

TOPPLING OF GOVERNMENT

Anusuya Ghosh¹

Pratyus Deb²

ABSTRACT

The concept of toppling government is emerging nowadays. The changing of government or political parties within the tenure itself or changing of parties from one party to another is heard nowadays in many cases. It's a very significant role that plays the role of the common public in choosing any government. Changing of government suddenly within the tenure is putting question toward the election. Because in a country like India people choose members by giving their vote is a crucial part of Democracy. But by using political powers into it they are complicating the system and putting question over the democracy as well as the stability of the government. If the government is not stable and started toppling then it is very difficult to hold the position of the state and the conducting of election will go in vain. The question over the stability of government will lead to malfunctioning the base of democracy where the trust of people over democracy or choosing a government will hamper. Therefore, toppling of government is an emerging issue which is facing by our country throughout many states with a current date also. one cannot use its political power to break another government. Going with the cases like Madhya Pradesh, Karnataka we saw how the strong government using their power to break the current government and bring the power into them by toppling the current government. The disloyalty of members of the legislative assembly brings dissatisfaction toward the people's choice if we see it from another angle it can be said that powerful governments are trying to buy the loyalty of the members. Yes, it can happen due to failure of the government or lack of satisfaction it can breakdown but by getting influence or for the craving for power if the government is breaking down then it will directly question the voting right of the people as well as the spirit of democratic right over the right to choice of government by people, unfortunately, people are trying to buy elected members.

¹AUTHOR, BBA LLB, THIRD YEAR, KIIT UNIVERSITY, BHUBANESWAR.

² CO-AUTHOR, BBA LLB, THIRD YEAR, KIIT UNIVERSITY, BHUBANESWAR

Therefore, here the author likely to introduce the problem in this research paper that what are the problems that can arise due to the toppling of the government and what are the consequences to be faced by the individual.

Keywords: Anti-defection law, Floor test, Horse trading.

INTRODUCTION

The constitution is the mother of all law. Any law which is present is connected or emerged from the constitution. Going with the words of B.R. Ambedkar, an eminent jurist and founding father of the golden book known as the Indian Constitution. The constitution is not only a mere document but it gives the right path whenever there is any misuse of power by politics or there is any threat to democracy. Although India faces many instances of overusing or misusing of power by political leaders or party men but in every instance constitution came and safeguards the right of individual and curtail the power by using its functionary and help to prevent mockery of the Constitution and the Judicial system of the country. Time and again whenever there is an infringement of rights or overuse of the power then it will always seek the attention of the Supreme Court to maintain the dignity of the Constitution and to fulfill the constitutional obligation rights and duties.

THE TOPPLING GOVERNMENT OF KARNATAKA CASE

The legitimate year to complete a tenure is 5 years for any political party or legal impediments but in the case of Karnataka, the situation becomes different from recent times there is no stability of Government except in the case of Mr. Siddaramaiah 22nd Chief Minister who completed the tenure of five years from 2013-2018. Politicians are playing with the audacity of constitutionalism and its provision rather than acting diligently in such a vicious way to misguide the importance of the constitution. This incident gives a dynamic change in Rajya Bhavan and Vidhana Soudha which clearly shows the changing of government from one party to another.

It all started when the Assembly Election, where BJP wanted to form Government but it became unsuccessful which resulted in a coalition government between Congress and Jd(S). The 15 MLAs submitted their resignation letter which becomes a major threat for the government. As they submitted their Resignation letter, therefore, they were not attending any session which becomes defeat for Mr. H.D. Kumaraswamy as the Chief Minister of

Karnataka. It stayed only for 14 months. Mr. B.S. Yediyurappa, the Leader of the Opposition in the House was behind all this toppling of government he administered the whole thing. Facts of the case *Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly*.³

Although Supreme Court upheld the decision over the 17 MLAs of Karnataka for revolting which lead to the collapse of the Janta Dal Secular Congress party which was a coalition a government afterward which was taken over by the BJP party which was led by Yediyurappa within July there were fourteen MLAs and 3 of Janta Dal secular Party member were disqualified.

THE TOPPLING GOVERNMENT OF MADHYA PRADESH CASE

For toppling government elections have become meaningless. A similar instance that happened in Madhya Pradesh also reminds us about anti-defection law.

Here, BJP grabbed the power from the congress government due to the involvement of the chief minister and two deputy chief ministers. It's all started when in December elected Komal Nath to resign due to the conduct of a floor test where congress lost 22 former MLA. The resignation was done because it can't compete with the maximum number set that is 104 as they were left with 92 MLA in the house. For conducting the floor test the order was given by the Hon'ble Supreme court and the deadline was 20th March due to pandemic courts were closed so it was decided and held by the court that the proceeding will be held as a video graphic and live and rules for the voting was raising hand only and no other means which was decided by the governor. Here congress wants to postpone it until and unless the by-polls are getting whereas BJP wants it as early as possible. However, there were 230 members in which 228 were currently present including it 107 from BJP out of which 16 were resigned therefore counting of member started declining.

The argument given by congress was "MLAs can be forced or abducted for resignation".

Under the presence of the general secretary and union minister 22 MLAs joined BJP after their resignation.⁴ BJP government expert management of few MLAs had disclosed the

³*Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly*, 2019 SCC Online S.C. 1454

⁴After Toppling Congress From Madhya Pradesh available at:<https://www.ndtv.com/india-news/madhya-pradesh-government-after-toppling-congress-from-madhya-pradesh-bjp-may-import-up-model-source-2198594> (accessed on 29th September 2020)

loopholes of the anti-defection law and rather put a limitation regarding the democratic process. Because of the toppling of government from Congress to BJP, it leads to questioning regarding the choice of the person which means that the people are confused about their elected party members.

Madhya Pradesh case was the second time when BJP took over the power from Congress by floor test by eliminating the Members of Legislative Assembly.

Although they file a writ petition and it was the first writ where it stated to hold the floor test by the governor. Governor of Madhya Pradesh said to chief Minister that Art174 and Art.175 of the Indian Constitution are unconstitutional and also said that to hold the floor test within 12 hours of passing judgement by Hon'ble Supreme Court⁵.

RELEVANT CASE LAWS WHICH DEALS WITH TOPPLING GOVERNMENT

RAMESHWAR PRASAD AND ORS VS UNION OF INDIA AND ANR ON 24 JAN 2006⁶

Facts of the case:-

The facts of the case are as such, firstly the elections got over in February 2005, however, none of the parties nor the coalitions were able to form a majority after the elections as there were allegations of intentional MLA poaching incidences by luring them based on cast and money,

Lalu Prasad Yadav was the chief minister of Bihar for the past 15 years before the elections of 2005, and was there for three terms with the help of his wife Rabri Devi appointed as chief minister for two of them,

Apart from them, four political parties contested in the assembly. Bharatiya Janata Party (BJP) and the Janata Dal United (JDU) of the National Democratic Alliance (NDA), the Lok Janshakti Party (LJP), and the Congress. The Legislative Assembly consisted of 243 seats, making 122 the magic number required to secure an absolute majority in the assembly and

⁵Shivraj Singh Chouhan v. Speaker, Madhya Pradesh Legislative Assembly, [2020 SCC Online SC 363](#), decided on 13.04.2020]

⁶**Rameshwar Prasad & Ors. vs. Union of India & Anr [2006] Insc 35 (24 January 2006)**

form a stable government. However, the number could not be reached. This resulted in a hung assembly, with no party or alliance securing the majority.

The then governor Bihar state took responsibility to call upon probable majority makers in the assembly but none of them could form a majority due to LJP not siding with either of the coalitions and thus the governor decided to call upon the president of the nation for presidents rule to which the president initially was not willing to allow presidents rule and thus a fresh call of the governor was given to the parties a second time to form a coalition. in this phase it was alleged by several leaders of the incumbent government were trying to poach MLA to get the majority and the NDA figured out the magic number with the support of the ljp however the governor did not go along with the numbers of the NDA citing credibility issues and thus called for the president to give ascent to presidents rule which indirectly meant rule under the national government the UPA government and thus the president signed the papers for presidents rule in the state, this led to riots in the state of Bihar by the NDA government and thus petitions were filed in the supreme court as a remedy to the presidents rule in the state,

Judgement:-

Supreme Court swiftly heard the case by 29 September 2005, for six days. ‘We want to allay impressions and conjectures and surmises about the time when the verdict would be delivered. Considering the nature of the cases, we will not be able to give judgment before October 18. We may come out with a short judgment, if necessary, before 18 October and the detailed judgment will follow. Otherwise, there would be one main judgment.’ This was interpreted as suggesting that the court would pronounce its decision early if the dissolution was held unconstitutional, and would do so later if the dissolution was upheld.

Supreme Court issued an order the court held that the President’s proclamation dissolving the Bihar Assembly was unconstitutional. However, it did not mention any legal remedy due to the proximity of the next elections and the usual preparedness that had already begun

The people of Bihar delivered a more decisive verdict in the election of October-November 2005. The JDU and the BJP collectively gained fifty-one additional seats from their performance in the February elections, most of which were at the expense of the RJD and the LJP.

This gave the NDA a comfortable majority in the assembly Nitish Kumar was sworn in as chief minister. Governor Singh's position remained vulnerable to any criticism that could be forthcoming from the Supreme Court's reasoned decision.

SHIV SENA AND ORS AS PETITIONERS VS UNION OF INDIA⁷ AS RESPONDENTS

Introduction:-

Separation of powers needs to be understood from a standpoint of the Indian political system the Judiciary can intervene in the political democratic system if it is the need of the hour. The welfare of the citizens of the nations and the protection of their rights is of utmost importance.

Facts:-

A pre-poll alliance was struck between the Bharatiya Janta Party and the Shiv Sena who contested for the Maharashtra Legislative Assembly elections. However, no single party form the majority in the assembly the Governor called upon the BJP to form the Government is the largest party with 105 seats. Shiv Sena broke away from the BJP. When the Governor summoned Shiv Sena to appear as Government they at first agreed to the call of the governor but were unable to form the majority and thus NCP was summoned by the governor to form the government but it was not fruitful as well, the governor invoked President's rule.

The applicants said that they were in talks with the INC but the invocation of the President's rule did not yield the results. The Governor invited the Respondents to form a Government and take the oath. Shiv Sena files a writ petition in protest of the governor's decision

1. To declare that the Government formed by Mr. Devendra Fadnavis as unconstitutional, arbitrary, illegal, void-ab-initio.
2. To order the Governor to invite the alliance of Shiv Sena and Indian National Congress to form the government under the leadership of Mr. Uddhav Thackeray.

⁷SHIV SENA AND ORS AS PETITIONERS VS UNION OF INDIA P. (C) No. 1393 of 2019 SC decided on 26.11. 2019

Judgement:-

Supreme courts emphasize the need for inculcating Constitutional morality by curtailing undemocratic and illegal practices in the political arena. Delay in the ascertainment of the government will lead to poaching and horse-trading which is undemocratic in every sense most effective method will be an immediate floor test The Hon'ble Court cites Justice B.P. Jeevan Reddy that the floor test is not compulsive. "If only one keeps in mind the democratic principle underlying the Constitution and the fact that it is the Legislative Assembly that represents the will of the people and not the Governor. The court observed that the oath was not granted yet to any party the court wanted to pass an order immediately for the formation of a strong government. It and that the floor test needs to be conducted as soon as possible. The procedure for the floor test will be as follows:

1. The availability of a pro-term speaker is necessary.
2. Members who have been elected have to pledge an oath on a definite date
3. Immediately after the oath, the floor test should be conducted which should be telecasted to a live audience across the state.

The Court held that the interim orders have been passed and the applicants' order will be heard soon.

WHETHER TOPPLING OF GOVERNMENT IS A THREATENING FOR DEMOCRACY?

In recent times political parties significantly topple elected persons which were done democratically. If we see anti-defection law then it was inserted by Rajiv Gandhi's government under the 10th schedule of the constitution which deals with disqualification of the member for political party changing of for abstaining voting power rules prescribed under for disqualification of a member from the house⁸. If the presiding officer found any complaint of that member from others he can act against it. The recent case related to Karnataka and Madhya Pradesh it is an act of malfeasance which becomes the order of the day. By looking at the case of Madhya Pradesh Karnataka and recently with Rajasthan the toppling of

⁸The limits of anti-defection available at:

<https://indianexpress.com/article/explained/explained-the-limits-of-anti-defection-karnataka-5849316/>(accessed on 2nd October 2020)

government is happening a sudden change of parties within the tenure of other parties which arise the question of the elected party as well as about the stability of the government. In a country like India where the tenure of staying a government is for 5 years within the tenure if the political party is changing to another because the party is not being able to meet the minimum number of MLAs or due to change in the mind of MLAs the party falls then another strong party will take the place which can be called as the toppling of the government⁹. But it sure put a question about the election or the choice of the people because as India follows the path of Democracy where it states that government is *for the people of the people and by the people* which is putting question toward the choice of people.

There might be a reason for the failure of the government for which it can breakdown but by getting influence or grabbing more power if the government is breaking down then it will directly putting a finger towards the principle of democracy.

An election is the backbone of democracy it depicts the choice of the people or the elected members of the representative of the people members of a political party as well as who will govern them in the future¹⁰. If the toppling of government will emerge like this then the trust of people from the Government will also start to erode and the benefiting of election will be null and void.

CONCLUSION

To limit the individual political interest and anti-party activities, the legal document as a sort of anti-defection law has been effective since 1985 with the needs of preserving the government also on preventing the changing behavior of legislators from one party to a different after becoming a legislator from any party. In stabilizing the governance for the last three decades for prevents corruption and horse-trading in parliament or state legislative houses. The anti-defection law proved itself as a vital part of it. Exceptionally, the law

⁹Refer to: Shivraj Singh Chouhan v. Speaker, Madhya Pradesh Legislative Assembly, [2020 SCC Online SC 363](#), decided on 13.04.2020] also see disqualified Karnataka MLA case and Rajasthan Sachin pilot case

¹⁰**Toppling governments a disservice to democracy available at:**
<https://www.deccanchronicle.com/opinion/dc-comment/220519/toppling-governments-a-disservice-to-democracy.html> (accessed on 2nd October 2020)

allowed defections if it involved one-third of members of legislators just in case of a 'split' during a party. Keeping these exceptional provisions enriched in the Indian constitution in mind, the need for enactment of anti-defection law is diverted by the opposition parties breaking one-third members of the legislators or mass resignations of the rebel legislators.

For the last few years, the method of destabilizing the governments of Madhya Pradesh and Karnataka followed by a change of powers within 15 months had been constructed with the assistance of the existence of such loophole in anti-defection law as opposition parties always act as an influence chaser in democracy instead of creating popular opinion against erroneous policies and programs of the incumbent government. Hence, a robust and efficient opposition sometimes happens to be disastrous for political stability and people's mandate as Indian democracy has been witnessing a variety of political ups and down also as frequent instability in governance and midterm election thanks to the existence of oppositions since 1967 as proper guidelines and constitutional obligations of role of opposition parties remained a grey area in democracy.

The absence of justifications of twenty-two MLA's resignations results in trust deficiencies in politics

With 22 MLA's resignations from the ruling party in Madhya Pradesh and followed by their immediate joining to the BJP to destabilize the prevailing government of Congress tempted a variety of questions as resignations themselves floated filled with the political drama of 1 month. The resignations of those MLAs must be independent, voluntary, and free from any quiet pressures. But, the political crisis in Madhya Pradesh emerged with 22 MLAs' resignations assumed to be loyal to former Union Minister Jyotiraditya Scindia which emerged through the Madhya Pradesh case he would likely to pursue his upcoming political party with BJP by offering 22 MLAs to the BJP so on by removing 15 months old Kamalnath government. Under Article 190 of the Indian Constitution, it gives power to the speaker to conduct an independent inquiry to satisfy that the resignation which has to be done is voluntary not struggling. Therefore, the resignations of those MLAs got to be inquired independently together month stay of MLAs in an isolated place outside Bhopal acknowledged to any pressure or conspiracy theory as resignations will cause an unnecessary financial burden on the part of the general public exchequer thanks to conducting by-election within the coming days.

The office of the speaker and therefore the governor must be deployed as an instantaneous tribunal for such a political crisis that occurred on account of malpractice, horse-trading, and loopholes in anti-defection law as both authorities draw their power from the constitution as an independent and apolitical institution. Therefore, such convention of appointment of a speaker from the ruling party must be re-examined to exchange with the eminent and commonly trusted individual, perhaps sort of a retired judge or eminent jurist.

