

Draw the line for Speakers and Governors

Speakers and Governors, acting independently of each other or in concert, can navigate the destiny of State governments. Governors also have the capacity to install governments and give them enough time to manufacture a majority. The Governor's discretion allows them the necessary elbow room to invite either the leader of the single largest party or the leader of a quick-fix post-poll alliance, engineered through generosity in kind or cash, to form the government and give that leader enough time to iron out the creases to win a trust vote in the Assembly. This is because Speakers and Governors, even after their appointments, continue to be guided by their respective parties' best interests. The result is that those holding these exalted constitutional offices enjoy little public trust or credibility. Constitutional values are made subservient to political outcomes.

The provisions of the 10th Schedule of the Constitution, meant to root out defection, are now being misused to protect those who defect. When defections are engineered either to install a government or protect its longevity, the role of the Speaker is critical.

In Tamil Nadu, the Chief Minister owes his continuance in office to the Speaker's indefensible machinations when dealing with pending proceedings under the 10th Schedule. A petition was presented against the present Deputy Chief Minister and 10 other MLAs of the All India Anna Dravida Munnetra Kazhagam in March 2017 for violating the party whip during the floor test held in February 2017. However, till date the Speaker has not even issued notice to the defecting MLAs. On the other hand, when on August 22, 2017, the T.T.V. Dinakaran group expressed no confidence in the Chief Minister and wrote to the Governor, the Speaker with unusual alacrity issued notices within two days for disqualification against 19 MLAs of the Dinakaran group, on a petition presented by the Chief Government Whip on the ground that their actions amounted to voluntarily giving up membership of the party. The Speaker disqualified 18 MLAs (one MLA shifted his loyalty to the Chief Minister) within three weeks of notices being issued to them. Interestingly, the order for disqualification was passed immediately after a petition was moved by the Dravida Munnetra Kazhagam seeking directions from the High Court for a floor test to be held before the next date of hearing in the said petition. Even after several weeks of the 19 MLAs of the Dinakaran group expressing no confidence in the government and the demands for a floor test, the Governor did not direct a floor test and allowed a minority government to continue to function.

The Speaker is more loyal to his party and the government than to the Constitution. Both the inaction of the Speaker in one case and the disqualifications of the 18 MLAs in the other case were challenged in the High Court in writ proceedings. Unfortunately, the court has not acted with the judicial sagacity expected of it. In the case where the Speaker did not act, the court, relying on a Supreme Court order, refused to issue a mandamus to the Speaker to decide the disqualification petitions expeditiously. Since the power to issue such a mandamus to the Speaker is referred to a Constitution Bench by the Supreme Court, the court decided to await resolution of the issue by the Supreme Court. Speakers can, therefore, merrily refuse to decide such petitions. On the other hand, the court has not rendered judgment in the case challenging the disqualifications of the 18 MLAs of the Dinakaran group. In case the disqualifications are set aside, the government is likely to fall.

In Andhra Pradesh, of the 67 legislators belonging to the YSR Congress Party, 21 have defected, making Chief Minister Chandrababu Naidu's position unassailable. Some of the defectors are Cabinet Ministers. Despite pending petitions questioning the Speaker for not proceeding against the defectors, the Speaker has chosen not to act for obvious reasons. The High Court has also not allowed matters to precipitate stating that with 3.25 lakh pending cases, every matter cannot be heard as a fresh case.

In Telangana, 12 of 15 Telugu Desam Party (TDP) MLAs defected to the Telangana Rashtra Samithi. Apparently, eight TDP MLAs had initially crossed over, after which four others followed suit. Despite a petition seeking disqualification, the status quo prevails. The balance three TDP MLAs have also crossed over. The Congress's strength in the Assembly has gone down from 21 to 12 but none of the defectors stands disqualified, thanks to the Speaker.

In the past too, partisan Speakers have extended the tenure of illegitimate cut-and-paste majorities. The Samajwadi Party did it by creeping defections from the Bahujan Samaj Party to reach the magic 1/3 figure under the unamended 10th Schedule in the early 2000s. That gave legitimacy to the defections. By the time the Supreme Court rendered its verdict challenging the validity of such defections, the term of the Assembly was over. Such situations have replicated themselves in other jurisdictions too.

Governors too have not come out with flying colours as they unabashedly protect the interests of the party that appointed them. That is why the recommendations of the Sarkaria Commission, and later the Punchhi Commission, had clear guidelines for Governors to act when inviting leaders to be sworn in after the electoral verdict is out. But time and again we see Governors flouting these guidelines. A challenge in courts takes time while the constitutional indiscretions of Governors play havoc with democracy. Verdicts after the event make good law to be flouted once again by future incumbent Governors. Recent events in Karnataka and earlier government installations in Goa, Manipur and Meghalaya are shining examples of political venality initiated by Governors' actions. Earlier too, the Supreme Court castigated the Arunachal Pradesh Governor's unconstitutional conduct. In Uttarakhand, the Governor's recommendation for imposition of President's Rule was quashed by the High Court.

The past too has witnessed similar gubernatorial constitutional misdemeanours to be castigated later through court verdicts. Many court verdicts, including the decision of the Supreme Court in *S.R. Bommai v. Union of India* (1994), have lamented the illegal dismissal of State governments on the manipulated recommendations of Governors at the bidding of the Union government.

We need to address this aberration. Radical amendment in the law is one way out, especially by amending the 10th Schedule qua the office of the Speaker and the fate of those who defect. We need amendments to the Constitution to circumscribe the Governor's powers in areas of abuse of discretion. But most of all, we need political consensus to combat subversion of democracy. That is the toughest nut to crack.

Kapil Sibal is a Rajya Sabha MP, former Union Minister and a senior Congress leader.

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