

# **GOVERNOR IS NEITHER CIPHER NOR CAESER BUT HIGHEST CEREMONIAL HEAD UNDER THE CONSTITUTION**

India fought for long years for Swaraj led by the Indian National Congress and Gandhiji. He too was eliminated when an Independent India free from the supremacy of the crown and Rajen Babu was became the President as declared by the Constitution of India. The freedom of India under the Independence of India Act was passed by the House of Commons overruling Winston Churchill's Opposition which ran as follows: "Power will go to the hands of rascals, rogues and freebooters. All Indian leaders will be of low calibre and men of straw. They will have sweet tongues and silly hearts. They will fight among themselves for power and India will be lost in political squabbles". The Viceroy represented the Queen in his relation with the native princess and was Governor General in his dealings with the Governors of the State. Both these offices ceased to exist when the Constitution replace them all when the princedoms integrated into the Republic and the supreme head of the country was designated the President of the Constitution.

Was he a prophet? The Congress Opposition now asserts that the Governor, a nominee of the Congress in power at the Centre benami

or dubious authorization has discretion to disobey the Cabinet ruling in the State if wide and limitless is dictatorship by the backdoor, stultifying the democracy of the Constitution. Is this Nehru's Congress?

Our constitutional basic structure is democratic and non-negotiable. When after the debacle consequent on China's invasion the Congress demanded of Nehru the dismissal of Krishna Menon, and Nehru was disinclined, he had ultimately to yield since that is the democratic imperative not leaving a discretionary decision to the President. The Congress in Kerala is innocent and illiterate of political and judicial precedents and judicial case-law on the point in India or England. The Supreme Court has made the law clear in Shamsher Singh's case by a seven judge Bench. As Home Minister, I have forced Governor Rao to accept my decision for commutation whether he liked it or not. Why did the NDF or LDF are so ignorant and aggressive against the Advocate General though the issue is so critical in the corrupt, confusing, political situation?

The seven judges in Shamsher Singh's case has finally laid down the law that the Indian administrative system is substantially based on the Westminster system where the queen is bound to follow the Cabinet's advice except in a few rare exceptions illustratively mentioned not exhaustive though, in that ruling such as where the

Cabinet decision is irrational or arbitrary or perverse or plainly blatantly biased or malafide the Governor may have a discretion but the rule which democracy implies is that the Governor is the ceremonial head but the real power of administration is with the Council of Ministers. To assume, as the opposition in Kerala desiderates, that the Governor has a free indiscriminate discretion to substitute his judgment for that of the Cabinet is a grave outrage from the basic structure. Otherwise the Governor may assume all executive power, refuse to sign legislation passed by the legislature and negative judicial decisions. Thus our Constitution will be reduced to a paper tyranny. The implication of the Governor being treated as vested with absolute power is dangerous. Imagine the Rashtrapathi acting as the sole ruler not accountable to anyone except his conscience. Swaraj becomes a mirage and absurd. The Cabinet system of Government as against the presidential system virtually makes the monarch or the President a figure-head because sovereignty is in the hands of the people represented by their elected deputies who in the last analysis constitute the Cabinet. Royalty was rejected but the ideology of the crown haunted our constituent assembly that is how the Rashtrapathi and Governor survived verbally. The office of the viceroy survived in the shape of a Governor General and ended up in the shape of presidential symbol. But to go back from the President to a symbolic

crowns representative with totalitarian powers is absurd. Rare exceptions are necessary in the political compulsions of certain situations. That is how in Shamsher Singh's case the court after a lengthy discussion ruled that the President was bound by the Cabinet decisions and asked the question. Is the President a cipher? No, a few exceptional situations may still demand the independent judgment of the Rashtrapathi. The list cannot be exhaustive as in the case of the age of the judges when there is a controversy. Even there the President has to consult the Chief Justice of India and has to act on his advice, not as he pleases. That is how Chief Justice Raghavan became a casualty.

Once we have accepted a Cabinet system of Westminster tradition, it is full of guidelines including even removal by threat of impeachment Vide Edward the VIII. The fact remains that Shamsher Singh's case (of seven judges) until reversed by a larger bench or by radical change in the Constitution without violating the basic structure will still govern the governors and the President. I know of no case of the Supreme Court which dissents from Shamsher Singh. The Madhya Pradesh ruling propagandised by the Congress Opposition in Kerala is an egregious folly. Every later case has affirmed Shamsher Singh and provided one or two additional restricted exceptions in consonance with the earlier case. A passage or paragraph from the Madhya

Pradesh ruling of the Supreme Court of five judges confirm my contention:

***A Division Bench of the Bombay High Court dismissed the Revision Application, but whilst dismissing the application it was recorded by Gadgil, J. as follows:***

***"However, I may observe at this juncture itself that at one stage it was expressly submitted by the learned counsel on behalf of the respondents that in case if it is felt that bias is well apparently inherent in the proposed action of the concerned Ministry, then in such a case situation notwithstanding the other Ministers not being joined in the arena of the prospective accused, it would be a justified ground for the Governor to act on his own, independently and without any reference to any Ministry, to decide that question."***

In short, unless the present Kerala enigma is so irrational or grossly contrary to precedents it is not proper or legal for the Governor to depart from the rule that the Cabinet decision binds Rajbhavan. Why embarrass the Governor for gaining political power by polls where the final word belongs to the ballot of the last man. Churchill put it powerfully: 'At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper—no amount of rhetoric or voluminous discussion can possibly

diminish the overwhelming importance of the point'. No.10 Downing Street, prevails over Buckingham Palace.

Our founding fathers in their wisdom were familiar with the British practice symbolized by the Thames. In constitutional law Westminster was our model, not Washington and the presidential system. To adopt a passage from Shamsheer Singh:

***Prime Minister Nehru explained the position with political clarity when moving the clause relating to the election of the President:***

***'One thing we have to decide at the very beginning is what should be the kind of governmental structure, whether it is one system where there is ministerial responsibility or whether it is the Presidential system as prevails in the United States of America; many members possibly at first sight might object to this indirect election and may prefer an election by adult suffrage. We have given anxious thought to this matter and we came to the very definite conclusion that it would not be desirable, first because we want to emphasize the ministerial character of the government, that power really resided in the Ministry and in the Legislature and not in the President as such. At the same time we did not want to make the President just a mere figurehead like the French President. We did not give him any real power but we have made his position one of great authority and dignity. You will notice from this Draft Constitution that he is also to be Commander-in-Chief of the Defence Forces just as the American President is. Now, therefore if we had an election by adult franchise and yet did not give him any real powers, it might become slightly anomalous and there might be just extraordinary expense of time and energy and money without any adequate result.***

It follows that the Cabinet binds the President and the present case unless an exceptional situation has arisen or the Cabinet decision is irrational, manifestly biased or intentionally calculated to save a constitutional authority the rule that the tenant of the Rajbhavan is bound by the Cabinet ruling and the Governor cannot substitute his separate judgment or of any jurists, who may be his favourites to impotentize the Cabinet's clear resolution.

True, the CBI has suggested that Pinaray Vijayan, Party Secretary is guilty and should be prosecuted. But on matters of law it is not the police chief but the highest law officer of Government whose advice the Government in propriety must follow. In the present case, the Advocate General has exonerated Pinaray Vijayan and the Government is unless there is some manifest bias for the Advocate General in favour of the party secretary, propriety requires the Cabinet to adopt his advice. The opposition may request the Advocate General to appear before the House and seek clarification which is a dignified way of Nehru's party instead of burning his effigy or abuse him. Has politics become lunatic for the sake of power? No. Commons or Crown; people's representatives or authoritarian Rashtrapathi who governs Bharat Mahan!

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V.R. KRISHNA IYER