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THE PUZZLING NATURE OF A 'HUNG PARLIAMENT': A DENT ON THE POLITICAL ETHOS OR A STAIN ON THE CONSTITUTIONAL FABRIC?

INTRODUCTION

A 'Hung Parliament' as the term 'hung' suggests, refers to a situation in balance, with no clear weightage on one side to swing the pendulum in its favour. The phrase traces its origins to the Westminster system, or Westminster model, which is a type of parliamentary government first developed in England¹ and is analogous in nature to the phrase a 'hung jury' that can't reach a majority to give a verdict.² According to P. Ramanatha Aiyar's Law Lexicon, a Hung Parliament is a parliament wherein no party has won a working majority.³ The phrase also encompasses a circumstance of single or multiple pre-existing coalitions failing to reach the majority mark in parliament or other legislature. Wharton's Concise Law Dictionary goes a degree further and talks about the ramifications of a Hung Parliament which is either a minority government or a coalition that can together command a majority in the house.⁴ Another consequence could be the dissolution of the parliament & holding of fresh elections if a government cannot be formed.

NOT A DESIRABLE SITUATION

A hung parliament is not a welcoming standstill for the following reasons:-

Political instability

Hung Parliament leads to political instability in the country and is largely owing to the changing colour of Regional Parties. The increasing influence of regional parties in Indian politics has led to political instability and hung parliaments. Since 1989, the number of seats won by regional parties in Lok Sabha elections has steadily increased, from 27 seats in 1989 to 197 seats in 2024. This trend has forced national parties to seek alliances with regional parties to form a government, highlighting the growing dominance of regional parties in

¹ Arend Lijphart, PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES (Yale University Press 1999).

² Pascal Tréguer, Origin of 'Hung Parliament', Word Histories (June 7, 2017), <https://wordhistories.net/2017/06/07/origin-of-hung-parliament/> (last visited Sept. 11, 2024).

³ P. Ramanatha Aiyar, LAW LEXICON, 767 (Lexis Nexis Butterworth 2012) ; Dr. V. Vijayakumar, "Hung Parliament Under the Indian Constitution: A Study In The Light Of Contemporary Developments," XXV(3) IBR 441998.

⁴ Wharton's Concise Law Dictionaries, Universal Law Publishing co. new delhi(2013)

national politics.⁵ Regional parties play a crucial role in government formation by negotiating for ministerial positions with national parties. This ongoing bargaining leads to political uncertainty and public disillusionment due to perceived unfair practices. Governments must secure enough parliamentary votes for key motions like confidence and budget bills. India's coalition governments often lack responsible political management despite being formed out of necessity.⁶

Trade and Commerce

Trade and commerce suffer significantly after a hung parliament due to the lack of stable government and strategic planning, leading to gaps in decision-making. This instability negatively impacts trade and commerce. For instance, in 2004, the stock market indices dropped by 16 % following the Lok Sabha election results, showing the market's preference for stable governance.⁷ In 2014 when the BJP got a clear majority by its own "both the headline indices surged to record highs, in the lead-up to and following the election results".⁸ Market volatility and its direct correlation with polls could evidently be seen, when the Sensex plummeted by a mammoth 6200 points close to the day of the declaration of Lok Sabha 2024 polls when it was glaring that no single party would get a clear majority and a hung parliament was on the cards.⁹

Minority Government

When a hung parliament results in a coalition government, no single party holds a majority, leading to a minority government. Such governments often face decision-making challenges and constant conflicts with opposition parties, hindering effective governance. Minority governments tend to focus on short-term gains rather than long-term planning, unlike majority governments that plan for a five-year term. To appease their support groups,

⁵ Akriti Anand, Lok Sabha Elections Make Many Regional Parties Kingmakers but Some Draw Blank: A Deep Dive, LiveMint (Apr. 7, 2021), available at: <https://www.livemint.com/elections/lok-sabha-elections-make-many-regional-parties-kingmakers-but-some-draw-blank-a-deep-dive-11717680657315.html>

⁶ Dipak Malik, POLITICS OF COALITION 4 (1997).

⁷ Vivek Kumar M, Indices See Worst Election Year Jitters Since 2004, Financial Express (May 20, 2024), available at: <https://www.financialexpress.com/market/indices-see-worst-election-year-jitters-since-2004-3493748/>

⁸ Oliviya Kunjumon , Lok Sabha Elections 2024: Historical Analysis Of Stock Market From 2004 To 2019 As Exit Polls Trigger Record High Performance, Free Press Journal (June 3, 2024), available at: <https://www.freepressjournal.in/business/lok-sabha-elections-2024-historical-analysis-of-stock-market-from-2004-to-2019-as-exit-polls-trigger-record-high-performance>

⁹ Mithilesh Jha Lok Sabha Election Results 2024: 6200 pts Sensex crash not enough! Market may tank further if NDA tally dips below, Financial Express (June 04, 2024) available at: <https://www.financialexpress.com/market/lok-sabha-election-results-2024-6200-pts-sensex-crash-not-enough-market-may-tank-further-if-nda-tally-dips-below-3513299/>

unstable coalitions may resort to excessive spending, leading to high debts for future administrations.

To secure support from regional parties and the public, minority governments often offer various freebies and incentives. These can include subsidies, loan waivers, free electricity, and other benefits aimed at gaining favor and ensuring political stability. Few are listed below:-

- i. Free Electricity and Water: In Delhi, the Aam Aadmi Party (AAP) has provided free electricity up to 200 units and free water of up to 20,000 litres per month to residents.¹⁰
- ii. Loan Waivers: Several state governments, including Maharashtra and Punjab, have announced loan waivers for farmers to gain their support.¹¹
- iii. Subsidized Housing and Gas Cylinders: The central government has offered subsidized housing under the Pradhan Mantri Awas Yojana and free gas cylinders under the Ujjwala Yojana.¹²

Additionally, minority governments may provide mega grants to regional parties that support them to stay in power. These grants can be used for regional development projects, infrastructure improvements, or other local initiatives that benefit the supporting parties' constituencies.¹³

CONSTITUTIONAL GAMUT & COURT INTERPRETATIONS IN THE INDIAN LANDSCAPE

In Britain, the idea of a coalition government has been consistently rejected whenever the situation arose, such as in 1923, 1929, and 1974. During these times, a minority government was formed, leading to the establishment of conventions related to a Hung Parliament. In contrast, India has not only experienced coalition governments in the past but also appears to be transitioning into an era dominated by coalition politics. Way back in 1951 a distinction was clearly observed by the court in *Motilal's case* and it was held that the Indian

¹⁰ Zoya Mateen, Freebies: The row over handouts and welfare schemes in India, BBC (September 12 2022), available at: <https://www.bbc.com/news/world-asia-india-62722592>

¹¹ Thin line between freebies and public welfare, Civis Daily available at: <https://www.civildaily.com/news/thin-line-between-freebies-and-public-welfare/>

¹² *Ibid* 11

¹³ Akash Paun & Ashley Hibben, IfG Insight: Confidence and Supply, Institute for Government (June 2017), <https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG%20Insight%20Confidence%20and%20Supply%20final.pdf> (last visited Sept. 09, 2024).

Constitution was essentially different from that of Britain.¹⁴ In India, if no party can form a government after an election, fresh elections are held. Until then, the President's rule is imposed. However, before this step, the President (for Lok Sabha elections) or the Governor (for State legislatures) allows parties to attempt to form a coalition government to avoid fresh elections.

The Sarkaria Commission on Centre-State Relations¹⁵ has recommended the following order of preference for forming a government:

A pre-electoral alliance with a majority.

The single largest party without a majority.

A post-electoral alliance with a majority.

A post-election alliance where some parties form the government while others, including independents, support it from outside.

Let us now examine the constitutional provisions and how courts have interpreted this whole scheme:

Preamble

The preamble of the Constitution of India does not explicitly specify the form of government that the country has chosen to implement. Similarly, the various provisions within the Constitution do not directly state the nature of the government structure.

Article 74 & 75 of the Constitution of India

Examining Articles 74 and 75 of the Indian Constitution reveals that there is no requirement for the Prime Minister to have an absolute majority in Parliament.¹⁶ The Constitution only mandates a Council of Ministers, led by the Prime Minister, to aid and advise the President. The first reference to the Prime Minister can be seen in Article 74 of the Constitution which talks about the position of Prime Minister. The article is silent as to the need for an absolute majority in parliament, as a prerequisite to becoming a Prime Minister. A natural inference would be that the makers of the Constitution had envisaged the possibility of a Hung Parliament.

¹⁴ Moti Lal v. Uttar Pradesh Government, AIR 1951 All 257.

¹⁵ Chapter IV: Administrative Relations, Inter-State Council Secretariat (June 2015), <https://interstatecouncil.gov.in/wp-content/uploads/2015/06/CHAPTERIV.pdf> (last visited Sept. 15, 2024).

¹⁶ India Const. art. 74, 75 § 1, No. 1, Acts of Parliament, 1950 (India).

Moreover, many Lok Sabha members are elected with more votes cast against them than in their favor, indicating a fractured mandate. Therefore, even if a party wins the most seats, it does not necessarily reflect an absolute majority based on the people's mandate.

The term 'Hung Parliament' can be misleading regarding government formation. According to Article 75(3), the Council of Ministers is accountable only to the Lok Sabha, not the entire Parliament, which includes the President, the Rajya Sabha, and the Lok Sabha. Therefore, the term 'Hung Lok Sabha' would be more accurate when referring to a situation where no single party has a clear majority in the Lok Sabha.

Article 356

Since 1950, President's Rule has been invoked 124 times in India.¹⁷ One major reason is a hung assembly, where no party secures a clear majority. Other reasons include intra-party conflicts, poor governance, the creation of new states, and ensuring free and fair elections. Out of these instances, the President's Rule was imposed due to a hung assembly six times, making up 5% of the total cases. A notable recent example is Maharashtra in November 2019. After the BJP and Shiv Sena failed to form a government, the Governor invited the NCP to stake a claim. However, the President's Rule was imposed on November 12, 2019, before the NCP's deadline.¹⁸ It was revoked on November 23, 2019, when the BJP-NCP government took charge. The revocation was done under Rule 12 of the Government of India (Transaction of Business) Rules, allowing the Prime Minister to bypass standard procedures with the Union Cabinet's recommendation, even without a formal meeting. However, since no cabinet meeting took place, the rule was revoked using this special provision.¹⁹

¹⁷ Venkat, Ananth How President's Rule in India has been imposed over the years, LiveMint (January 27, 2016), available at: <https://www.livemint.com/Politics/SJ3mETZ7H1cjKNlodkcM8O/How-Presidents-Rule-in-India-has-been-imposed-over-the-year.html>

¹⁸ Himanshu Mishra, Why governor recommended President's Rule in Maharashtra?, India Today (Apr 5, 2022) <https://www.indiatoday.in/india/story/maharashtra-president-s-rule-1618230-2019-11-12> visited on

29.1.2020

¹⁹ PTI, President's rule revoked in Maharashtra at 5.47 am, The Economic Times, (November 23, 2019), available at: https://economictimes.indiatimes.com/news/politics-and-nation/presidents-rule-revoked-in-maharashtra-at-5-47-am/articleshow/72194738.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Judicial Pronouncements

- i. Way back since 1950, through the decision in the case of *Rai Sahib Ram Jawaya Kapoor*²⁰ and the famous case of *U.N. Rao v. Indira Gandhi*²¹ the court has been unequivocal in saying that India has been a Parliamentary form of Government.
- ii. In another landmark case of *H.S. Jain v. Union India*²² the court reviewed the decision of imposition and re-imposition of President Rule in State of U.P. in 1996 and held that the object of Article 356 is to restore the elected government.

The court, by majority, clarified the Governor’s role in appointing the Chief Minister as follows:

- If a party has a majority in the House, the Governor must appoint the leader of that party as Chief Minister.
 - If no party has a majority but a coalition or alliance does, the Governor must appoint the leader of that coalition or alliance as Chief Minister.
 - If no one has or claims majority support, or the Governor cannot determine where the confidence lies, the Governor must summon the House under Article 174 and send a message under Article 175(2) for the House to decide and convey their choice for Chief Minister.
- iii. The case of *Rameshwar Prasad & others v. Union of India*²³ was unique as it marked the first instance where a Legislative Assembly was dissolved before its first meeting due to the majority being obtained through illegal means. With no party able to form a government, President’s Rule was imposed under Article 356, and the Assembly was placed in suspended animation.

The court settled down the legal issue involved as following:

- After elections, every effort should be made to establish a popular government, regardless of the political party. Dissolving the Assembly to prevent claims of majority through corruption or allurements should not be based on assumptions without evidence, as it can exclude parties without an absolute majority from governance.

²⁰ AIR 1955 SC 549

²¹ (1971)2 SCC 118.

²² (1997)1 UPLBEC 594

²³ *Rameshwar Prasad & others v. Union of India* AIR 2006 SC 980

- Article 356(1) is an emergency power to protect and preserve the Constitution, not an absolute measure to fulfill obligations under Article 355.
- The President’s satisfaction is that of the Council of Ministers. *The Bommai case*²⁴ established that Article 74(2) does not prevent scrutiny of the material on which the President’s proclamation under Article 356 is based.
- If a political party, with the support of others or MLAs, claims to form a government and proves its majority to the Governor, the Governor cannot refuse based on a subjective assessment of illegal or unethical means. The Governor and President lack the power to invoke Article 356 on grounds of maladministration.
- Article 361(1) states that the Governor is not answerable to any court for exercising these powers, which is why notice is not issued to the Governor. However, this immunity does not prevent courts from judicially scrutinizing such actions.

A LOOK AROUND THE WORLD

Canada

In five of the last seven federal elections, Canada has seen hung parliaments, specifically the 38th, 39th, 40th, 43rd, and 44th parliaments. The most recent hung parliament was the 44th, elected in 2021.²⁵ In these cases, the largest party formed a minority government, meaning they didn’t have a majority of seats. To pass legislation, they needed support from other members of the legislature, fostering multi-partisanship.

Fiji

In the 2022 Fijian general election, no party secured a majority, leading to a hung parliament and ultimately a coalition government.²⁶

France

June 2022 parliamentary elections which were conducted less than 2 months after being re-elected as president, Emmanuel Macron and his government, fought the 2022 legislative election and in the second round, Macron's centrist coalition unexpectedly lost its majority in

²⁴ S.R. Bommai v. Union Of India, 1994 AIR1918, 1994 SCC (3) 1

²⁵ John Paul, Canadians have re-elected a Liberal minority government , CBC (September 20, 2021), available at: <https://www.cbc.ca/news/politics/federal-general-election-results-2021-1.6182364>

²⁶ Kirsty Needham, Fiji has new government after three parties form coalition, Reuters (December 20, 2022), available at: <https://www.reuters.com/world/asia-pacific/fiji-has-new-government-after-three-opposition-parties-form-coalition-2022-12-20/>

the National Assembly and was reduced to being the largest bloc (with 251 seats) in a hung parliament.

Malaysia

The 2022 general election of Malaysia resulted in a hung parliament with no party or party coalition winning a simple majority for the first time in Malaysian history.²⁷ Following five days of deliberation and negotiations within coalitions and parties, the leader of the coalition which won the most seats, was sworn in as the Prime Minister of Malaysia.²⁸

NEED FOR A STRUCTURAL OVERHAUL OR LITTLE TWEAKS HERE AND THERE?

Mandatory Polling

In India, just 66 out of 100 people cast ballots on election day as per the latest data.²⁹ It is past time to look into the issue, enact mandatory voting, and penalise those who choose not to cast a ballot. Enforcing compulsory voting increases the likelihood of majority rule and reduces the possibility of a hung parliament in the upcoming elections.

Bi - partite System

In India, a political party is considered a national party if it has a significant presence in more than four states, according to Indian law. Both national and regional parties are involved in the country's electoral process. Some experts argue that this diversity contributes to India being the largest democracy in the world. However, the problem of hung Parliaments and governments lacking a clear majority remains a concern. One potential solution is to eliminate regional parties and limit the political landscape to just two major parties at the national level. This approach could address the issue of hung Parliaments. A Counterpoint to this would be that such a measure could undermine the democratic fabric of the nation, which is a fundamental aspect of the constitution and would likely be deemed unconstitutional.

Alternative Voting System

²⁷ Zurairi A.R. Hung Parliament in GE15, as both Pakatan and Perikatan in race to form govt, Malay Mail available at: <https://www.malaymail.com/news/malaysia/2022/11/20/hung-parliament-in-ge15-as-both-pakatan-and-perikatan-in-race-to-form-govt/40752>

²⁸ Anwar Ibrahim sworn in as Malaysia's 10th Prime Minister, New Straits Time (November 24, 2022) available at: https://www.nst.com.my/news/nation/2022/11/854566/anwar-ibrahim-sworn-malysias-10th-prime-minister#google_vignette

²⁹ Press Note 65.79% voter turnout recorded at polling stations in General Election 2024 (June 06, 2024), available at: <https://elections24.eci.gov.in/docs/BnS4hhbvK9.pdf>

Used in countries such as Australia³⁰, Brazil, and Portugal, the alternative vote system involves ranking candidates in order of preference. During the vote counting process, the candidate ranked first is initially considered. If no majority is achieved (in cases of a tie or dispute), the votes are then redistributed based on the second-choice rankings, and this process continues until a majority is found. This method can effectively address the issue of hung Parliaments.

Legal Reform

There should be a legal change allowing the opposition party to initiate a no-confidence motion in Parliament. In India, any party can propose a no-confidence motion, which, once approved by the Speaker, leads to a vote. If the ruling party fails the trust vote, a fresh election is called. In contrast, in countries like Germany³¹, Spain, and Italy, a no-confidence motion is typically accompanied by a designated successor. If the ruling government fails the trust vote, the appointed successor assumes office for the remainder of the term, thus avoiding the need for a new election. This approach could help prevent unnecessary elections.

CONCLUSION

A hung parliament can be seen as beneficial, especially when public opinion is deeply divided on key issues. It can encourage the development of compromises or consensus. The President has the option to reactivate the Interstate Council under Article 263, which could be highly effective in building national agreement and improving governance. It brings together representatives from different states and the central government to discuss and resolve issues of common interest.

For the President to take on such an influential and proactive role, it's crucial to avoid blindly following foreign conventions and instead develop practices suited to our political and legal needs. As famously put by Sir Ivor Jennings *"Those who take decisions create precedents which others tend to follow, and when they have been followed long enough, they*

³⁰ Alternative vote: The Australian experience, BBC News (April 14, 2011), available at: <https://www.bbc.com/news/uk-politics-13065069>

³¹ Constructive Vote of No Confidence in the Bundestag (October 1, 1982), published in: German History in Documents and Images, available at: <https://germanhistorydocs.org/en/two-germanies-1961-1989/ghdi:image-2453>

acquire the sanctity and the respectability of age".³² Therefore, the President should fill in constitutional ambiguities and set rational precedents for resolving future hung parliaments.

A new constitutional provision should be introduced to address situations where no party or alliance secures an absolute majority to form the government. In such cases, the Governor should summon the house and ask it to determine where the confidence of the house lies within a stipulated time period.

Further, to streamline the process of post-poll alliances and to strive for stability as soon as possible, a provision that mandates coalition agreements be finalized within a specific period (e.g., 15 days) after the results are declared should be introduced through an ordinance. Since stability is the ultimate desired goal, a drastic move to ensure that would be to amend Article 75 of the Constitution to introduce a formal procedure for no-confidence motions that includes a mandatory cooling-off period and a requirement for a substantial percentage of votes (e.g., 60%) to pass the motion, ensuring only serious challenges lead to government changes.

Additionally, India should amend its election laws regarding the registration of political parties to control their rapid proliferation. Section 29-A of The Representation of People's Act, 1951, which deals with the registration of political parties, should be amended to make the registration process more stringent. This will help avoid fractured mandates and frequent elections, which may otherwise necessitate the use of Article 356 of the Constitution. To strengthen the role of the Governor in cases involving Article 356 and hung assemblies, the government should focus on the qualifications and experience of the appointee. The qualifications for appointing a Governor should be amended to include: a) Experience in administration, public affairs, or law. b) No affiliation with any political group or ideology.

³² Colin R. Munro, *STUDIES IN CONSTITUTIONAL LAW* 38 (London: Butterworths, 1987)