

# KnowLaw Journal

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## Post Poll Alliance – An Analysis.

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### Abstract

Post poll alliances are those that are formed between parties after the election results when none of the parties which participated in the election wins a clear majority. It is considered to be one of the options before the head of the state while deciding as to whom he should invite and administer oath of office in case of a hung assembly. We have referred to some articles tracing back the events of post poll alliances that were formed in India in the past years. As citizens of India, it is very crucial to know why such alliances are formed. We should also be able to discern for ourselves, whether they are a boon or a bane for the welfare of our nation by examining their pros and cons. We would like to present a paper which not only deals with some major instances of post-poll alliance but also with some other aspects related to them. Our paper will throw light on the nature of post-poll alliances and will answer the related questions such as the difference between pre-poll and post-poll alliances, why and under which circumstances they are formed, the major instances of post poll-alliances that were formed in our country and whether post-poll alliances are constitutional.

### Introduction

Election is the heart of every democracy. Laws are required to govern the process of election. The Parliament of India is empowered to make laws to regulate the electoral process under Part XV of the Constitution (Articles 324 – 329).<sup>3</sup>

The body which is responsible for conducting elections in India is the Election Commission of India. It is an independent body constituted under Article 324 of the Constitution of India.

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<sup>3</sup> <https://www.mea.gov.in/Images/pdf1/Part15.pdf> last accessed Apr. 21, 2021.

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Subsequently, the Representation of People's Act was enacted in the year 1951. This Act governs the conduct of elections in India, prescribes qualifications and disqualifications for members of Parliament and State Legislatures. The Act also contains the total number of seats/constituencies to the Parliament and State Legislative Assemblies. The elections to the Parliament and State Legislatures are conducted every five years.

A general rule is that the person or party which enjoys the majority on the floor of the house forms the new government. The term majority means minimum number of seats required to form the government. It is determined at the half mark of the House i.e., half of the total number of seats in the House. Most commonly, the party with half-mark plus one is said to form the government with independent majority. The test is not complete only winning the seats, but there is one step extra which the person/party forming the government, have to go through i.e. the floor-test. Only when the majority is proved on the floor of the house, the government becomes functional.

However, there might arise a situation where no single political party won an independent majority. In such a situation, two or more parties come together to form a coalition. In the view of elections, coalition means alliance between political parties. The government is formed with the support of more than one party and this is called post-poll alliance.

## **Evolution of Post Poll Alliance**

There are several reasons for the increasing emergence of post-poll alliances, some of which have been explained below -

### **Increasing Number of Small/Regional Political Parties**

One of the main reasons, why a single party could not win a clear majority is increasing number of regional political parties. They raise regional and local issues in order to seek votes. This weakens the political majors in the state. The votes which originally had to go to the majors' swing, shift to smaller parties because they address every local issue to the general electorate. When they start winning a reasonable number of seats in the election, the chances of majority

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getting a clear majority diminishes. As a result, to form the government, the majors have to certainly knock the doors of parties which they vehemently opposed just before elections.

## **Failure of Pre-poll Alliance**

Another main reason for the formation of post-poll alliances is the failure of pre-poll alliance. When the alliance fixed before election fails to get the required number, but one among them is behind their competitors i.e., becomes the single largest party, then there is no other option, than to invite support from the parties which are in a position to extend support. Another similar situation is when, even after the alliance wins a majority, due to inter-party frictions and misunderstandings the pre-poll alliance may fall, this gives rise to a new alliance formed after elections. Sometimes, this situation may arise well after the government is formed. Ally partners may withdraw support from the government. In such a case instead of an election, the ruling party may seek support from parties which were in the opposition till that point of time.

## **Show of Strength**

Often, pre-poll alliances are seen as a way to show strength. When no party has a majority, some rival parties join hands just to keep one particular party outside the race of forming the government. Though some parties might have been extreme rivals of each other, they come together only to keep that one party away from power.

## **Pros and Cons of Post Poll Alliances**

### **Pros**

#### **Creation of a new political environment**

Post-poll alliances create a new and different political environment. Different political parties come together to form a new government. This new alliance is a chance for association of parties which were ideologically similar but functionally different and vice-versa. Since the alliance is after the election, each political party would be completely aware of the popularity,

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reach and strength of its ally. It also helps the parties to analyse their strength and reach and compare it with their post-poll ally. Winning majority in the elections will make the political parties lethargic. The ruling party would begin to enjoy its power and the opposition parties would become a silent observer until the next election.

## **Prevents stagnation of power in one hand**

Due to lack of majority in the house, political parties seek help of other parties who are in a position to help them. Since the government is formed with the support of one or more political parties, they would demand a share in power/cabinet. Decentralisation of power takes place. This ensures that power is not stagnated in one hand. This creates an opportunity for members from other parties who are capable administrators to get in to the cabinet. Moreover, since ally partners have to be consulted before decision making, new ideas and policies could flow in from them as a result of consultation. This also improves the quality of decision making.

## **Prevents misuse of Power**

One party forming the government means all ministers would be from the same party. This can add up to the authority of the party leadership and the ruling party may misuse its power. In case of a collation after the election, i.e., after coming to know that they do not enjoy the people's mandate, the government is not formed by the one party alone but with the support of other political parties. Since majority of the ruling party on the floor of the house depends upon the support of its allies, the ruling party cannot misuse its power as the alliance partners can, at any time, withdraw their support. This fear factor of losing the support, in turn, losing the government, will restrain the ruling party from misusing powers.

## **Overcoming of political differences**

Since every decision is taken after consulting a number of political parties, the mutual understanding and cooperation between political parties increase leaving behind differences between them. This decreases the quantum of opposition which the government would face

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while taking important decisions. It can be seen as a new political arena where political parties throw out their differences and cooperate with each other in running the government, rather than fighting with others and stalling decision making.

## **Instrument to fulfil Constitutional Mandate**

The Constitution of India mandates a minimum number of seats/members in Parliament or State Legislative Assembly, required to form the government. However, if no political party is able to win the required number, neither of them can form the government. In such case, the Executive head, the President or the Governor, as the case may be, has only a limited scope of action. They cannot go beyond the provisions of the Constitution. They have two options with them. One will be to dissolve the house and call for fresh elections and the other is to wait for a post-poll alliance to form. Dissolving the house and calling for fresh election would not be a feasible option as the government would have spent huge amounts of funds and man power to conduct the previous elections. Therefore, to uphold the Constitutional mandate, waiting for post-poll alliance would be instrumental.

## **Cons**

### **Violation of People's mandate**

Election is a process to determine people's mandate. People vote for candidate and political parties of their interest, as they know before the election. In post-poll alliance, parties which were opposing each other would have to join hands. People voted for parties and allies which were formed before the election and never intended to vote for the alliance which is to be formed after the election. Parties which had seriously opposed each other before the elections, join hands once the results are declared, for their self-interest. This way, the will of the people is undermined and violates the people's mandate. Mandate of the people is considered to be the ultimate in a democracy. The three basic principles of democracy are By the People, For the People and Of the People. The government so formed by a post-poll alliance is neither formed by the people, nor for the people, nor of the people.

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## **Delay in Decision Making**

An alliance consists of two or more parties. They too would have to be accommodated in the government. Sometimes, in post-poll alliances, parties with completely different ideologies join hands to form government. In such a case, what might be right for one party, as per its ideology, may not be acceptable to the other, as per its ideology. Therefore, it becomes difficult to take some important decisions. Moreover, since the government is at the mercy of the ally partners, any decision against their will, would make them withdraw their support, on the happening of which, the government will fall. This forces the ruling party to consult every party in its coalition which hinders the process of quick decision making, which is very essential to run an administration.

## **Lack of Unity of Command**

For name's sake, the party to which the Prime Minister/Chief Minister belongs, is called the ruling party. As mentioned earlier, the support enjoyed by him on the floor of the House of Peoples, depends upon the support extended by his allies. Ally partners are offered key cabinet berths in order to retain their support. Key ministries, when delegated to allies, creates an atmosphere where there would be no clarity on whose direction to follow. This is a bigger problem especially when the alliance parties have completely contradictory ideologies. The council head's view would be different from the one his cabinet colleague would have. In addition, the fear of the government falling does not allow the leader to have a clear stand on any particular issue. This leads to a situation in which there are two different views from the top which confuse the subordinates.

## **Political Instability**

A government can implement public welfare schemes and concentrate on development only when it is stable. However, this is not the case when the government is formed by a coalition. Fear of losing majority and government always is constantly on the pages for the ruling party. In order to maintain the support, the top person has to concentrate more on his alliance partners,

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their satisfaction and pleasure. By doing this, public welfare is put at stake. This is a huge compromise on the principles of democracy. Moreover, too much intervention from alliance partners can make the government look non-functional. All these complications finally lead to a point where the top person might, either resign or would be forced to resign. Hence, it reduces the possibility of having a stable government.

## **Immoral Activities**

Once a hung Parliament/Assembly is formed, political parties start negotiating with each other for support and government formation. In the process, parties may try to poach legislators from their rivals through unfair and immoral means. This may include bribing, coercion, forcible restraint, etc. Many members may also shift parties if they are offered seats in the new cabinet to be formed. Not only individual members, but also parties as a whole indulge in corrupt practices to gain support and form the government. Money plays a vital role in deciding the new post-poll alliance. Sometimes, money as well as place in cabinet might have to be offered to gather support. The leader of the party might be offered a berth in the cabinet in addition to huge amount of money offered to them. In order to restrain members to have any contact with rivals, parties usually lockup all their members at a single place. This amounts to violation of the members' fundamental rights. The entire state is in a chaotic state until a clear picture of the new alliance emerges. At times, the President's rule becomes the only option for the head of the State to bring the situation under control. The arising of such a situation and the activities of the political parties in their attempt to gain power, undermines the fundamental values of a democracy, with elected members being subjected to horse trading in the process of government formation.

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## Some Instances of Post Poll Alliances in India

Place and Year	Total Seats	Pre-Poll Alliance	Election Results	Post-Poll Alliance
<b>Jharkhand, 2005</b>	81 Constituencies.	There was a pre-poll alliance between BJP and Janata Dal (United). JMM and INC were in alliance.	No single party or alliances won the majority in the results. BJP with 30 seats emerged as the Single-largest party. JMM got 17 seats and Congress party got 9 seats.	After a prolonged negotiation, the BJP and JMM joined hands to form the government. The alliance did not last long.
<b>Delhi, 2013</b>	70 Constituencies.	BJP went in all alone so did the INC and AAP.	The BJP became the Single-largest party with 32 seats, AAP in the second place won 28 seats followed by INC with 8.	INC rushed to support AAP and formed the post-poll alliance leading to AAP forming the new government. The Chief Minister Arvind Kejriwal



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				resigned within a short period of 49 days.
<b>Goa, 2017</b>	40 Constituencies.	There were no pre-poll alliances. BJP and INC went alone side by side with small parties.	The INC became the largest party with 17 seats followed by BJP with 13. Independents and regional parties were crucial in the field.	BJP had a first mover advantage by seeking support from regional parties and independents. Eventually government was formed. The ally partners demanded the then Defense Minister of India Late. Manohar Parikkar to be the CM.
<b>Bihar, 2015</b>	243 Constituencies.	The RJD and JD(U) were in an alliance called the Mahagathbandan.	The Mahagathbandan won the election and formed the	The JD(U) formed an alliance with BJP in

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		The BJP was on its own with smaller partners.	government. (JD(U) chief Nithish Kumar became the Chief Minister.)	the year 2017. Due to corruption charges against his ally partner, the then Chief Minister, resigned leading to fall of JD(U)-RJD alliance.
Karnataka, 2018	224 Constituencies.	All three political majors i.e., BJP, INC and JD(Secular) were alone creating a three-corner competition.	BJP won 105 seats, INC won 80 and JDS won in 37 constituencies.	INC supported JD(secular) to form the government. Eventually, due to defections and cross-voting, the INC as well as JD(S) lost majority paving way for BJP to

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				form the new cabinet.
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## Judicial Review on Post Poll Alliances

### Shiv Sena and Ors. v. Union of India<sup>4</sup>

In the Maharashtra State General Assembly elections, pre-poll alliance was formed between the Bhartiya Janata Party (BJP) and Shiv Sena. There were several other alliances in the field. However, the election results mandated formation of a coalition government. The BJP emerged as the single largest party winning 105 seats. Its ally Shiv Sena won 56 seats. The number of seats required to form the government in Maharashtra stands at 145, hence, the total number of seats won by the BJP-led alliance was sufficient to form the government. However, due to the fall in the number of seats for the BJP when compared to the last term (2014), the Shiv Sena made higher demands in the ministry. They breached the pre-poll agreement with BJP and demanded a larger number of representations in the cabinet amounting to 50:50 share, including the demand of Deputy Chief Minister from their party. However, since BJP had nearly twice the number of MLAs which the Shiv Sena had, the BJP declined to pay heed to the demand made by the Shiv Sena leading to a crack in the alliance. The Governor called up BJP to express its willingness to form the government. But BJP failed to do so. Then the Governor approached the Shiv Sena to form the government. Though, initially, Shiv Sena was ready to form the government, they failed to do so as the talks with NCP to extend support, failed. The Governor immediately recommended the proclamation of President's rule. But within a week's time, even before dawn, the President's rule was revoked and the Governor invited the BJP led by incumbent Chief Minister, Mr. Devendra Fadnavis. The Governor invited him relying on the facts and materials placed before him including the letters of support extended by the NCP through its leader Mr. Ajith Pawar. The swearing in ceremony was conducted within few hours of the revocation of the President's rule. Aggrieved by the

<sup>4</sup> Shiv Sena & Ors vs. Union Of India, (2019) 16 SCALE 610

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Governor's action, Shiv Sena and INC filed writ petitions under Art. 32 of the Constitution of India to declare the order of the Hon'ble Governor dated November 23, 2019 inviting Shri Devendra Fadnavis to form the Government as unconstitutional, arbitrary, illegal, void ab initio, and violative of Art. 14 of Constitution of India and accordingly should be quashed. Meanwhile, All India Hindu Mahasabha filed a PIL before the Hon'ble Supreme Court to declare post-poll alliances as unconstitutional. The Supreme Court combined the PIL with the present case.

In its judgement, the Apex court observed that it had only a limited scope of judicial review on the order of the Governor of a State. The judgement had references to several previous judgements of the Supreme Court

The court placed reliance on *S.R. Bommai vs Union of India*<sup>5</sup>, where it held that floor test was the only way to prove the majority of the government. Delay in floor test may lead to immoral and illegal activities.

The court also took note of the reports submitted by Sarkaria Commission and Rajamannar Committee, constituted by the President of India. The reports expressed a unanimous stand that it is the floor test which should determine the majority of the government. The court also took a view that it had no jurisdiction to inquire into the proceedings of the house nor can it question the procedure of the house under Art. 212 of the Constitution of India.

The court also referred to *Jagadambika Pal vs Union of India*<sup>6</sup>, in which, the court had summoned the immediate convening of the Uttar Pradesh Legislative Assembly to conduct floor test.

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<sup>5</sup> *S.R. Bommai vs Union Of India*, (1994) 3 SCC 1

<sup>6</sup> *Jagadambika Pal vs Union Of India*, (1999) 9 SCC 95

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The same view was taken by the court in the case of Anil Kumar Jha vs. Union of India.<sup>7</sup> The apex court directed the swearing of newly elected members of Jharkhand Legislative Assembly, followed by floor test.

Reference was made to Union of India vs. Harish Chandra Singh Rawat.<sup>8</sup> Here it was observed that any direction to the constitutional authorities by the Supreme Court was only to strengthen the democratic values and the constitutional norms.

The court referred to Chandrakant Kavlekar vs Union of India<sup>9</sup>, where it was observed once again that floor test was the only test to determine whether the cabinet enjoys a clear majority or not. The doors of the court were knocked upon immediately after the results of Goa Legislative Assembly and formation of a post-poll alliance thereupon.

Lastly, the court referred and relied upon G. Parmeshwara vs Union of India.<sup>10</sup> A similar circumstance in the state of Karnataka. The court set aside the order of the Governor of the State granting 15 days' time to prove majority and ordered immediate convening of the Assembly and floor test.

The court, also referred to its judgement in Shrimahant Balasaheb Patil vs Hon'ble Speaker, Karnataka Legislative Assembly<sup>11</sup> in which the court emphasized the requirement of imbibing constitutional morality by the constitutional functionaries. Undemocratic and illegal practices within the political arena should be curtailed. The court was referring to the immoral practices and horse trading that take place in case of a hung assembly.

In all the above cited judgements, the Hon'ble Supreme Court of India, restrained itself by playing the role of the protector of the Constitution and did not go into political issues. The court left the discretion open to the respective Legislative Assemblies by simply ordering

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<sup>7</sup> Anil Kumar Jha vs Union Of India, (2005) 3 SCC 150

<sup>8</sup> Union Of India vs Harish Chandra Singh Rawat, (2016) SCC OnLine SC 618.

<sup>9</sup> Chandrakant Kavlekar vs Union Of India, (2017) 3 SCC 758.

<sup>10</sup> G. Parameswara vs Union of India, (2018) 16 SCC 46.

<sup>11</sup> Shrimahant Balasaheb Patel vs Hon'ble Speaker, Karnataka Legislative Assembly, (2020) 2 SCC 595.

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immediate convening of the Assembly and conduction of the floor test. The court, in all its judgements, took a stable stand that it could not permit to defer conduction of the floor test as it would lead to several immoral and illegal activities.

While this being the case, the court refused to declare post-poll alliances as unconstitutional. It was argued that post-poll alliances were a straight forward violation of the people's mandate, which is the most essential feature of a democracy. It was also submitted that people chose for whom to vote keeping in mind the political situations immediately before the elections. However, if a political party contests from one alliance and jumps to the other after elections, the mandate of the people is undermined. It was pleaded before the court to declare all kinds of post-poll alliances unconstitutional and illegal. The court in all its judgements refrained from entering into political matters. The court repeatedly stressed upon conducting the floor test as soon as possible.

The court referred to *B.R. Kapoor vs State of Tamil Nadu*<sup>12</sup>, as referred to by the petitioner and observed that this case only reiterated that the mandate of the people should not be ultra vires of the Constitution. In *B.R. Kapoor's* case, the court observed that the will of the people can be appreciated only when it is in accordance with the provisions of the Constitution.

Reference was made to *Rameshwar Prasad vs Union of India*<sup>13</sup> where the court refused to declare post-poll alliances as unconstitutional.

In the several matters and at different points of time, the Supreme Court was reluctant to go into the political matters of formation of alliances either pre-poll or post-poll. Though the court did not comment on alliances, it had constantly reiterated the prior ruling of itself which demanded convening of the Assembly and conduction of the floor test as soon as possible. The court took a view that the ministry can continue in office only when it enjoys the majority in

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<sup>12</sup> *B.R. Kapoor vs State of Tamil Nadu*, (2001) 6 SCALE 309

<sup>13</sup> *Rameshwar Prasad vs Union Of India*, (2005) 7 SCC 625

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the house of peoples. It also observed that the only way to determine majority was by conducting the floor test.

## **Constitutionality of Post-Poll Alliance**

There is always an objection against the concept of Post-poll alliance stating it to be unconstitutional. When a particular political party fails to get the requisite number in the house, forming an alliance with the parties which were in the opposition after the elections in order to form the government, it clearly violates the mandate of the people as the people did not vote for the other party which formed the government with the party they voted for.

In case of a hung Parliament/Assembly, the role of the President/Governor becomes pivotal. At such times, they might make use of their discretionary powers in appointing the Prime Minister/Chief Minister. However, such powers have to be exercised only in line with the constitution. This being the situation, the executive head has the following three options only

1. To invite and administer oath of office to that person/party who, in his opinion, commands the majority in the House,
2. To invite the leader of Single-largest party and ask him to prove the majority on the floor of the house,
3. To wait for a post-poll alliance to form and stake claim.

Since the executive head has the highest duty to uphold the Constitution and the constitution mandates the minimum number of seats required to form the government, he has no other option than inviting them to form the government. Moreover, in several instances the Supreme Court had refused to declare post-poll as unconstitutional, it has a legal validity as of now in India. In the words of the Supreme Court, a government is said to be constitutional as far as it enjoys the support of the majority in the house. However, it is regarded as a destructive of the constitution. The drawbacks of post-poll alliances over-weigh its advantages. Democratic values are undermined, and people's interests are compromised. Political parties, which people would never have dreamt would join hands, do so to capture power. Parties which slammed

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each other very harshly before elections, could easily combine and form the government after the elections. At the end, the people who voted for and against the parties become the scape goat. The trust which the people had in the party whom they voted for, is lost in the event. In addition, parties themselves face many problems in running a coalition government. That too, when the alliance is formed in a hurry to grab power, due to the lack of understanding between them, the government falls within a short time. This creates political instability in the country/state. Moreover, regional parties which gain substantial vote share by raising local issues and become capable of defeating political majors, pose a huge threat to them. While their presence cannot be ignored, they play a crucial role in the formation of the new government in case of a hung assembly. Nobody can question the parties over the unprecedented alliance, and it takes five long years for them to face the people again. However, on the other hand, the government cannot be pressurised to frequently conduct elections. The cost of conducting the elections and the arrangements required for it is very huge and cannot be afforded. Therefore, as rightly reiterated by the Hon'ble Supreme Court in several judgements, the decision of the head of the State is very crucial along with the floor test which is a mandatory act. However, due to lack of people's confidence in the government, we opine that post-poll alliance is unconstitutional.

## **Conclusion**

In our opinion, post-poll alliances are in a way against the basic principles of democracy as far as it violates the mandate given by the people through their votes. People vote for a particular party/alliance keeping in mind the situation before the elections. However, the post-poll alliances may be formed between parties whom people did not vote for. In addition, there might arise a situation where parties which vigorously opposed each other before elections may join hands to claim power. The government so formed lacks confidence of the people. The party in power will have to concentrate more on its allies than it could on the people as there is always a fear of losing majority. There might be a delayed decision making since the ruling party has to consider the opinion of all its alliance partners. This situation creates a problem in the state,



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where people's interests and public welfare is undermined just for the sake of want of power. When one party withdraws support and exits the coalition, the whole entity poses the possibility of losing power. Within political alliances, a party has some restrictions, which also causes it to disregard the anti-democratic actions of its allies. The relationship between the Centre and the States has also been influenced by the coalition between the national and regional parties in India. Although regional parties stress the issues of their respective states and bring pressure on the coalition government to pay more attention to them, the coalition government is under every duty to pay equal attention to any other state in the country. Growth in ethnic and caste-based factionalism is a by-product of coalition politics. It causes fractures inside the coalition and thus destroys the structure of social unity. Since there is no bar on parties to form alliances after election, it is still valid in India. As stated earlier, the whole process of conducting elections is voluminous and not a frequently affordable one. But that does not mean that interest of the nation and the people who voted needs to be put at stake. Hence, we opine that post-poll alliances are destructive of the basic principles of a democracy and unconstitutional as power is given a higher importance than service to the people. We suggest since the law-making power and the law interpretation power vests with the Parliament and the Courts respectively, they have to take a bold stand on post-poll alliance in a way that it does no harm to the basic principles of democracy and upholds the mandate given by the people.