



A Study of Electoral Jurisprudence of Indian Democracy

DR. RAJESH S.VYAS
Principal,
Shri N. S. Patel College
Modasa (Gujarat)

Abstract:

Mushrooming growth of Political Parties, especially growth of local and regional parties, arousing parochial and provincial feelings are rendering governments unstable and even creating problems in the formation of the governments. A number of governments in Centre as well as in States have fallen due to the multiplicity of political parties with different ideologies. Goa, Jharkhand, Bihar and Delhi are current examples in these regard. These occurrences have not only weakened the functioning of the parliamentary system but have also exposed the ugly faces of this system

We should seriously think over the change of parliamentary democracy into the presidential form of democracy though on experimental basis. A national consensus will have to be aroused first for pondering over all the pros and cons of the presidential form of democracy to do away with the indelible evils of parliamentary democracy with Prime ministerial despotism and governors as their agents as well as the fractured mandates of the people.

Keywords: *Constitution of India, Criminalization in politics, Democracy, Electoral Democracy, Electoral Jurisprudence, Fractured Mandate, Power-hunger Politician, Regionalism*

1. Introduction

Since last couple of decades of twentieth century we have seen number of times a coalition government in centre as well as in states. It is also noticeable that coalition governments emerge as less strong and durable government. Needless to say, that we have adopted the best form of governance of the day i.e. electoral democracy with adoption of Constitution of India. There were two types of electoral democracy was in fashion namely Parliamentary form of democracy as preferred in U.K. and Presidential form of democracy. We adopted the U.K. model. There were various reasons behind the adoption of U.K model which had been widely discussed in Constituent Assembly before the adoption of the Constitution of India. Certainly this kind of governance considered as fit for the country by the framer of the constitution. But the history of last couple of decades shows that perhaps there is something wrong with the system which was not expected at that time. The current problem of unstable governments at the centre as well as at states force to re analyses the U.K. model of electoral democracy with emerging trends of electoral system in our country. Therefore this paper is specially present a study on analysis of current system with preferred trend and a comparison of U.K. model and U.S. model keeping in mind to remove the various ill and vices currently in our electoral democracy.

2. Factors of instability of the Houses

Instability of the popular houses in India is a big problem of the day. With the observation of the current scenario one can find easily that there are various factors responsible for the instability of the House, namely, the large number of political parties, multiplicity of candidates, low voting percentage, defections in political parties, criminalization in politics and first-past the post system. Ticket distribution by political parties to candidates to come into fray on the basis of caste and community are also playing a major role in destabilizing the Houses. All the aforesaid factors may

be grouped into two main categories which badly affected the stability of the popular houses namely, fractured mandate and rising number of power hunger politicians.

Both the aforesaid factors required a little discussion. Therefore an attempt has been made to discuss these two things in the following way:

2.1 Fractured Mandate

Fractured mandate leads to majority to no party in the election. It has given birth to the culture of coalition governments which are most in-stabilized in their very nature and the horse trading at large scale. It sometimes leads to no formation of the new government for want of comfortable majority of a particular party and ultimately the house is dissolved and people go for another election as we have seen very recently in Bihar. So, "Fractured mandate" is mandate of common voters of the country in any General Election, in which no majority of seats in the House is conferred on any political party or in a political situation after a General Election in which no single political party or any political alliance get such number of representatives for the House which could constitute the majority of the House and in turn, formation of government becomes too difficult or impossible. This is surfaced as a big drawback of our political system and it has become a permanent feature from the year 1989. It would be nothing extraversion to say that this situation is a natural by-product of large number of political parties and candidates participation in election. Castesism, communalism, corrupt practices, religionism, regionalism, low-voting percentage, poverty and illiteracy of the voters etc. are the basic factors responsible for the same.

Mushrooming growth of Political Parties, especially growth of local and regional parties, arousing parochial and provincial feelings are rendering governments unstable and even creating problems in the formation of the governments. A number of governments in Centre as well as in States have fallen due to the multiplicity of political parties with different ideologies. Goa, Jharkhand, Bihar and Delhi are current examples in these regard. These occurrences have not only weakened the functioning of the parliamentary system but have also exposed the ugly faces of this system. On an average 10 contestants of different political parties including individuals are sharing in the fray. It results in "no clear-cut majority of any one party" due to a little bite in vote by every contestant in total vote polled. The low voting percentage is also a big problem running with our system since its inception. On an average the poll percentage had been, in India, during 16 General Election as 53 to 59 percent.¹ Ticket distribution by political parties to the candidates to come into fray on basis of caste and community is also leading to the some extent, no clear-cut majority to any single party and culmination in Hung Houses and ultimately seriously affecting the stability of the *Lok Sabha* and *Vidhan -Sabha* of the States. Frequent elections, coalition governments, unprincipled and unethical pre poll and post poll alliances are the natural by-product of 'Hung House'. All this makes the country weak politically, economically and socially due to which the socialistic pattern of society has become irrelevant.

R. K. Mahajan has rightly expressed his worry about the danger of Hung House. He expresses that, 'The danger in hung Parliament is that, it is not able to command political stability and it may lose its international image on account of its instability.'²

2.2 Rising Number of Power-hunger Politician

Rising number of the power-hunger politicians is another big reason for the unstable House. It is pointed out that till 1967 there was no question of dual leadership at the national level in strong way due to strong leadership of late Mr. Jawaharlal Neheru. But afterwards many of the leaderships or at least powerful centres of power in politics have emerged pipedot an all such types of centres are ontestion for more power in politics. They may go to the extent of withdrawing support in case of

¹ See various Reports of Election Commission of India.

² Mahajan, R.K.; 'Hung Parliament-Retrospect and Prospect', IBR Vol. 19 (1 & 2) 1992 Pg. 17(23)

coalition government or split from the mother party in case of single party governance in order to bargain for him or their followers and these generate the political crises in Centre as well as in States resulting into the instability of the Popular Houses.

Evil of frequent defections by horse trading of representatives in Indian politics also boots up this fantasy of the political leaders in case of Hung Houses. Political parties don't hesitate to rule over or to rule out the ruling party/alliance through horse trading of representatives.

Criminalization of politics is also a factor for the instability of the popular Houses. Since the hard criminals come in the politics and some of the politicians are using them as a tool to hijack the representatives of the House to form or to save their government.

The evil of defection has been threatening the very basis of our parliamentary system resulting in instability of governments. To cure this evil parliament enacted the 52nd Constitutional amendment in 1977 and added the Tenth Schedule to the Constitution which provides that if a member of the legislative party voluntarily leaves his party or votes against the whip of the party or nominated member joins other party within six months of election he will lose his membership of the legislature. But one of the exceptions to the above rule is that if 2/3 of the members defect from the party it will be called 'split'; and not the defection, and the separated group will be a new entity. Unfortunately, this provision of the tenth schedule has proved to be a boon for unscrupulous politicians who aspire for immediate political gain. A number of State Governments were thrown out by the power hungry politicians.

Therefore it is submitted that there is no need to give such type of relaxation and the provision of 10th Schedule of the Constitution should be repealed as early as possible as regards the 2/3 ousters.

The result of recent 16th General Election in India reflects that after 30 year of span any single party get full majority in Lok-Sabha. The reason seems behind it that party come into fray to project one person as a leader. Though, there may be other reason but it cannot be denied that projection of strong leadership is also a strong reason for the same. These phenomena of the Indian democracy giving a room, to think about the current Parliamentary system of democracy with view to replacement of Parliamentary form of democracy with the presidential form of democracy as prevailing in U.S.A. In this context, it would not be worthwhile to give a brief introduction to the debate on Parliamentary vs. Presidential system of governance.

The discussion reveals that we are continuously suffering from the problem of the instability of the Popular Houses. In fact these seem to be abuses of the multiparty system based Parliamentary democracy and voting system based on first past the post system. Thus a question arises that what was the thought of our founders of democracy when they adopted the present system of democracy in India. However, any principle in humanity could not be considered as comprehensive and fit forever. It is true for the parliamentary democratic system too. Every system has some merits and demerits and our system is not exceptions to that. Despite some demerits it has lots of merits, and due to this reason multiparty Parliamentary democratic system based on universal adult franchise irrespective of castes, creeds, races or sex has been adopted. But happenings during the last 25 years in political history of India due to above stated reasons have shocked the intellectuals, political thinkers and academicians to think about that what is wrong with this system where as our founders of democracy adopted this system considering best in the contemporary world. Therefore, it would be worthwhile to examine the basic ideas of this system in order to find the solutions of the problem of instability of the popular houses.

3. Idea of Present System

We adopted the electoral democracy through the Constitution as a means to for, the parliamentary form of government. 'Democracy' has been evolving as a best and most acceptable form of

governance through centuries of experiences among the people who care for human dignity and rights.³

The type of government may be different in democracy, For example, USA adopted the Parliamentary system of democracy. It is the UK model which has been adopted in India. The President is the nominal head of the executive of the Union of India under Article 53(1)⁴ of the Constitution of India and acts on the advice of the 'cabinet', with the Prime Minister at the head under Article 74(1).⁵ The tenure of office of the 'cabinet', which is the real executive, depends upon the support of the majority of the members in the Lok-Sabha. The responsibility of the cabinet is collective under Article 75 (3)⁶, so much so that if there is a disagreement, amongst the ministers, then either the cabinet as a whole or the dissenting Minister(s) must resign. In the states, correspondingly, the Governor is the nominal head of the executive under Article 154(1)⁷ and acts on the advice of the cabinet with the chief Minister of the head under Article 163(1),⁸ the cabinet is collectively responsible to the State's Legislative Assembly under Article 164(2).⁹ The representation of the people into the Parliament/Houses of Legislature is secured by adult suffrage under Article 326¹⁰ which entitles every citizen aged 18 years or above to cast his vote at an election.

4. Reasons behind the Adoption of Present System

The reason¹¹ behind the adoption of the Parliamentary system of UK model is, first, the system was already in existence in India and people were well acquainted with it, secondly, it provides for accountability of Ministers to the Legislature. Legislatures are subject to the review of their term by the common voters through the election in time intervals. They may not send them to the house if they are not performing their duty well in the House whenever General Election will be held. Needless to say that 'election' is an essential and inseparable part of this system and 'free and fair election' is a precondition to the system. So the framers of the Constitution of India have been made adequate provisions in the Constitution and Parliament has passed set of laws relating to conduct of free and fair elections in form of Acts, Orders and Rules.

No doubt, this system was adopted by the framers of the Constitution keeping in mind to achieve the cherished goals of the democracy but unfortunately, this hope of the framers has been belied. The happenings during the last 25 years clearly show that the parliamentary form of government system has almost failed. It is seen that the present democratic system is not functioning as smoothly in India as in U.K. Therefore, it would be appropriate to discuss the comparison between the systems prevailing in U.K. and India.

³ Justice Kamleshwer Nath, "The Culture of Democracy in India," AIR Journal, 2001, Pg. 193

⁴ Article 53(1) provides that, 'the executive power of the union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.'

⁵ Article 74(1) provides that, 'there shall be a Council of Ministers with the Prime Minister as the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. Provided the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.'

⁶ Article 75(1) provides that, 'the Council of Ministers shall be collectively responsible to the House of the People.'

⁷ Article 154(1) provides that, 'that executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through subordinate to him in accordance with this Constitution.'

⁸ Article 163(1) provides that, 'there shall be a council of Ministers with the Chief Ministers as the head to aid and advise the Governor in the exercise of his function, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.'

⁹ Article 164(1) provides that, 'the Chief Minister shall be appointed by the Governor and the other Minister shall be appointed by the Governor on the advice of the Minister, and the Minister shall hold office during the pleasure of the Governor.'

¹⁰ Article 326 provides that, 'the elections to the House of the People and to the Legislative Assembly of every state shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.'

¹¹ Pandey, J.N.; Constitutional Law of India, 49th Edition 2014

5. U.K. system viz-a viz Indian system of democracy

In the U.K. system, besides the principle of majority rule, there is a sustained willingness of the minority to accept the decisions of the majority. There is the difference in India, political parties in minority in the Lok Sabha/Vidhan Sabha are anything but willing to accept the decisions of the majority, the minority acts in opposition quite only for the sake of opposition, which is a sinister design to destabilize, the government in order to capture power. The fall of Atal Bihari Vajpayee's 13 months coalition ministry at the Centre in the 12th Lok Sabha by only one vote in April, 1999 is a classic example of this evil.

Another important feature of the democratic system in U.K. is the existence of prestigious political parties manned by men of high public integrity and stature divided by broad issues of policy and not governed by personality cult. The number of political parties, too, is very small 3 or 4, in India there is mushroom growth of political parties with their personal, often running at cross purposes with each other.

In comparison to U.K. it is also considerable thing that even half a century, after attainment of independence, a very high percentage of our population continue to be a 'uneducated.' Article 45 of the Constitution contemplated free and compulsory education within 10 years of the enforcement of the Constitution; this continues to be a far cry. The Constitution does not contemplate any educational qualification for election to any House of Parliament or State Legislatures, although the meanest employment (like a peon) under the government requires 10th standard pass nor do the political parties ensure that they would not put up a candidate who is not adequately educated. Indeed we find a few totally uneducated elected representatives in every House.

One of the most important features in the U.K. democracy which is not followed in Indian democracy that only those candidates have tickets to come into fray by his mother political parties who get major percentage of votes by the public in pre-poll referendum organized by political parties to spell out the best candidates in his party workers. There is no such trend in Indian political scenario. In India, candidates have ticketing by their mother political parties, on the basis of winning equations in the particular constituency," not on the basis of popularity of care and character of the candidate. The basic reason behind this is that our society is divided in multiple castes and communities.

There is one distinguishing provision in our Constitution also, which is *abinitio* not in U.K. that is, Article 75(5) and Article 164(4). These Articles provide that a person may function as a minister, respectively at the Centre or in the State, for a period of 6 months even if he has not been elected to any House. The provision runs as follows:

"A minister who, for any period of six consecutive months is not a member of either House of Parliament (or the Legislature of the State) shall at the expiration of that period cease to be a member."

In this regard, it is noticeable that even a person who has lost at an election can become a minister for 6 months, which the ban for holding office applies to a period of consecutive months so that, with a short break, one can again become a minister for further 6 months and that such a minister can also be a chief Minister. Indeed, almost every government at the centre has imposed a Chief Minister from outside in some States when the State leadership has failed to choose one. If a provision of the Constitution can enable an extra Constitution authority to be the chief executive of a State, it ceases to be democratic. He is not a 'representative of the people' at all a *sine-qua-non* for democratic exercise of power.

Therefore, on the basis of aforesaid comparison with U.K model one can say that Indian democracy is far from the system on which it is based. The happenings during the last 25 years clearly show that the parliamentary form of government in India is currently suffering from severe political disease.

Thus, in the light of the experience of functioning of parliamentary system of democracy in India during last 25 years, it may be submitted, that the present system has not been working successfully due to lack of unity and cohesion in political parties, behavior of the members of the different groups within the party and have weakened the authority of the leader of the party. It has been seen that the prime-minster or the leader authorized for this has to devote much of his time in solving party disputes and little time is to him to look after nation's work. The Prime Minister/Chief Minister has to satisfy different sections and groups among his party by giving ministerial posts.

6. Form of democracy: Parliamentary *viz* –a *viz* Presidential

For the last two decades, a debate has been going on among political scientists of the country that whether the present parliamentary system should be continued or should be replaced with the presidential system under which the president, elected directly by the people for a fixed term, will function as the nation's executive unpampered by the legislature in taking administrative decisions. He will also have the distinct advantages of choosing his ministerial team from among the best talent, available in the country without being subjected to the pulls and pressures of elected representatives and their parties. Therefore, it would also be appropriate to discuss the comparison between Parliamentary form of democracy and Presidential form of democracy as prevailing in India and U.S.A. respectively. Those who favor the presidential form of government claim that it has the following advantages:

1. The Chief executive in a presidential system is relatively free from sectional and party disputes. His term is fixed and, thus it ensures stability of the government and president can devote his entire team for the development of the country.
2. He is free to choose his team of ministers from the best talent available within the country. This choice is not restricted to elected representatives as is the case in parliamentary system.
3. It discourages the disease of defections and maintains discipline among the members of a political party.

On the other hand, those who favor the retention of the present parliamentary form of government claim that it has following advantages over the presidential form of governments.

1. It is a responsible government. The government is always subjected to its scrutiny by the legislature as regards its achievements and failures. The ministers are accountable to the legislature.
2. The Prime-Minister who enjoys 2/3 majority in parliament is much more powerful than the President in the United States.
3. There is nothing to prevent the Prime-Minister to choose the best talents from outside for his cabinet and get them elected or nominated to either Houses of Parliament, and.
4. The disease of defections can be cured by appropriate legislation.

However, arguments by the pro-parliamentary form of government are too realistic but they have no answer about the Prime-Minister despotism, indirect pressure to give representation to all castes and communities in the ministry, ignoring the fact that whether that minister is competent enough to run the portfolio or not. It is also unanswered that defection may be control by the appropriate legislations but the horse-trading of legislatures to rule over or rule out to any government can be comprehensively removed. In the wake of unprincipled coalitions, which have come to stay in the present Indian polity, just to form the government, coupled with the menace of instability of the governments occurred thereby. We should seriously think over the change of parliamentary democracy into the presidential form of democracy though on experimental basis. A national consensus will have to be aroused first for pondering over all the pros and cons of the presidential

form of democracy to do away with the indelible evils of parliamentary democracy with Prime ministerial despotism and governors as their agents as well as the fractured mandates of the people. There may be fear that a presidential system may work as a negation of democracy as it will concentrate too much powers in the hands of one individual though such fear is not valid. Our faith in democracy is quite unshakable. Further, with the emergence of Prime-Ministerial despotism in parliament the distinction between the two systems does in fact not exist. In the result, we have a presidential system without its advantages but with all disadvantages of the parliamentary system. Goa, Bihar Jharkhand and Delhi at the present had not witnessed such an unfaithful situation if we had the presidential form of democracy. Apart from the stability, this system will have the following merits-

- a. The political parties would be forced to enter to a clean pre-poll choice of their candidates. People will know beforehand as who would be our chief executive.
- b. It will enable the people to shift the issues between notional, provincial and local polls.
- c. Anti democratic factors like casteism, communalism, religion, language and region might be reduced. The candidate will have appeal across the board. Fissiparous tendencies could also be curbed.
- d. It will ensure the transparent funding system and will also reduce muscle power in conducting the election to be quite free and fair.
- e. Parliamentary and Assembly elections could be coterminous with that of the president, vice-president and governors. The president and vice-president could be elected on nationwide votes while the governors on statewide votes. Their tenure could be co-terminus with the Parliament and the Assemblies. Local bodies' polls could also be held together.

Therefore, it is further submitted that there is no place for such type of evils in presidential form of government, so we should think in this way and to think about to switch over to the U.S.A. model of democracy despite taking steps to cure the present system by adopting the mixed patterns of voting system in first - post –the –past system. It is the right for the historical change otherwise we will be loser in the age of global developments.

References

1. AIR Journal, (2001). Pg. 193
2. Annual Survey on Election by Election Commission, 2006
3. Election Commission of India. (2004). Proposed Electoral Reforms, New Delhi; Nirwahan Sadan.
4. Mahajan, R.K.; "Hung Parliament-Retrospect and Prospect
5. Pandey, J.N. (2014). Constitutional Law of India, 49th Edition
6. Vohra Committee Report