

POST-POLL SCENE

Forming the government

By Dr. M.J. AUDI

Today Goa finds herself in a piquant situation, the like of which India has never seen anytime, anywhere during forty years of freedom. The elections were held for 38 seats of the Goa Vidhan Sabha, which consists of forty members. Of these, 18 seats are bagged by the Congress, 18 by the Maharashtrawadi Gomantak Party and there are two Independents. The election is yet to take place for 2 seats, as they were countermanded.

Consequently the formation of the government has proved to be a ticklish problem. His excellency, the Governor of Goa has rightly dissolved the Legislative Assembly. Surprisingly, he has not set in motion the process of formation of the government. This is an attempt to acquaint the people of Goa with the issues involved in the formation of a government.

A clear understanding of the issues depends upon a clear understanding of the basic principles of parliamentary democracy and Constitutional provisions upholding those principles. Understanding of both depends upon the grasping of their spirit and not the letter. Whenever and wherever emphasis is laid on the letter of law, the Constitution is distorted and principles are perverted. Such a thing invariably takes place when the legal interpretation of the Constitution is imposed on the democratic society.

For example, it is argued that the term of the outgoing Assembly will expire only on 20 January 1989 and hence the outgoing government can continue till that date. What is conveniently forgotten is that the assembly lives for five years only when it is not dissolved earlier and it can be dissolved at any time before five years. Secondly, the assembly lives for five years only if there are no elections in between. The moment polling begins for a new assembly, the old assembly and the old government lose their *raison de etre*.

Hence, Prof. A V Dicey, an outstanding authority on parliamentary democracy and Constitutional government, in his classic book *Law of the Constitution*, lucidly points out that the business of the legal sovereign is only to implement faithfully the mandate of the political sovereign. In a parliamentary democracy, the people are the political sovereign. The people are the final masters and ultimate arbiters of democracy. In India, the President is a legal authority at the national level and the Governor is a legal authority at the state level.

An impression is created that presently, there is a state of confusion in Goa which may lead to a crisis because of parity of seats gained by the two political parties. Some think that the government formed by either of them will not be a stable government. It

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must be realised that at this juncture fears about *instability* of the government are absolutely irrelevant and unwarranted. At this stage, the crux of matter is not at all the stability of the government. The moot point is the *formation* of the government. The steps which his excellency the Governor ought to take are as clear as sunlight. One follows the other in a sequential order.

As there is a parity between the two con-

tending parties, the Governor is entitled to use his discretion. But his discretion is strictly confined to inviting either of them immediately to form the government. The Government would be ill-advised to postpone that invitation any more. According to the basic principles of parliamentary democracy, the formation of government should follow the declaration of the results of the election.

In view of the parity, the Governor's invitation to the leader of the party he invites must be on the basis of a specific directive. The leader of the party invited to form the government should be directed to establish his majority on the floor of the House within forty-eight hours after the swearing-in ritual. The majority that any party enjoys is never confirmed on the lawns of the Rajbhavan. It is always confirmed on the floor of the Vidhan Sabha. The time-limit to prove the majority should be the shortest possible because our politicians are masters in the art of horse-trading, despite the Anti-Defection Act.

If the party proves its majority on the floor of the House, the problem is solved. If not, the Governor should give a chance to the next contender with the same specific directive. If both the parties fail on the floor of the House, His Excellency should request the Election Commission to hasten the election in the two countermanded constituencies within a month. Till their results are declared, the Governor should rule himself. Let it be known that just as our Constitution does not provide for President's rule at the Centre, the Constitution does not provide for a caretaker government in the state because in the states, the Governor himself is the caretaker.

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