

The Mockingbird Competition

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In America and in Mexico there are several black, white or grey coloured birds that copy calls of other birds and are generically called mockingbirds. In India the Bastar hill mynah can mimic both bird calls and human speech. The art of vocal imitation is a form of mimicry. In the matter of appointment of Governors of States the present BJP Government seems to have entered into a mockingbird competition with the previous UPA Government or, for that matter, the Congress Government under Indira Gandhi, especially from the time of the Emergency. The competition centres around the appointment of Governors on any one of the four considerations given below:

1. Party hacks who have served the party in menial or middle level capacities who are rewarded with a Governorship.
2. If the State Government is to be destabilised, then by sending in a Governor such as Romesh Bhandari.
3. If the relations of the Prime Minister and the Chief Minister are cordial, then a person can be sent as Governor of whom the Chief Minister approves.
4. The candidate selected is an octogenarian or older in urgent need of medical attention.

Of course the previous UPA added a fifth dimension, which is that if a person was likely to face criminal charges, then appoint him or her as Governor so that the protection available to the President or Governor under Article 361 against criminal proceedings, process for arrest or imprisonment and civil proceedings may be availed of by the person so appointed.

After the Emergency the Janata Government removed virtually all the Governors appointed by Indira Gandhi. She repeated the exercise in 1980 vis-à-vis Governors appointed by the Janata Government. This seems to have become the standard practice since then. What this has done is that to totally politicise an office which under the Constitution is supposed to be completely apolitical. This is further reinforced by the words of the oath that the Governor is required to swear or affirmation that he has to make when entering office, as prescribed by Article 159.

Article 159. Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that Court available, an oath or affirmation in the following form, that is to say-- “ I, A.B swear in the name of God/solemnly affirm that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of (name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of (name of the State)”.

A person who is required to preserve, protect and defend the Constitution has to do this without party affiliations or leanings, he has to be unbiased and all his decisions must conform to law. The essence of the post of head of State, whether President or India or the Governor of one of the constituent States of the Union,

is that he has to be above politics, nonpartisan and a true defender of the basic features of the Constitution as given in the Preamble.

The Governor of a State is undoubtedly appointed by the President and holds office during his pleasure. In appointing a Governor the President, under Article 74, will be guided by the advice given to him by the Council of Ministers. This casts an enormous responsibility on the Prime Minister to ensure that the person proposed for appointment as Governor fulfils the norms of impartiality, constitutional accountability and the duty to serve the well-being of the people of the State. Has the present government followed this in appointing Governors? The answer has to be a capital NO. Every single Governor appointed is a BJP loyalist with a record of highly partisan politics. For example, Kalyan Singh has been appointed as Governor of Rajasthan. As Chief Minister of U.P he not only countenanced but ensured that the Babri Masjid at Ayodhya was destroyed by *kar sevaks*. He also has a record of playing casteist politics. Can he be considered nonpartisan? Kaptan Singh Solanki has been sent to Haryana to repeat what Romesh Bhandari did in U.P. Can we expect him to rise above BJP politics? Vajubhai Vala has been appointed as Governor of Karnataka. As Revenue Minister under Keshubhai Patel in Gujarat he certainly did not earn a reputation for pea-green incorruptibility. He is being sent to Karnataka, whose capital, Bangalore, is supposed to be the home of science, high technology and culture. Do we have to send an oaf like Vajubhai Vala as Governor of this State?

The Constitution of India vests the executive power of the Union in the President under Article 53 and of the State in the Governor under Article 154. Though appointed by the President the Governor draws his powers not from the President but from Article 154. He acts on the advice of his Council of Ministers under Article 163 and not on the advice of the President. The Governor is not an agent of the President or of the Central Government but he is entirely governed by the provisions of Part VI of the Constitution. He is, to the extent that the Constitution provides, an independent entity whose job is both to exercise the executive power of the State on the aid and advice of his Council of Ministers and to ensure that Council of Ministers functions according to the letter and spirit of the Constitution. This extends to his warning the State Government if it deviates from the provisions of the Constitution and, if he is satisfied that the State Government is persisting in such deviation whereby the government of the State cannot be carried on in accordance with the Constitution, it is his duty to advise the President accordingly under Article 356 and suggest that the President may assume all or any of the functions of the State Government. In other words, the Governor has both the authority and the duty to ensure that the government of the State is conducted according to the Constitution and even suggest the dismissal of the State Government if it persists in its wrongdoing. Under Article 167 the Governor may call for information relating to the administration of the State and can require the Chief Minister to place any matter before the Council of Ministers in which the Council has not taken a decision. His authority to render advice, which is not binding on the Chief Minister, is unlimited. The post of Governor, in the constitutional order of things, does have an importance of its own. Looking at the list of persons appointed as Governors one has no faith that the present government understands the true role of a Governor. Modi has used his power to distribute largesse to party workers and leaders. This is unpardonable.
