

re-examine the Act to ensure that it remained an enabler for development of information and communication technology. Adequate measures for promoting growth of electronic commerce and governance and for regulating cyber crimes and cyber forensics are to be the other focal points.

I hope this present committee may give good suggestions to make more strengthens

of the I.T. Act. The committee while making recommendations if throws some light on the issues raised in this article for updating the law.

1. Section 2(o), the I.T. Act, 2000
2. Id Section 2(t)
3. Id Section 2 (p)
4. Id Section 43,
5. UNCITRAL Model Law: Information Technology Act (Cyber Laws) (ALT Publications).

## COALITION GOVERNMENTS - FATAL TO THE BASIC STRUCTURE OF THE INDIAN CONSTITUTION

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The people of India resolved to set up a Democratic Government under the Indian Constitution which has come into force on 26th January, 1950 and to this effect the Indian Constitution make explicit the goals and aspirations that are to be accomplished through the Governmental Machinery so set up in accordance with the provisions of Indian Constitution. The supreme law of the land, [The Indian Constitution - the preamble] The preamble thereof reads as follows. “We the people of India having solemnly resolved to constitute India into a (Sovereign, Socialist, Secular, Democratic Republic) and to secure to all Citizens

*Justice* Social, Economic and Political

*Liberty* of thought, expression, belief, faith and worship

*Equality* of Status and of opportunity and to promote among them

*Fraternity* Assuring the dignity of the individuals and the Unity and Integrity of Nation.

Manifestly the preamble of the Indian Constitution sounds the avowed object of

the Indian Constitution to build up democratic edifice where justice, Liberty, Equality, Fraternity all together collectively dwell therein “Democracy” Etymologically means people’s Government, a Government set up for the people, by the people and of the people, the word derived from combination of two Greek words namely; Demos and Krotia it is the Government of the people which has been voted by the majority of the population. The mandate of the peoples to Government of their choice is reflected through the electoral process conducted in accordance with the Constitution of the country, or in accordance with the domestic law thereof.

Obviously, we have adopted in India a Parliamentary democratic form of Government following the British pattern. Apparently Governmental accountability to the Legislature is the salient feature the Parliamentary democracy and a commitment of Parliamentary democracy the Government will hold the reins of the Governmental power which commands the support of the Legislature and enjoys the confidence of the Legislature to which it is accountable.

Under the Indian Constitution an express provision has been made the under, where by Council of Ministers to aid and advise the President [The Constitution - Article 74] has been provided and the relevant provision reads as follows: Council of Ministers to aid and advise President (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall in the exercise of his functions act in accordance with such advice, as we have opted of Parliamentary form of Government. The President of India who is the Chief Executive and custodian of all the Executive power of the Union Government is obviously a Titular head and the President of India, as laid down under the Indian Constitution has no other option, but to act in accordance with advice rendered by the Council of Ministers headed by the Prime Minister of India appointed him by the President.

In a country, where there are limited numbers of political parties participating in the elections, the crux of the democratic system, hardly there would be any difficulty to assume the reins of Governmental Administration in accordance with the provisions of the Constitution. However, as we can note in India there is Multi Party System whereby every Political Party has access to participate in electoral process and test the prospects of their political career.

As it is already noted the power of appointing the Prime Minister is vested by the Indian Constitution in the President of India and appointing the Ministers on recommendation of the Prime Minister.

Conspicuously the Indian Constitution, which provided for the Council of Ministers and appointment of Prime Minister and his Ministerial colleagues remained obviously silent as regards the appointment of Prime Minister of India. It is also quite pertinent to add that it is the same position as regards the appointment of Chief Ministers of the States by the respective State Governors.

Since the Constitution doesn't lay down any express modality or guidelines pertaining to the appointment of the Prime Minister and Chief Ministers. The subject of their appointment is certainly a matter of vital significance since they are the real heads of the respective Government under Parliamentary democratic set up.

When the Constitution itself doesn't provide the guidelines for the appointment of the Prime Minister, the President of India has hardly any discretion in this regard as he is bound by the conventions whereupon the English Cabinet System acts which we have adopted under the Indian Constitution.

As such the leader of the majority party of the Lower House is appointed as Prime Minister consequently in such a situation the President is left without any alternative.

However, as already stated hereinbefore since we have adopted Multi Party System in our country it has to be considered as to how a Prime Minister or Chief Ministers are to be appointed in a case where no single party could secure majority so as to appoint its leader as such. In such situations the discretion exercised by the President or the Governors is of vital importance since their decisions shapes the destiny of the nation and its people.

Since the Constitution of India apparently is silent covering such situations the President or the Governors have to be guided by certain well-established conventions, normally they have to invite the leader of largest political party whom he feels is capable of forming the Government alternatively coalition of political parties formed before elections, or where a Government is defeated the leader of the opposite party.

Obviously, the conventions such of those mentioned above are said to be uncoded norms of the Constitution and they envisage upholding of the spirit of the Constitution, the Fundamental Law of the Land.

The Indian political scenario in recent times had bitter experience where in many of the States in the center no political party could secure absolute majority which can be invited unquestionable by the President or Governor for forming the Government under the Constitution in accordance with the well established healthy convention consequently coalition or hung Assembly or Parliament is the outcome. As against this political scenario, it has to be examined in the Indian context whether coalition Governments formed, where no single political party could secure sufficient majority is in accordance with the doctrine of basic structure laid down by the Supreme Court of India in *Kesavananda Bharathi v. State of Kerala*, AIR 1973 SC 1461.

In India whenever no single political party secures sufficient majority in the elections held neither the Indian President nor Governor in the State at all times have followed uniform principle for inviting such political group capable of mustering the support of fellow political parties and command the confidence of the House of Legislature.

Practically such situation where there is uncertainty as to who can form effective Government according to the Constitution, glaringly results in political instability and engenders uncertainty. Obviously stability, certainty are the corner stone and life breath of ideal democracy and preamble of the Indian Constitution contemplates such state of democracy which is strong and competent to realize the goals enshrined in the Preamble. The Democratic Government as envisaged by the Indian Constitution is such type of Government, which can independently survive, and act effectively according to the spirit of the Constitution raising to the expectation of the people voted it to the power.

But in reality the alternative of coalition Government in India as a matter of fact is posing severe threat to the very foundation of the democracy. It is crystal clear that for various reasons political parties just to gain the political power, form themselves into political

alliance and offer to form the Government, but such a Government which has no adequate numerical strength to sustain the power is inevitable dependent on the supporting political parties, as such the survival of the Government is at the pleasure of those supporting political parties as such continue at the constant threat of loss of power by the imminent withdrawal of their support to the ruling political party. Glaringly, it is contrary to the basic tenet of Parliamentary democracy wherein the Government is accountable to the Legislature for its acts. Consequently, it should be noted that the supporting political parties act as extra Constitutional authority posing themselves to be the king maker of the Government in power.

The Supreme Court of India in its landmark judgment has enunciated that the basic structure of the Indian Constitution cannot be altered or damaged or destroyed, therefore the way how present coalition Governments survive purely at the mercy of few hands of political parties either within the cabinet, or outside the cabinet certainly goes to the roots of democratic edifice set up under the Indian Constitution and shakes its foundation which is indeed repugnant to the theory of basic structure. Although there is cleavage of opinion about the constituents of basic structure among the Judges of Supreme Court, still there is consensus that democracy is one of the essential elements of the basic structure within the purport of the Indian Constitution.

In the light of this, it is suggested that necessary amendments may be made to incorporate the age-old Constitutional conventions with regard to appointment of Prime Minister and the Chief Ministers clearing all clouds in the situations stated hereinbefore such amendment ensures stability, certainty by which the Government in power can act effectively within the parameters of Constitutional ideology, without any fear of uncertainty or threat of ouster by unscrupulously political parties lending their support to formation of Government.