

ILLEGALITIES AND IRREGULARITIES: THE TIPPING POINTS OF THE STABILITY OF A COALITION GOVERNMENT

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I. Introduction

The subject matter of this research paper is very relevant in Indian economic and political backgrounds, and when we refer to the famous quote by George Bernard Shaw – “*If history repeats itself, and the unexpected always happens, how incapable must Man be of learning from experience.*” The relevance of such a quote is apparent considering the constant failure of coalition governments (as this article shall indicate), and the constant accusations of one-party dominance being considered authoritarian (the 1975 Emergency being a testament to that fact). History, tends to repeat itself, and this research paper keeps that in mind before –

- 1) Analysing Coalition Governments historically;
- 2) Coming up with a framework of reasons for government failure;
- 3) Comparing the framework with the successful UPA coalitions;
- 4) Understanding these governments and their functions in the context of the constitution (specifically the Anti-Defection Law);
- 5) Makes a specific reference to the posts of the Governor and the Speaker and their constitutional validity;
- 6) Takes a look at the feasibility of Common Minimum Programmes;
- 7) Concluding with suggestions.

I. A History of Power Tussles in Coalition Politics in India

Coalition governments are not a bad idea. When they function positively and systematically, they can work to satisfy the economy. In an attempt to understand the nature of coalition politics in India, the first and most important place to begin is by stepping back into the past and trying to understand the conditions that contributed to the failure of coalition governments in the past. This would allow the researchers to evaluate a set of principled reasons for failure, which would hopefully prove to be a source preventing such conditions to arise in governments in the future.

The first case of a coalition government in India, was with the Punjab elections of 1937, and later, the government established in India in 1946 was also, in a way, a coalition government.¹ Owing to how the Parliamentary system places the government directly under the legislature, and considering how, as apparent above, in the brief pre-independent beginning of the 20th Century “people of India had some experience in working this type of system”,² and lastly, because of the diverse nature of the Indian population, the parliamentary system was constitutionally enforced.³ After these instances, post 1975, our nation has witnessed a tumult of coalition governments, some successful, some not, but all of them a powerful source to analyse the functionality of the Parliamentary Democratic system in itself. This section shall take a look at a few instances of coalition governments that failed to sustain as governments, or failed to work in a unified manner to achieve particular success, and will come up with indicators that cause instability in this form of government.

1) 1977 – The Morarji Desai Government

In the aftermath of the 1975 Emergency, the Anti-Congress movement with Ram Manohar Lohia, in the lead, managed to put up a powerful candidate against each Congress candidate, which successfully led to the first post-independence coalition government in 1977, with Morarji Desai at the helm.⁴ While there was a noble reason that prompted these parties to come together, it naturally would not last. The outspoken, controversial nature of the Prime Minister, fueled the already prevalent internal strife, and the government crumbled, two years after its inception.⁵ It is interesting to note that the Anti-Defection Law was inserted into the Constitution only in 1985, and in this case, because certain members of the government were reportedly a part of multiple parties,⁶ there were protests within the government, with many senior members (George Fernandes, H.N. Bahuguna, Biju Patnaik, Mudhu Limaye, etc.) defecting.⁷ Right from the first

¹ Mouneshwara Srinivasrao, *Parliamentary Democracy and Coalition Governments in India*, Vol. 72, No. 4, The Indian Journal of Political Science, 961 (2011) www.jstor.org/stable/41856532.

² *Id.*

³ Sudhir Kumar, *Constitutional Position of Coalition Government in India*, Vol. 72, No. 2, The Indian Journal of Political Science, 489-490, (2011) www.jstor.org/stable/42761434.

⁴ Farooq Ahmad Malik and Bilal Ahmad Malik, *Politics of Coalition in India*, Vol. 2, No. 1, Journal of Power, Politics & Governance, (2014) http://jppgnet.com/journals/jppg/Vol_2_No_1_March_2014/1.pdf.

⁵ Kuldip Singh, *OBITUARY: Morarji Desai*, Independent, 11 April 2019, <https://www.independent.co.uk/news/people/obituary-morarji-desai-1615165.html>.

⁶ *Morarji Desai government collapsed due to internal contradictions – 1979*, India Today, July 2 2007, <https://www.indiatoday.in/magazine/cover-story/story/20070702-1979-non-congress-government-collapsed-748333-2007-07-02>.

⁷ *Supra* at 4.

instance of coalition, it has been the **internal conflicts**, and lack of **uniformity of choices and decisions** that led to the government's demise.

2) 1989 – The V.P. Singh Government

The year 1989 was the next important year to indicate a specific angle to the internal conflicts issue that was deduced in the previous government – that of communal politics. It is no mystery that communal politics is a driving factor to allow for the smaller parties to rise up to larger positions, and in 1989, the highly noble V.P. Singh, became the Prime Minister, creating the Janata Dal, and later the National Front, with the Bharatiya Janata Party (BJP) a powerful contributor, to bring down the majority Congress (I) party. Interestingly, the Janata Dal itself had parties with conflicting manifestos, not to mention the National Front as well, which eventually led to the V.P. Singh administration being as ambivalent as they possibly could. In then President R. Venkataraman's words –

“it is my impression that if V.P. Singh had headed a government with a clear majority instead of depending on a conglomeration of parties mutually destructive to each other, he would have given a good administration to the country. Being dependent on parties with different objectives and ideologies, he could not withstand pressures from discordant groups.”⁸

The **communal differences** that arose are of large importance made apparent with two instances – firstly, the Mandal Commission Report that Singh supported, which led to Chandra Shekhar of Singh's party, leaving the party with numerous others. The second instance was when LK Advani and Pramod Mahajan took a Ratha to foster support in a movement to demolish the Babri Masjid in Ayodhya, and even though the BJP had warned Singh that Advani's arrest would lead to withdrawal of support, he went on to arrest Advani for stirring up communal tension. The BJP withdrew, and with the BJP, the Congress, and the Janata Dal (S) (led by Chandra Shekhar and other dissidents) all lined up against him, Singh lost the no confidence vote 356 to 151, leading to his resignation.⁹ In the words of the President himself (see 8th citation), the learning in this case is that **dependency on parties with conflicting ideologies** never do well, and in a nation

⁸ R. Venkataraman, *My Presidential Years*, New Delhi, 1994, 437; *Supra* at 4.

⁹ *V.P Singh's coalition—its brief rise and fall*, Encyclopaedia Britannica, <https://www.britannica.com/place/India/V-P-Singhs-coalition-its-brief-rise-and-fall>, last accessed on 26.11.2019, 8:35 AM.

with communal politics making a constant appearance, the coalition would not stand. Singh's conspiracy with Devi Lal, the non-dismissal of Om Prakash Chautala, and the resultant Chandra Shekhar fiasco are further indicators of the complexities coalition governments pose.¹⁰

The whole idea behind the Lohia strategy (see *1977 – the Morarji Desai Government*), was to execute a defeat of the majority authoritarian government by going to the roots, grabbing hold of a particular candidate and putting a stronger individual up against him. The whole issue of interpreting this strategy was that soon enough, the issue became very communally oriented. Minority dominant constituencies would have a minority representative, and today what we take for granted might not necessarily be the most viable structure in the spirit of democracy. Why the researchers make such an admonition is considering how the promises made by communal parties, representatives, would conflict, and in a coalition, they would never be executed either.

3) 1990 – The Chandra Shekhar Government

The government formed after Singh's ousting, with Chandra Shekhar at the helm, was also short lived. Chandra Shekhar had formed the government with the Congress as a prime supporter, and there was a lot of heat he received owing to the fact that he was a defector himself. That being said, the issue was most aptly summarized, once again by then President R. Venkataraman –

“during his few months in office, he had handled parliament competently and was responsive to suggestions from the opposition. He was under constant strain from the pressures of the congress party, which I am afraid, assumed that it was the real government and Chandra shekhar only a proxy. The office hungry coterie of the congress party used to misguide Rajiv Gandhi that Chandra Shekhar's attempts at building up a good image could prove deleterious to his image.... I realized that unequal combinations are always disadvantageous to the weaker side.”¹¹

And for our purpose, the last sentence would help – **that unequal combinations are always disadvantageous to the weaker side**, and that **the success of a weaker party in a coalition affects the stronger ones**.

¹⁰ Inderjit Badhwar, *Office didn't corrupt V.P. Singh, but it showed him up for what he was – not yet a leader*, India Today, November 15 1990, <https://www.indiatoday.in/magazine/cover-story/story/19901115-office-didnt-corrupt-v.p.-singh-but-it-showed-him-up-for-what-he-was-not-yet-a-leader-813238-1990-11-15>.

¹¹ *Supra* at 8.

4) Other Governments in Brief

Due to the paucity of pages in this paper, the researchers shall briefly summarize how the Deve Gowda government of 1996 also witnessed a crumble. This was a thirteen-party coalition, once again intended to bring about the downfall of the BJP majority, which, once again failed, after Congress pulled out. An issue which is apparent in this regard is how every coalition faces the issue of which politician to crown as Prime Minister. The recent cases of Maharashtra and Karnataka are prime examples, as will be discussed in the constitutional section.

5) Framework – Indicators:

- a) The inevitable rise of internal conflicts.
- b) A lack of uniformity in decision making.
- c) Conflicting ideologies culminate in instability.
- d) Communal Politics.
- e) Unequal combinations usually being disadvantageous to the weaker sides.
- f) Hunger/greed for power.

6) UPA 1 (2004) and UPA 2 (2009)

Both the UPA governments successfully lasted the entire term. But were these reasons mentioned above, predominant, and if so, how and by whom were they subdued?

- a) **Internal conflicts** – Yes, they did exist – the Left Front pulling out after the Indo-US Nuclear Deal in UPA 1 (and the coalition held), but the issue was not predominantly witnessed in UPA 2.
- b) **Decision making** – A constant issue, the lack of decision making heralded the fact that governments could not accomplish much, and considering that this was an issue not just in the coalition, and even within the Congress Party itself the Prime Minister was forced to rely on Congress Party President for every decision, and this was a major reason for hampered progress.
- c) **Conflicting Ideologies** – Even though there existed a chalked out Common Minimum Programme (addressed specifically in later pages), parties found themselves either constricted, or offensive to other parties, when certain decisions

- needed to be taken. This issue, coupled with the previous issue, was a cause for concern.
- d) **Communal Politics** – This was not a problem faced by the parties, and this was, in the researcher’s opinion, a very important reason for the success of both UPA governments. It stands as a reference to how in a diverse nation such as India, when parties do not unite on communal lines, it fares better for the government formed.
- e) **Unequal combinations** – In UPA 1, the Left wanted a say in the decision making – power, without responsibility. In UPA 2, the Dravida Munnetra Kazhagam wanted portfolios of their choice, to have more power, and interestingly, the weaker and smaller parties, held more power, and this perhaps was another reason the governments did not fail. This ties into the next point of **Power Hunger** as well.

A major setback for the UPA 2 were the corruption charges and the various scams (CWG, 2G, Coalgate), that led to its ultimate demise in the 2014 elections.

II. The Constitutional Point of View

1) Anti-Defection Law:

It is indeed an irony to see a law which is meant to prevent defections, hence ensuring the stability of any government for that matter has ended up being a main contributing factor for the epic fall of many coalition governments. The Anti-Defection Law was brought in by the 48th Constitution Amendment Bill during the Rajiv Gandhi tenure and the 10th Schedule was added to the Indian Constitution. The 10th Schedule has even stood the test of time through long judicial battles. It was challenged before the Supreme Court in the landmark *Kihoto Hollohan vs Zachillhu And Others*¹² on the grounds that the said legislation violated the right to free speech of legislators guaranteed under Articles 105 and 194 of the Constitution. However, the Constitutional Bench by a majority of 3:2 held that the said curtailment of rights was reasonable and was done keeping in mind the larger interest of the nation. The minority judgments in this case rendered by Justices LM Sharma and JS Verma each have their own story to tell about the concerns regarding one authority – the Speaker having the final say in such disqualifications. The 2/3rd clause included by the 91st Amendment to the Constitution also has its own implications as it can be seen in the Goa scenario when 10 out of 15 Indian National Congress

¹²*Kihoto Hollohan vs Zachillhu And Others*, (1992) SCC Supl. (2) 651 (India).

legislators broke away making the single largest party, a minority party in the state. This misfire of the Anti-Defection Law along with an incompetent Chief Minister or Prime Minister, who must pander to the coalition partners in order to survive, makes a worst-case scenario possible for a coalition government.

2) Constitutional Posts:

The constitutional posts of the Governor and the Speaker exist as formal entities when there is a majority in the said assembly or parliament. However, when no such clear majority exists for any party in the house, all eyes turn towards the office of the Governor. The Governor, with his discretionary powers has played a major role in deciding the fate of many hung assemblies in the past. According to Black's Law Dictionary¹³, discretionary power means one which is not imperative or, if imperative, the time, manner or extent of execution of which is left to the donee's discretion. Looking at this from a legal lens makes it clear that with respect to the Office of the Governor, the said powers are granted to him by the Constitution of India¹⁴. The power to invite a party or not to invite a party, to give time to a party or not to give time to a party, and so on, lies solely in the hands of the State Governor when there is a hung assembly or a possible coalition government in the brewing. Now, the Governor is a single entity, having enormous power in his hands. Time and again history has proved that such vast powers concentrated at one place can prove to be disastrous. Speaking about the stability of coalition governments, there have been instances when the governor has indeed closed the doors to forming new ones by using his discretionary power. The recent 2019 Maharashtra Election crisis is a perfect example where the Governor of the State, Bhagat Singh Koshiyari did not grant even a 3 day window to the Shiv Sena, Nationalist Congress Party and Indian National Congress to form an alternate alliance after the pre-poll alliance between the Bhartiya Janata Party and the Shiv Sena, ended abruptly. On the other hand, taking the State of Karnataka into consideration, following a hung assembly, the Governor of the State, Vajubhai Vala granted about 15 days' time to B. S. Yeddiyurappa to prove his majority in the house. It is in the latter scenario when the illegality of Horse Trading comes in. It was indeed an open secret that the single largest party, the BJP, was short of the number of Legislators required to form a government. However, this 15 days' time period opened up new possibilities and could have worked wonders for any party in that situation

¹³ *Discretionary Power*, Black's Law Dictionary (5th ed. 1981).

¹⁴ The Constitution of India, 1950, Art. 163(2).

if it was not for the Supreme Court which acted upon a petition moved by the Congress-JDS and reduced the time window for the floor test. Poaching of Legislators, Horse Trading of Legislators, Resort Politics have become common terminologies in the media and press and can indeed prove disastrous to the democracy. Besides defeating the democratic system, horse trading of legislators is one of the main reasons for the instability of the coalition governments.

This is apparent when the Governor at times assumes a role favoring one party which most often is the ruling party in the centre. It needs to be understood that the Governor is a human being as well and the time is ripe to put these discretionary powers of the Governor under scrutiny. SR Bommai vs. Union of India¹⁵ was a turning point when the Supreme Court stepped in and held the Governor wrong and brought in the concept of a floor test. In the same way, the Apex Court needs to step in to prevent anomalies regarding the use of discretionary powers of the Governor when there is a Coalition Government on the cards due to no absolute majority. In this way, the stability of a coalition government can be ensured.

The Sarkaria¹⁶ and Punchhi¹⁷ Judicial Commission Reports have been willfully ignored over a long period of time and this according to the authors is again a major faulty factor that in tandem with other illegalities, ultimately leads to the breakdown of a coalition government. Certain chapters of the Sarkaria and Punchhi Commission Reports have spoken about the action that needs to be taken by the Governor in case of a hung assembly. It basically sets out the order of precedence as follows:

- a) Alliance of Parties formed prior to the elections.
- b) Single Largest party that seeks claim to form the Government with the support of other parties including independent legislators,
- c) Post-electoral Coalition with all the legislators being a part of the government
- d) Post-electoral coalition, where the government is given support from the outside by independent legislators and parties

Following such an established set of guidelines can prove to be the immediate, essential turning point as far as the stability of a coalition government in the process is concerned. This is because

¹⁵ S.R. Bommai vs Union of India, 1994 SCC (3) 1 (India).

¹⁶ *Sarkaria Commission Reports*, January 1988, <http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/>.

¹⁷ *Punchhi Commission Report*, 30 March 2010, <http://interstatecouncil.nic.in/report-of-the-commission-on-centre-state-relations/>.

when there are set guidelines, there no longer exists this sense of anticipation and hype that the media terms as ‘All eyes turned towards the Raj Bhavan’, which is very common during coalition formation.

The courts, on their part, have not given a very clear remedy or interpreted the law so as to remove all ambiguity that allows the Governor to act in a crudely partisan manner with impunity. Indeed, even though the Supreme Court in the S. R. Bommai case¹⁸ asserts the significance of a floor test as being the only relevant determinant of the strength of an alliance and the Governor has to invite the leader of the party commanding majority in the House or the single largest party/group, it does not clearly specify whether the single largest party/group is a pre or post-poll alliance.

With the reasons for coalition failure as discussed above, the Courts of the land have also failed to establish a clear interpretation to remove all the ambiguities that exist and ensure a stable coalition government. Thus, in this regard, the authors are forced to address upon the fact that the discretionary powers in the hand of the Governor are often used with a tinge of political preference which is an irregularity that later paves way to illegalities such as horse trading of legislators which affects the stability of any such coalition government in the formation and also poses a threat after a coalition establishes itself, this in the form of defection of legislators.

3) Common Minimum Programme:

There is a lack of a set common minimum programme for most coalition governments ever since coalition governments became the norm in the Indian arena. Such a document would aim at outlining the common, minimum objectives of a said coalition government. The presence of a common minimum programme ensures the stability of a coalition as far as the people-legislator relationship is concerned. Moreover, the coalition aims at working for the achievement of the proposition. However, these days, such a common minimum programme, even if proposed, does not work out in the best interests of the coalition due to reasons mentioned above. It hampers the overall stability of a coalition and there is no legislation to prevent such ideological mismatches as it comes in as an irregularity and not an illegality. Again, it must be seen that the need for an effective Common Minimum Programme to ensure the stability of any government has been

¹⁸ *Supra* at 15.

suggested by the Second Administrative Commission in its report¹⁹. Once again, the suggestions have gone ahead as suggestions only, and as mentioned above, while they could instead have drastic effects on the strength of an existing coalition government.

III. Conclusion

Concerns about the stability of coalition governments have been around ever since its inception in global democracy. Even before the wake of the century, nearly four decades ago, in 1979, one Mr. Paul Warwick had spoken about the stability of a coalition government in global democracies in his paper *The Durability of Coalition Governments in Parliamentary Democracies*²⁰. Thus, the issue as it may seem has been around for a long time and over the long run, many different possible answers have come up from different sides of the globe. Now, trying to tackle the irregularities and illegalities addressed in the paper in the Indian scenario, the authors after careful analysis, find these as possible measures to address instability –

- 1) Take proper note of previously failed governments, and try not to allow communal preferences to influence the vote-bank, later affecting the manifestos of parties.
- 2) Let the framework provided in this paper be an important metric to analyze coalition government feasibility when forming such a government.
- 3) Amend the existing Anti-Defection Law to remove the anomalies which can lead to its potential misuse.
- 4) Implement the Sarkaria and Punchhi Judicial Commissions' recommendations as directives to the Governors of the states in case of a hung assembly.
- 5) Common Minimum Programme can be made a bare minimum when coalition governments are formed.
- 6) The setting up of an Ethics Committee to ensure the implementation of the Common Minimum Programme of a said Coalition Government.
- 7) A check for disproportionate assets of legislators following an abrupt defection.

¹⁹ The Department of Administrative Reforms and Public Grievance has designated the darp.gov.in website as the Official site to access reports of commissions constituted under the department. See *Second Administrative Reforms Commission Report*, <https://darp.gov.in/arc-reports> These reports are in PDF format and are authenticated.

²⁰ Paul Warwick, *The Durability of Coalition Governments in Parliamentary Democracies*, 11 SAGE J. 465-498 (1979).