Ms Jayalalitha and the Constitution of India

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The Governor of Tamil Nadu is a former judge of the Supreme Court of India. The Supreme Court is the final arbiter as to the meaning of any Constitutional provision. It is presumed that any one appointed to the Supreme Court is competent to perform that decisive job. As such, Her Excellency should not find need of consultation with experts before deciding what is the Constitutionally proper thing to do in any situation requiring ascertainment of the meaning of any Constitutional provision. The formation of a State government following the completion of elections is one such situation, governed as it is by Article 164 of the Constitution.

These propositions constitute the first terms of what logicians call a syllogism. The conclusion that follows unerringly from this is that Ms Fatima Beevi behaved unexceptionably in deciding in a matter of minutes without consulting anybody what to do in the matter of the formation of the government of Tamil Nadu. What does not follow is that she decided right in asking Ms Jayalalitha to get ready to be sworn in. Perhaps some term of the syllogism is wrong – or overly optimistic – but let that be.

Article 164 is worded plainly enough, though somewhat obliquely. It envisages that every Minister shall be a legislator, but indirectly makes allowance for the possibility that a Chief Minister may want a non-legislator to be taken into the Cabinet (in the interests of a better administration, presumably) and permits such a person to be in the Council of Ministers for a period of at the most six months, before the end of which the person should become a legislator. This exception is inferred from clause 4 to Article 164 which reads: A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

It is arguable that this provision should not have been put in the Constitution. Our Constitution, rightly or wrongly, has accepted a system of governance by representatives of the people elected by adult suffrage from territorial constituencies, collectively responsible directly to the Legislature of which they are all members. It did not accept the alternative proposal of a government by experts answerable to a single elected head of government. If expert assistance is needed it can be taken by the government in any manner it pleases consistent with its Constitutional mandate. Where was the need to smuggle in a non-elected person to be part of the Council of Ministers, and direct that he or she be elected within six months? What happens if such a person is held universally disagreeable by the electors, and cannot possibly get elected at all? Would he or she not have exercised ministerial power for a period of six months without any body's consent?

As a matter of fact, `safe' constituencies have been identified for such preferred persons, and the elected representatives of such constituencies have been forced by their `high commands' to resign so that the electors may elect the chosen one. This is hardly respectful of the electors and their considered choice, upon which the sense of our system of representative democracy is based. Moreover, an exception that came into being on the plea of the need of suitable experts in administration to assist the Chief Minister has been applied by our political masters to the selection for the post of the Chief Minister too.

Our Supreme Court, which is said to have evolved (or adopted) the doctrine of purposive construction of legislative intent has allowed this purposeless extension of the Constitutional exception to pass its scrutiny. Non-elected persons have been asked to form governments time and again. But even so, can a former judge of the Supreme Court be heard to argue that a person who is not merely not a legislator but was in fact legally incompetent to become one at the time of election can be sworn in to head the new government under the exception provided by Article 164(4)? Would a person who is six months short of eighteen, or is not as yet a citizen of India, or is declared insane by a competent Court be asked to form a government on the presumption that the disability can or may (*inshallah*) be cured within six months?

It is unlikely that Her Excellency the Governor of Tamil Nadu would say yes, but the logic she has applied to Ms Jayalalitha's case is no different. It may be argued – and is being argued strenuously – that `the people' have voted for her, or alternatively that the only difference between her and Karunanidhi is that he is yet to be caught. About `the people' voting for her, I think it may safely be said that insofar as any collective intent can rationally be read into electoral choices in our country, people have in recent years been by and large voting against and not for: Jayalalitha's election is not an endorsement of her, but a condemnation of her rival. About being caught and not caught, that is a distinction underlying the very notion of the Rule of Law. To make light of it may lie well in the mouths of those who regard Rule of Law itself as a piece of humbug, but not those who lecture about it day in and day out, as many who support Jayalalitha's appointment do.

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