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One Nation One Election

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I. Introduction:

A Constitution needs to be a living Constitution¹ to endure the tides of time and adapt to the changing requirements of generations. However, at the same time, there are some intrinsic values, a basic framework on which the whole content of the constitution rests. This framework originalism² is the very essence of the legal system which the constitution document embodies and which the courts try to protect through their various doctrines and pronouncements. The Indian Constitution is undoubtedly an organic Constitution and has successfully responded to the changing needs of the society. The process of responding to the situations which could not be foreseen by the Constitution makers is on-going.

India is one of the largest Democracies in the World. Elections are sacrosanct to the idea of democracy. Election is the cornerstone on which the magnificent edifice of democracy rests. It should be in a position to translate the will of the people in the legislature. This requires the electoral law to be dynamic and efficient. Law, by its very nature, needs to be modified regularly or else it either fails to perform its functions or it itself withers away. Indian electoral system faced the absence of reforms for a very long time. While electoral systems in most of the countries are regularly updated as per the needs of the society. In India, however, there has been a severe lack of reforms in the electoral law which has greatly affected the efficiency of our democratic governance.

In the independent India, initially, elections for parliament and state legislatures were held simultaneously. It was so efficient and convenient. It had its own advantages. We need to take a brief look at its background to understand its benefits and success in our political situation. In the post-independence in 1951-52, India started its first election cycle to House

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¹ David A. Strauss, "Do we have a Living Constitution" 59 Drake L. Rev. 973 (2011)

² Jack M. Balkin, "Framework Originalism and the Living Constitution" 103 North-western. Univ. Law Rev. 550 (2009).

of People and State Assemblies simultaneously. It remained as the norm until 1967. However later on due to dissolution of some Legislative Assemblies in 1968 and 1969, a problem was posed to the system of simultaneous elections. In fact, the Lok Sabha dissolved in December 1970. Thus, ever since elections to the State Assemblies and the Parliament have been held separately. Presently, the General elections for the Lok Sabha and State Assemblies are held at the gap of five years in India whenever the incumbent government's maximum term ends or if it dissolves due to various reasons. Often elections for State Assemblies are held separately which puts a huge burden on the government exchequer. One has to understand that the expenditure involved in elections is like that of a war. All logistics are to be geared up to successfully pursue it. It should be a success at all costs.

The present parliamentary system has been tried and tested for nearly 70 years. A reform to cleanse the system is required to make democracy more robust, from limiting expenditure, to holding simultaneous elections, declaring results for a combination of booths instead of constituencies.³ Due to various reasons Indian polity is perennially in elections. Barring a few exceptional years within a normal 5-year tenure of the Lok Sabha, the country witnesses, on an average, elections to about 5-7 State Assemblies every year⁴. As a result, a serious need to evolve a mechanism to end this frequent election cycles has been expressed by various stakeholders since quite some time now. Several prominent political leaders have also consistently voiced their support for the above idea at various forums. Some expert committees have also examined this issue in the past like the Law Commission of India⁵ and the Department related Parliamentary Standing committee on Personnel, Public grievances, Law and justice in its 79th report⁶ had also examined the feasibility of holding simultaneous elections.

³ Upendra Baxi, <https://www.thehindu.com/opinion/op-ed/do-we-need-a-presidential-system/article17617761.ece>, last visited on 28/11/2020.

⁴ Analysis of Simultaneous Elections published by NITI Aayog written by Bibek Debroy and Kishore Desai

⁵ The Law Commission of India headed by Hon'ble Justice B.P. Jeevan Reddy in its One Hundred Seventieth Report on Reform of Electoral Laws, 1999.

⁶ Parliamentary Standing committee on Personnel, Public grievances, Law and justice in its 79th report submitted to the Parliament in December 2015.

As of now “One Nation, One Election” is just a concept rather than a reality with a few trials in the past. In its core this concept simply envisages a system where elections to all State Assemblies and the Lok Sabha (House of People) will have to be held simultaneously. In order to make this concept and the trials in the past a norm legislature will have to restructure the laws related to elections and the government needs to restructure the Indian election cycle.⁷

II. Synchronised Elections: Advantages

The simultaneous elections were considered because frequent elections lead to disruption of normal public life and impact the functioning of essential services⁸. Mr Csaba Nikolenyi, a Montreal-based professor at Concordia University studying Indian elections has used basic formulae to calculate voter motivation among others, and drew the conclusion that separate elections in India were preventing more people from participating in the democratic process. After comparing voter turnouts in state and national elections held concurrently and separately with, Nikolenyi drew the hypothesis that voter turnout in national elections will be higher in those states where state elections are also conducted at the same time⁹.

The moment model code of conduct is enforced; all developmental activities come to an end. The system becomes totally a licence permit raj. It becomes difficult for the departments to undertake even the basic administrative activities as all of them involve some expenditure. Fresh tenders cannot be called, procurement comes to a halt. Recruitments cannot be conducted. Policy decisions cannot be taken, etc. To the national and state elections we also have to add elections to local self-bodies. The situation gets worst due to frequent bye-elections.

⁷ Sankalpita Pal, 'One Nation One Election: Why? and Why not?', <https://www.latestlaws.com/articles/one-nation-one-election-why-and-why-not/> last visited on 28-11-2020

⁸ Parliamentary Standing committee on Personnel, Public grievances, Law 79th Report

⁹ One nation, one election: Why Modi govt wants to go for simultaneous polls; Response Paper and Recommendation for Simultaneous elections

The circling back to simultaneous elections once historical circumstances have proven that holding simultaneous elections are not feasible would be not accounting for the changes that were made.

III. Constitutional Provisions:

Article 83(2) of the Indian Constitution provides that the House of the people shall continue for five years from the date of its first meeting. A similar provision under article 172(1) provides for five-year tenure from the date of its first meeting for the state legislatures. For the government to conduct simultaneous elections, tenure of the State Legislative assemblies must be either curtailed or extended which is not provided under the current provisions in normal circumstances. Article 85(2)(b) of the Indian Constitution grants the power to dissolve the Lok Sabha to the President. A similar provision for dissolution of state legislative assemblies by the governor is provided under Article 174(2)(b). In the backdrop of the existing provisions in the Constitution, it is not possible to conduct simultaneous elections. The exercise will require extensive amendments to respective articles of the Constitution.

Currently, all these dates vary. The current term of the Lok Sabha will go up to 2024. The elections to some state assemblies have also been recently held, whereas some were held in last 2 year (2018-19) and some were held during the previous year. Thus, some important questions emerge for serious consideration. The most important being the manner in which one can synchronise all these dates, in such a way that all their terms end during a particular given span of time. Thus, for the implementation of simultaneous elections in the country, the terms of some legislative assemblies should be extended, or in some cases, they must be curtailed. Thus, all these extensions and curtailments would need some amendments to the Constitution of India.

Nobody seriously disputes the fact that Indian polity is passing through a very crucial phase. All would agree that there is enough in the national scenario that is disturbing and distressing and calls for introspection on where did we go wrong. Stability of ministerial chair or ensuring fixed five year election none the less prevents frequent elections and colossal expenditure but this cannot be the only concern.

IV. Feasibility of One Nation One Election

When the idea of simultaneous elections was mooted by the Prime Minister in the year 2018, the Law Commission of India examined the constitutional aspects as well as the legal aspects. The Law Commission then gave its interim recommendations. These interim recommendations are also in the public domain. These recommendations touched upon two things: a) If simultaneous elections are to be brought in, then the Constitution of India would need to be amended. The Representation of People Act, 1951 would need to be amended. Also, Parliamentary procedures would need to be amended. The Law Commission of India also observed that simultaneous elections would save public money. It would also reduce the burden on the administrative setup and security forces. It would ensure timely implementation of the Government policies, and ensure that the administrative machinery is engaged in developmental activities rather than electioneering. On this score, obviously, opinions and views are not divided. Everybody agrees with this.

However, some options were recommended by the Law Commission of India. Also, all these options are within the framework of the existing Parliamentary System. It is important to note that when we started elections in 1951-52, simultaneous elections were held. But when a State assembly got dissolved in between, it posed to be an obstruction towards conducting simultaneous elections. Thus, synchronizing the elections of the Lok Sabha and the Rajya Sabha within the existing framework of the Constitution of India with a few amendments is something which can be done through consensus by all political parties.

The Prime Minister's recent call towards "One Nation, One Election", is to evolve a consensus first among the political parties, then among the intellectuals, and also the media. Now, it is time for a national debate. The very first initiative that the Prime Minister has taken up in the new Lok Sabha is to initiate a debate, amongst the lawmakers of our country. The Prime Minister mentioned that political parties that even have a single member elected to the Lok Sabha would be involved in this consultative process. This is a positive sign, and India has come a long way in strengthening parliamentary democracy in the last 70 years. Also, we are a mature democracy now. Thus taking the consensus of all political parties, and other stakeholders, including taking the judiciary into confidence would be the right way forward.¹⁰

¹⁰ 'One Nation One Election:RSTV-Big Picture' <https://byjus.com/ncert/ias-prep/one-nation-one-election-rstv-big-picture/> last visited on 28-11-2020

The Law Commission report states that a constitutional amendment can solve the problem of synchronisation of elections. The amendment can also provide for extending or curtailing the term of one or more Legislative Assemblies wherever it is necessary to achieve the said goal. “The Parliament may extend or curtail the term of any state assemblies for a period it deems necessary, strictly for the purpose of synchronisation of elections to the legislative assemblies of states with the Lower House of People”. An amendment with this regard in the Constitution would reveal that the said provision in no way transgresses into the concept of democracy envisaged in the Constitution. The purpose behind the recommendation was reduction of the burden on the exchequer. For every election there is colossal deployment of man power, which also would adversely affect the functioning of the government machinery. It is the duty of every welfare state to utilize the tax payers’ money to subserve their best interest. The First Annual Report of the Election Commission of India, 1983, strongly recommended simultaneous elections to the House of people and the state assemblies. In the 170th report of the Law Commission of India¹¹, also there is a recommendation that holding of separate elections to State Legislative Assemblies should be an exception and not the rule.

The rule must be one election once in five years for Lok Sabha and all the Legislative Assemblies. The Parliamentary Standing Committee in its 79th Report in the year 2015, put forward a number of reasons for synchronising the elections. The massive expenditure that is currently incurred for the conduct of separate elections was one of the main reasons for such recommendations. The working paper prepared by NITI Aayog¹² in the year 2017 also contained a proposal to conduct elections to the House of the People and the State Legislative Assembly, simultaneously. The draft report submitted by the Law Commission of India in the year 2018 on ‘Simultaneous Elections’, unequivocally recommended the synchronisation of elections to the legislative assemblies of the state with the Lower House of People.

V. Pros & Cons of Simultaneous Elections:

A. Pros of One Nation One Election (Simultaneous Election):

¹¹ 170th Law Commission Report on ‘Reforms of Electoral Law’, 1999

¹² ‘Analysis of simultaneous elections: the What, Why and How’, 2017

1. In several other nations such as Sweden, Indonesia, South Africa, Germany, Spain, Poland, Belgium, etc the same scheme is used, from where we have occupied the bulk of our constitutional Ideas.¹³
2. Simultaneous elections will decrease the huge expenses of holding separate elections. In the 2019 Lok Sabha elections, a whopping Rs 60,000 crore (\$8.5 billion) was spent, while the US presidential and congressional elections coupled were \$6.5 billion in 2016.
3. The above expense involves expenditure from India's Election Commission (ECI) and Rs 50,000 crore, which has been formally spent by political parties and is hard to track obviously. In other words, during numerous elections, a lot of unaccounted for cash also finds its way into the scheme.
4. The frequent disruptions induced by the imposition of model code of conduct hamper the government's correct functioning, which adversely impacts the service delivery to a common.
5. Although the imposition of model code does not prevent the continuation of work on already announced schemes/policies, the machinery of the government comes to a staggering halt once it enters the electoral mode. In addition, the model code puts an end to new schemes/policies being announced.
6. Simultaneous polling will increase the turnout of voters according to the Law Commission's Analysis.

We can also increase vigilance, as all government staff can be used at a single time, and factors such as black money, booth capture, can be reduced.

B. Cons of One Nation One Election (Simultaneous Election):

1. States' assembly elections are generally fought on more inherent state-related problems such as legislation and order, education, health care, supply of vital services such as water, electricity, etc. Simultaneous elections can cloud the voters' judgment and remove it from problems that are more important to the country.

¹³ Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, Seventy-Ninth Report, Feasibility of Holding Simultaneous Elections to the House of People (Lok Sabha) and State Legislative Assemblies, (2015).

2. Holding elections once in five years is likely to reduce the political leadership's accountability. Frequent elections keep lawmakers on their toes throughout and for the next five years they cannot take the masses for granted.
3. Given the trend of hung elections, when a state or even Lok Sabha is dissolved early, the greatest issue will happen. It will imply holding elections unnecessarily in all states again or imposing the President's rule in certain states where the state assembly has been prematurely dissolved until the next five-year elections are held. The same will be against the very principles of our nation's parliamentary democracy and federal framework.
4. National parties can mute the voice of smaller parties at the state level as they have higher clout. The Smaller parties that came into being to tackle regional problems of the people of the state will be side-lined.
5. If a party losses power in midterm or any minister is removed or dies, the seat will go vacant, then conducting simultaneous elections is easy with current method. But it would be difficult with simultaneous elections method.¹⁴

VI. Concerns vis-à-vis Federalism

Some scholars are prone to argue that the very idea of simultaneous elections undermines the parliamentary system itself. It is not feasible to conduct simultaneous elections in Westminster model for long term. One of the basic features of the parliamentary system is that it offers the prerogative of dissolution of legislature to the executive, which will end if the term of the central and state legislatures is fixed through amendment of the constitution. The introduction of simultaneous elections to the central and the state legislature will make article 356 a rule rather than an exception. It would be against the wishes of our constitutional forefathers. B.R.Ambedkar, Chairman of the Drafting Committee, has observed with reference to Article 356 that "Such Articles will never be called into operation and they would remain a dead letter."¹⁵

¹⁴ Naveen Singh, 'One Nation One Election: What are the Pros and Cons? Must Know', <https://gradeup.co/one-nation-one-election-pros-cons/> last visited on 29-11-2020

¹⁵ Ambedkar, B. R. (1949), Constituent Assembly Debates, vol. IX, no. 5, p. 177(4 August, 1949)

The simultaneous election system will keep regional parties sidelined and the larger parties remain as the viable alternatives to each other but at the same time it is considered to be undemocratic. The democratic ethos is absolutely necessary to recognize the parties' relevance and legitimacy and limiting the number of parties will restrict the number. Some parties have themselves become mafia gangs; coalition is another name an arrangement between criminals, the police, the bureaucracy, businessmen and politicians¹⁶. The hard bargaining and play the game of brinkmanship, bluff and blackmail to get the best price for their support in government formation or in 'operation topple' is involved. It is usually criticized that our legislators can be freely bought and sold. It is important that we begin to accept the hard reality that the people have lost faith in the present political system, political parties and politicians. Unless there is a fundamental attitudinal change and a wide-ranging review and reform of the political system including the administrative set-up and electoral processes there is no better option.

VII. Concerns vis-a-vis the Principle of free and fair elections

Simultaneous elections would involve structuring the election cycle in a manner where a voter would normally cast his/her vote for electing members of the Lok Sabha and the State Assembly on a single day and at the same time.¹⁷ This will impact the electorate's behaviour for voting in State Assembly elections substantially. Synchronised elections would result in voters conflating national and state issues. On an average, there is a seventy-seven per cent chance that voters will vote for the same party for both the State and the Centre when elections are held simultaneously¹⁸. This would lead to larger national parties winning both State and Lok Sabha elections thereby marginalizing regional parties which often represent the interests of local social and economic groups¹⁹. A diversity of opinions and a plurality of

¹⁶ Subash C Kashyap, "Indian constitution conflicts and controversies", (vista publ pvt ltd: New Delhi, 2015) p-96

¹⁷ Bibek Debroy and Kishore Desai, 'Analysis Of Simultaneous Elections: The "What", "Why" And "How" A Discussion Paper', (NITI Aayog, 2017) 4.

¹⁸ Praveen Chakravarty (IDFC Institute), 'Nudging the Voter in One Direction?', (The Hindu, 8 September 2016)

¹⁹ Bibek Debroy and Kishore Desai, 'Analysis Of Simultaneous Elections: The "What", "Why" And "How" A Discussion Paper', (NITI Aayog, 2017) 4.

parties is essential to free and fair elections and would be violated with simultaneous elections. Therefore, synchronised elections undermine the width and depth of democracy of India. Fears are expressed that ONOE will make violence to basic structure of the Constitution. At the same time to qualify to be basic structure, a provision must be a terrestrial concept having its habitat within the four corners of the Constitution.²⁰ Certainly, sequential elections cannot be considered a part of the basic structure of our Constitution, especially in light of the fact that the essence of the basic structure only includes within its ambit free and fair elections²¹ and not the manner in which such elections are conducted. Regardless of the manner of conducting the elections, if the procedure followed leaves the sanctity of the elections unaltered and ensures a continued guarantee of free and fair elections, it cannot amount to modification of the basic structure of the Constitution.²²

VIII. Conclusion:

Introducing reforms in any system is not an easy task as a change is always resisted by a large number of people who see the status quo as the only acceptable position. If we analyse the history of electoral reforms throughout the world, it was not easy to bring reforms in electoral system in any democracies.²³

When seen in the larger interest it could be argued that certain inconvenience after amendment is certain but at a larger interest and to achieve the end results it is a must. The Amendments do not infiltrate the multi-polity system as it only pertains to vesting the power on the Parliament to hold simultaneous elections in the interests of the nation and saving public money.

²⁰Indira Nehru Gandhi v Raj Narain, AIR 1975 SC 2299.

²¹ Kihoto Hollohan v. Zachilhu, AIR 1993 SC 412.

²² Thirubhuvanam Silk Handloom Weavers' Co-operative Production and Sales Society Ltd v. State of T.N, 1991 SCC OnLine Mad 502

²³ Ajay Dixit," <https://legal-wires.com/columns/electoral-reforms-in-india-issues-and-prospects/>, last visited on 28/11.2020.

The adoption of List System of Election instead of first-past-the-post system may be in a better position to address the issue of ONOE without any hazels ONOE can be implemented.

VII. Draft of proposed amendments:

1. In Art.83, the following Claus shall be added:

Cl.(3). When the House of the People is dissolved before the expiration of the said period of five years, the state legislative assemblies also shall stand dissolved automatically.

2. In Art.172, after the proviso, the following proviso shall be added:

“Provided further that the said period may be curtailed to enable the conduct of election of state legislative assembly simultaneously with election to the House of People.”

3. After Art.356, the following Article 356-A shall be added.

“Art.356-A: In cases of the state legislative assemblies being dissolved under Art.83(3), Article 356 shall apply mutatis mutandis.”

4. The following proviso shall be added after Art.326.

“Provided that in case of bye-election the electoral college shall consist of the elected representatives of the panchayat as constituted under Part IX of the Constitution and municipalities as constituted under Part-IX A of the Constitution.”

5. In sub-paragraph (c) of paragraph 1 of the Tenth Schedule to the Constitution, after the words “political party” the words “or the pre-poll alliance of political parties” shall be added.

6. The following proviso shall be added to Art.164(2):

“Provided that whenever a no confidence motion is brought against the government, it shall be accompanied by a confidence motion in favour of a political party or an alliance of political parties as defined under sub-paragraph (c) of paragraph 1 of the Tenth Schedule to the Constitution.”

6. Commensurate amendments to the *Representation of Peoples' Act, 1951* shall be carried out.