⁴⁴ It was argued by many critics that President Narayanan was wrong in asking Prime Minister Vajpayee to seek a vote of confidence after **Jayalalitha** withdrew support to the B.J.P. led coalition. Since parliament was in session and scheduled to meet in a day, the President should not have asked **Vajpayee** to seek the confidence vote goes the argument. Some critics say that in 1990 when the BJP withdrew support to the **V.P. Singh** Government, and in 1997 when the Congress ditched **H.D. Deve Gowda**, Parliament was not in session, and so President, **R Venkataraman** and **S.D. Sharma** respectively asked the Prime Ministers to seek a confidence vote at a specially convened session. A Supreme Court Counsel **Rajeev Dhawan** says that **Narayanan** created this crisis. He has forced a confidence motion. The idea is disastrous, since parties can now rush to the president and prompt him to ask the Prime Minister to prove his majority. The President's constitutional duty is not to put the Prime Minister at risk, **Dhawan** said that the rug-pullers should have been asked to move a no-confidence motion since the onus is on its sponsors to provide an alternative.

⁴⁴ Rajesh Ramchandran 'Fair to a fault?' Published in Hindustan Times, New Delhi, 2nd May 1999. P. 12,

Constitutional expert **S.L. Shakdher** believes that the President should have merely forwarded **Jayalalith's** letter to Vajpayee and perhaps privately hinted to the desirability of providing his majority. The impending finance bills in any case, would have shown whether or not the Government had majority. What the President has done is wrong and hence it should not become precedent.

The clinching argument in the President' defense was forwarded by **K. Sukumaran** he said that the AIADMK was a pre-poll ally, commanded a significant number of M.P. and a part of the Government. The President adopted the quickest simplest and most appropriate procedure by asking the Prime Minister to prove his majority without fixing a time-frame. In March 1998 **Narayanan** had waited almost 10 days for the B.J.P. to furnish **Jayalalith's** letter of support. This became the basis for him to invite the B.J.P. to form the Government. According to **Rajni Kothari**, a political scientist since the very basis ceased to exist the President had to act to ensure stability.⁴⁵

Most experts hold Narayanan responsible for the opposition's inability to provide an alternative Government. According to **Kothari**⁴⁶ the President allowed the game of numbers to drag on far too long. However, he was fair to a fault.⁴⁷ Without getting involved in the numbers; should have simply invited the second largest party. In other words, the second charge leveled against the president was that he should not have become involved in the numbers game by asking the Congress and BJP to prove that they had 272 MPS.

But it must be noted that the President faced a tricky situation this time. Had he straightway invited Sonia Gandhi, he would have been accused to replacing one caretaker Prime Minister by another in the event of her failing to prove her majority. Thus, he preferred to count heads. It would be very unfair to compare President Narayanan with his predecessors as none faced these challenges. He had to exercise discretion in a complex and unprecedented situation. India is now witnessing a period of unstable Government trying to retain majority by the thinnest of margins, and relying too much on allies consequently those provisions of the constitution, normally not in operation, are now being increasingly relied upon by the President.

⁴⁵ See Hindustan Times, New Delhi, 2nd May 1999, p.12.

⁴⁶ Id.

⁴⁷ Id, See the opinion of K. Sukumaran & also Rajni Kotharia.