

Present Scenario of Post-Poll Alliance In India

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Abstract:

India is one of the greatest democracies in the World, however, the 2021 Economic Intelligence Unit ranked India at 46th position on Democracy Index with a score of 6.91. Such low ranking of in Democracy Index shows the mirror to changing opportunistic political culture prevailing in India. Free and fair election is the basis of any democracy where the government is formed as per the mandate of the voters. However, recent years in Indian polity has seen the increase in the trend of post poll alliance which provides the opportunity to form government by bypassing the public mandate. This left voters in a state of confusion where they are left uncertain of their role in democracy. The increasing trend of post poll alliances is a severe challenge to democracy which cannot be dealt with existing election laws. The present scenario of Indian politics demands the formulation of new laws to put a stop to this unethical practice of opportunistic politics.

Keywords: Post-poll alliance, Anti defection law, Election Law, Democracy

INTRODUCTION

When the Indian Constitution was enforced on 26th January, 1950, it declared India as a democratic republic. This democratic feature visualized by the Constitution is realized by the virtue of election to elect people's representatives in Centre and in States. India has a Parliamentary form of government where the President is the head of the State and exercises his powers through the ministers subordinate to him. The state legislature is headed by the Chief Minister and his cabinet of ministers. All the ministers in the Union government and the State government are elected directly by the people of India following the provisions prescribed in the Part XV of the Constitution of India.¹ The Election Commission of India has been tasked with the superintendence, direction and control of the preparation of electoral rolls and conduct of all the elections of the Parliament and the state legislature. There are three major types of elections in India, namely, General Election (held to constitute the Lok Sabha by electing the Members of Parliament), Assembly Election (aims at electing the members of Vidhan Sabha of various states), and by-elections (to fill the elected offices between elections). The present paper aims at discussing various laws in place to govern and regulate the electoral process in India and to ensure that free and fair elections are conducted. The paper also reviews the malpractices often adopted by the political parties to form government and to stay in power and why new effective laws are need of the hour to curb such malpractices. With the help of the case studies of Maharashtra and Karnataka, the authors would point out the perils of the malpractice of post-poll alliances to Indian democracy.

¹ The Constitution of India

LAWS GOVERNING ELECTIONS IN INDIA

The Constitution of India, in its Part XV, through Articles 324-329, prescribes the provisions for conducting elections. The Parliament may make laws in matters relating to elections conducted to elect the members of either House of the Parliament or members of either House of the State Legislature regarding all matters necessary for constitution of such House or Houses.² The Constitution also confers the power to the State Legislatures to make laws regarding election of its members if no such laws have been made by the Parliament.³

Apart from the Constitutional provisions, that govern elections in India, various laws have been passed by the Parliament in this regard. These laws are described below:

- a. **The Representation of the People Act, 1950:** It provides for distribution of seats in Lok Sabha and Vidhan Sabha, delimitation of constituencies, qualification of voters, appointment of officers for various elections by the Election Commission, etc.
- b. **The Representation of the People Act, 1951:** It provides for the conduct of Parliamentary and State Legislative elections.
- c. **The Registration of Electors Rules, 1960:** These rules are pertaining to preparation and updation of electoral rolls.
- d. **Conduct of Election Rules, 1961:** The Act deals with the actual conduct of election governing its various stages upto taking of polls and counting of votes.
- e. **Election Symbols Order, 1968:** It empowers the Election Commission to recognise political parties and allot them symbols.
- f. **Presidential and Vice-Presidential Rules, 1974:** This Act specifically governs the conduct of Presidential and Vice-Presidential elections. It stipulates the entire process through which these elections are to be conducted.
- g. **Anti-defection law, 1985:** Under the 52nd Constitutional Amendment, the anti-defection law had been included in Schedule X of the Constitution. It prohibits a member of the House from voluntarily giving up the membership of his party, voting or abstaining from vote contrary to his party's directions or an independent member from joining a political party after elections are conducted.

PRE-POLL AND POST-POLL ALLIANCES

Election of government by casting a vote is the crucial premise of Democracy. A citizen casts his vote with the belief that the elected representative would add to the country building process and would bring about a positive change. This is the "Majority Rules" system where the political party getting highest number of votes would form the government. In case none of the parties get desired number of votes, a multi-party government is formed where different political parties come together on the basis of agreed common agenda. Going with the trend of sharing of power to become the ruling party, pre-poll alliances are now seen in the recent years. It is an agreement between parties to share seats prior to the commencement of elections. Every party in the alliance put aside their own policies and beliefs and agree on a common agenda to pool voters and get elected. The member parties share contestable seats which are distributed in a manner that candidate of only one allied party contests from a particular constituency. In such a scenario, the voter casts votes keeping in mind the agenda portrayed by the

² Art. 327 of Constitution of India

³ Art. 328 of Constitution of India

alliance as a whole. If this alliance breaks up post-election and a member party forms coalition government with another party, the voter's mandate for forming government by pre-poll alliance parties is left in abeyance. Moreover, if a member disagrees with such immoral practice, he would be subject to disqualification for defection. Hence, in the matter of *Kihoto Hollohon v. Zachilhu and Ors.*⁴ the constitutionality of the Anti-defection law was challenged in the Apex Court. It was concluded that the law is meant to discourage unprincipled defections that are not protected by freedom of conscience, right to dissent, or intellectual liberty; it did not violate the freedom of speech or the parliamentary popular government's essential structure and hence is not unconstitutional. Moreover, not complying with the disqualification conditions is a defiance of constitutional obligations. Furthermore, the disqualification rules were devised by the Speaker in the exercise of his responsibilities under Article VIII of the Constitution; hence they cannot be compared to constitutional regulations.

However, the greed for power is a great motivation and the member parties of an alliance want to hold key ministries to hold on to power. This often plays a lead role in destabilizing the alliance and thus the government. As a result, post-poll alliances have gained more popularity in the recent times. An increase in the number of regional political parties causes the swing of votes as they address every local issue. Belonging to that particular region, the voters have more faith in the leaders of regional parties and as such the number of votes that would go to the major parties is now reduced. The major parties often have to hold hands with the local parties to form government.

Post-Poll Alliances: A threat to democracy

In a democracy, the citizens select their representatives and in doing so they clearly deliver a mandate as to which party should form the government. A post-poll alliance offers another way of forming government where the party with the highest votes fails to form government. This is a breach of trust promised by the democracy and is clearly against the voters' mandate. During an election, it is the party's manifesto that helps the voters while choosing their representatives. A party's manifesto provides insights into their functions and missions and how it would rule once it comes in power. This kind of transparency allows the voters to choose the party that would most likely perform their duties diligently. A post-poll alliance can bring a party to power whose ideologies and functions do not resonate with the voters and are sometimes contradictory to each other. A government formed in such a way would arrive at some kind of compromise which would not be in public's best interests.

When political parties come into alliance after the election, it is only with the intention of coming into power and forming the government; it is an alliance of convenience. It has rightly been said by Niccolo Machiavelli that, "Politics have no relation to morals." This quote has proven its relevance in Indian politics in the modern times. In recent years, the Indian politics has seen many shifts in alliances to form government and to stay in power. Such instances were seen in the Assembly elections of many states. In 2018 Karnataka Assembly elections, Congress and Janta Dal (Secular) were involved in a head-to-head fight where the leader of the Congress Party Siddaramaiah accused JD(S) leader HD Deve Gowda of working against the Lingayat community and the latter called Siddaramaiah's government to be the most corrupt government. Yet, the two parties joined hands after the elections were concluded and proposed their claim before the Governor to form government with the support of 116 MLAs. BJP, which

⁴ 1992 SCR (1) 686

emerged as the largest party after securing 104 seats, also put forward their claim.⁵ Under the leadership of BS Yediyurappa, BJP formed the government and was given a 15-day window to prove their majority. However, the Supreme Court intervened and gave the Yediyurappa govt. a 3-day window for the floor test.⁶ Yediyurappa resigned 10 minutes prior to the trust vote and the Congress-JD(S) coalition form government under the leadership of HD Kumaraswamy. However, this coalition could also last for only 14 months when 16 MLAs of the coalition resigned and two independent MLAs shifted their support to BJP. This led to the reducing of ruling coalition's seats to 101 and with the support of independent MLAs and BSP, BJP now had the majority of 107. Three weeks of political upheaval and Kumaraswamy lost the trust vote by 100-107 and resigned; BS Yediyurappa was sworn in as the Karnataka CM on July 2019.⁷

In the 2019 Maharashtra Assembly election, people voted for the BJP- Shiv Sena alliance, however, in an interesting turn of events the government was formed by the alliance between Shiv Sena and Congress called "Maha Vikas Aghadi."⁸ What was strange about this alliance was that the former follows a hard right-wing ideology while the latter presented a secular front. This is clearly a case of political opportunism. The political alliance in Maharashtra again took an interesting turn when a faction of Shiv Sena led by Eknath Shinde revolted and the Maha Vikas Aghadi collapsed after which with the support of BJP Eknath Shinde took oath as the Chief Minister of Maharashtra on June 30, 2022. On 4th July, 2022 the Shinde led government won the floor test with 169-99, establishing him as the CM of Maharashtra and the leader of Shiv Sena. Furthermore, people in Maharashtra witnessed another dramatic development when a faction of Nationalist Communist Party (NCP) led by Ajit Pawar and Praful Patel joined hands with BJP and Shiv Sena. Ajit Pawar was sworn in as Deputy Chief Minister, a position he now shares with Davendra Fadanvis and 8 other NCP MLAs were sworn in as ministers. The official NCP led by Sharad Pawar moved to the Apex Court with the disqualification petition against Ajit Pawar and the 8 MLAs who joined the government. In its judgment, the Hon'ble Supreme Court made it clear that

"...no faction or group can argue that they constitute the original political party as a defence against disqualification on the ground of defection... The inevitable consequence of the deletion of Paragraph 3 from the Tenth Schedule is that the defence of a split is no longer available to members who are disqualification proceedings. In cases where a split has occurred in a political party or in a legislature party, members of neither faction may validly raise the defence that they are the political party in the

⁵ "Who should get the first call to form govt in Karnataks? Jury's out" *The Times of India*, 16 May 2018, available at <https://timesofindia.indiatimes.com/india/who-should-get-first-call-to-form-govt-in-karnataka-jurys-out/articleshow/64182765.cms> (last visited on 13 June 2023)

⁶ "Boost for Congress-JDS as Supreme Court orders Karnataka floor test tomorrow at 4 pm" *India Today Web Desk*, 18 May 2018, available at <https://www.indiatoday.in/elections/karnataka-election-2018/story/karnataka-election-supreme-court-hearing-bjp-congress-jds-1235817-2018-05-18> (last visited on 13 June 2023)

⁷ "Karnataka assembly convened on May 25 for floor test", *The Economic Times*, 24 May 2018, available at <https://economictimes.indiatimes.com/news/politics-and-nation/karnataka-assembly-convened-on-may-25-for-floor-test/articleshow/64293191.cms?from=mdr> (last visited on 15 June 2023)

⁸ Mehul Malpani, Sonam Saigal "The making and breaking of Maha Vikas Aghadi: Timeline", *The Hindu*, 21 June 2022, available at <https://www.thehindu.com/news/national/other-states/the-making-and-breaking-of-maha-vikas-aghadi-timeline/article65548574.ece> (last visited on 15 June 2023)

event that each faction files petitions for the disqualification of members of the other faction. The defence sought to be availed of must be found within the Tenth Schedule as it currently stands...⁹

More importantly, the Court further elaborated that, “percentage of members in each faction is irrelevant to the determination of whether a defence to disqualification is made out¹⁰” This kind of political maneuvering is demeaning to the aspirations of the people. It is not only the violation of people’s mandate but also a violation of their trust. The political parties only appear to be interested in ruling; the responsibilities that come with ruling don’t seem to be a concern for them. The voters also see it elections as futile which combined with the apathy of the political parties, is a serious threat to the future of democracy. The practice of post-poll alliance and repeated changes in the alliance over the term of 5 years is not only unethical and immoral but also is a threat to the constitutionality of political alliances. It has now emerged as a way to go around the public mandate and form government even when the parties didn’t earn the voters’ trust.

In the 9th general election of the Lok Sabha in 1989, the country for the first time witnessed post-poll alliance at Centre. It was for the first time that no party could come close to securing a minimum of 263 requisite seats. This resulted in the formation of government by BJP and the Communist Party with the support of five other parties which, unfortunately, could not hold up for long and gave way to the formation of government by other parties.¹¹ This event marked the beginning of the practice of post-poll alliances.

The Supreme court of India has stated that “The right to vote at the elections to the House of the People or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter.”¹² The Constitution makers gave the citizens the right to vote which is essential for a functional democracy and which cannot be implemented unless the voters have all the information necessary to form their opinion of the candidates. However, electing a candidate based on this information would prove to be entirely futile if the government is formed not on the basis of public mandate but on the basis of shared interests of the political parties. It is worth considering the repercussions of this unchecked freedom granted to the political parties to form alliances as per their will. It would reduce democracy to a pseudo-democracy where the citizens would be left as nothing more than mere recipient of the unethical alliances formed; they would have no role to play in this so called democracy.

With the increase in number of political parties and the loss of trust among citizens, it is very difficult for any party to secure the requisite number of seats to form government; formation of coalition has become a political necessity in present times. This has led the way to the development of opportunistic post-poll alliances. And if one alliance fails or the party feels it would have more of an upper hand in alliance with another party, there would then be a different member party in the government. There

⁹ Manu Sebastian “NCP Rift : Examining Validity Of Ajit Pawar Group's Actions In The Light Of Supreme Court's Judgment In Shiv Sena Case” 4 July, 2023, available at <https://www.livelaw.in/articles/ncp-rift-examining-validity-of-ajit-pawar-groups-actions-in-the-light-of-supreme-courts-judgment-in-shiv-sena-case-231832> (last visited on 06 July 2023)

¹⁰ Ibid

¹¹ Rishi Mathur, “History Revisited: How political parties fared in 1989 Lok Sabha election” *Zee News*, 5 Apr 2013, available at <https://zeenews.india.com/lok-sabha-general-elections-2019/history-revisited-how-political-parties-fared-in-1989-lok-sabha-election-2192973.html> (last visited on 25 June 2023)

¹² AIR 1997 SC 568

would always be a state of uncertainty and the citizens would always be in a confused state of mind as to what their role is in a democracy!

Need of a New Law: A Way Forward

What India needs today is a new law to delegitimize opportunistic post-poll alliances and to ensure that a government is formed as per the people's mandate. The 52nd Constitutional Amendment Act, 1985 has prohibited a legislator from leaving his party after the elections with certain exceptions. The amendment was aimed at curtailing the evil practice of joining other party with the lure of power. However, this law applies only on an individual. Undoubtedly, defection defies the public mandate and should not be permitted in any case, be it done individually or in group. Although the Anti defection law is in place to prevent such cases, the recent changes in the nature of defections has called for revision of these laws. There is a need to broaden the sphere of the 10th Schedule of the Constitution to accommodate for the changing nature of defections.

The Dinesh Goswami Committee on Electoral Reforms in 1990 in its report had made a recommendation that could prove useful in curbing this unethical practice, "The power of deciding the legal issue of disqualification should not be left to the Speaker or Chairman of the House but to the President or the Governor, as the case may be, who shall act on the advice of the Election Commission, to whom the question should be referred for determination as in the case of any other post-election disqualification of a Member."¹³ Only those parties must be allowed to form post poll alliance who did not contest against each other and this issue must be decided only by the President of the Governor on the advice of the election commission.

The Constitution of India provides freedom to the political parties to form alliances in order to run the government. However, this freedom must be enjoyed only with the restriction that it would not become an "alliance of opportunity." There must be some regulations that force the parties to follow peoples' mandate while forming alliances. If not, this unchecked freedom would prohibit the basic intention of anti defection law, i.e., "the evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundation of our democracy and the principles that sustain it."¹⁴

Conclusion

As stated by Abraham Lincoln Democracy is "Government of the people, for the people, by the people." It is a basic right enjoyed by all the citizens under the conditions of freedom, equality, transparency and responsibility. To maintain these goals of democracy and to show a sense of responsibility towards the citizens, it is important that the "post poll alliance of opportunity" be curbed. It is important to scrutinize the need of post poll alliance to ensure that the parties entering in alliance do not do so by compromising their ideologies with the single aim to remain in power. When remaining in power is the mere aim of political parties, it is then that the spirit of democracy loses. It has been argued that before the voters cast their precious vote, they have the right to know which parties would form alliance once the results of the

¹³ Ministry of Law and Justice "Report of the Committee on Electoral Reforms" (May, 1990).

¹⁴ Chakshu Roy "The anti-defection law is failing in its purpose" *The Hindustan Times*, 15 May 2023, available at <https://www.hindustantimes.com/opinion/the-anti-defection-law-a-spectacular-failure-in-indian-politics-and-time-for-a-reassessment-by-the-supreme-court-101684159265442.html> (last visited on 06 July 2023)

elections are declared. In a democracy, proper representation is of utmost importance and going against the people's mandate is not in the spirit of democracy.

It is high time that the unchecked freedom of political parties to form or to stay in government be restricted. There is a need of certain regulations that compel the political parties to inform the voters that once the elections are over, with which party would they join hands to form government if no single party attains full majority. The ambit of anti defection law must also broaden to prevent the formation of such opportunistic alliances. It is only when some strong step is taken in this direction that the democracy can be saved.