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विधि कार्य विभाग/ Department of Legal Affairs

भारत का विधि आयोग/ Law Commission of India

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Public Appeal

The Commission was called upon to study the issue regarding holding of simultaneous elections to the House of the People and the State Legislative Assemblies by Department of Legal Affairs, and submit a report to the Government thereupon. While the Commission relentlessly involved itself in detailed research and discussions, a working paper and a draft report were placed before it for consideration. The working paper was considered in a meeting held on 17 April 2018 and it was decided that a summary of the paper may be placed in public domain to elicit further comments and opinions. Based on the responses received, consultations held with the stakeholders and detailed study of the issues involved, the Commission has prepared a Draft Report on the subject. This draft Report has been considered by the Commission in its meeting held on 30 August 2018. Though many of the impediments in the way of achieving synchronisation of elections to the House of the People and the State Legislative Assemblies have been addressed, the Commission feels that some of the points would still remain to be pondered upon, such as:

- i) Will holding simultaneous elections, by any means tinker with the democracy, basic structure of the Constitution or the federal polity of the country? As per the understanding of the Commission, the meaning of these expressions has been explained in great detail in the Draft Report. Most of the participants in the Consultations raised the issue that holding simultaneous elections will adversely affect the above three concepts. However, none could explain as to how and in what manner these principles would be violated, to the satisfaction of the Commission.
- ii) The suggestions given by various Committees and Commissions to deal with the situation of hung Parliament / Assembly, where no political party has majority to form a Government, propose that the Prime Minister / Chief Minister may be appointed or selected in the same manner as a Speaker of the House / Assembly is elected. Will it be possible? If so, will it be in consonance and in conformity with the Tenth Schedule to the Constitution?
- iii) Will such an appointment or selection of the Prime Minister / Chief Minister by consensus amongst the political parties / elected members require amendment to Tenth Schedule to the Constitution? If so, to what extent?

- iv)** After detailed discussions, the Commission has come to the conclusion that holding simultaneous elections would be ideal as well as desirable, but a workable formula is required to be provided in the Constitution. What other Articles of the Constitution may require amendment(s)/insertion of new clauses or Articles, other than those discussed in the Draft Report?
- v)** To hold simultaneous elections, are there any other issue(s) apart from those discussed in the Draft Report that would require elaborate study?
- vi)** Do any of the suggestions / recommendations that the Commission has arrived at violate the constitutional scheme? If so, to what extent?

In view of the complexity of the issues involved, it is desirable to have further discussions **and examination** on the matter, involving all the stakeholders, once again, before making final recommendations to the Government.

Therefore, with an intention to initiate a healthy and sustainable debate on the issue, the Commission places its Draft Report titled "Simultaneous Elections" in public domain.



GOVERNMENT OF INDIA

LAW COMMISSION OF INDIA

Draft Report

Simultaneous Elections

30 August 2018

ACKNOWLEDGEMENTS

During the Valedictory Address on the Law Day Celebrations 2017, organised by the Law Commission of India and NITI Aayog on 25-26 November 2017, the Prime Minister of India gave a call to start a constructive discussion on the occasion of 57th anniversary of the Constitution, on holding of simultaneous elections in the country. Taking the call as a mandate, the Commission started its study on the subject and prepared a draft working paper. Meanwhile, the Government asked the Commission to undertake the study and submit a report on holding simultaneous elections. The socio political environment was all charged up with the views in favour and against of holding simultaneous elections. Thus the preparation of this report amidst such atmosphere and coming up with balanced recommendations without any bias, that too within a short time frame, was a challenging task. The Commission was assisted by a cross section of experts and stakeholders in formulating its recommendations. The Law Commission would like to express its deepest appreciation to all those who provided various insights on socio-politico-legal issues involved. Special thanks are due to those who provided impetus in stimulating viable recommendations. The Commission would also like to acknowledge with much appreciation the crucial role of the staff and library members. The Commission is privileged to place on record its gratitude to Dr. Subhash C Kashyap, former Secretary General, Lok Sabha; Dr. S Y Quraishi, former Chief Election Commissioner; and Shri S K Mendiratta, former Legal Advisor, Election Commission of India for the advice given to the Commission from time to time. The Commission is grateful to Shri O P Rawat, Chief Election Commissioner; Shri Sunil Arora and Shri Ashok Lavasa, Election Commissioners, and Shri Umesh Shinha, Sr. Deputy Election Commissioner, for providing valuable inputs during the discussions with them as well as by way of written replies to the Commission. The Commission appreciates the efforts put in by the students of Gujarat National Law University, NUJS, Kolkata and NLSU, Bangalore, who have given valuable suggestions through their working papers, submitted to the Commission. The contribution by the most important stakeholders, the general public, through their responses to the working paper floated by the Commission, have given valuable inputs, needs appreciation. An endeavor like preparation of a report on Simultaneous Elections would have been incomplete without the participation of political parties. The Commission acknowledges the efforts taken by the political parties, both national and regional, who either sent their written representations, or spared their valuable time to interact with the Commission or did both, and the inputs provided by them have been pivotal in framing the recommendations. Special appreciation is due to Ms. Oshin Belove, Consultant, Ms. Nidhi Arora, Consultant, Shri Setu Gupta and Ms. Astha Sharma, former Consultants, whose dedicated research and analysis have been of immense help in preparation of the Report. As a token of encouragement, the Commission would like to place on record the assistance provided by young law students from across the country, who did internship with the Commission from (June-August).

Draft Report
Simultaneous Elections

Table of Contents

Chapter	Title	Page
1	SIMULTANEOUS ELECTIONS - MEANING AND SCOPE	1
2	FEASIBILITY OF SIMULTANEOUS ELECTIONS	3
A.	Financial Implications	4
B.	Logistical Issues	8
C.	Effect of Imposition of Model Code of Conduct	11
D.	Simultaneous Elections - Boon or Bane?	12
E.	Effect on Democratic and Constitutional Set up	16
F.	To sum up	17
3	EXISTING PROVISIONS	19
A.	Constitutional Provisions	19
B.	Representation of the People Act, 1951	21
C.	Other Statutes	21
4	REPORTS AND DISCUSSIONS AVAILABLE ON SIMALTAENOUS ELECTIONS	22
A.	First Annual Report of the Election Commission of India, 1983:	22
B.	170th Report of the Law Commission of India, 'Reform of Electoral Laws'(1999):	24
C.	Report of the National Commission to Review the Working of the Constitution, 2002 (NCRWC Report):	25
D.	255th Report of the Law Commission of India 'Electoral Reforms', (2015):	25
E.	79th Report of Parliamentary Standing Committee, 2015	26
F.	Working paper by Niti Aayog	27
G.	Presidential Addresses	27
H.	Constituent Assembly Debates	28
5	INTERNATIONAL PERSPECTIVE	30
A.	South Africa	30
B.	Sweden	31
C.	Belgium	31

D.	Indonesia	32
E.	Germany	32
F.	Forms of Simultaneous Elections the World Over	34
G.	United Kingdom (Fixed Term Parliament)	34
6	SIMULTANEOUS ELECTIONS VIS-À-VIS DEMOCRACY, BASIC STRUCTURE AND FEDERALISM	36
A.	Democracy	36
B.	Doctrine of Basic Structure	38
	i) Right of the People qua the Elections	46
	ii) Right to Vote and Right to Elect (Right to Caste Vote)	47
	iii) Right to Contest Elections	49
C.	Federalism	50
	i) Supreme Court on Indian Federalism	54
	ii) Indian Constitution – Unitary or Federal?	59
7	ALLEGATION OF COLOURABLE LEGISLATION IN THE CONTEXT OF SIMALTANEOUS ELECTIONS	67
8	ISSUES IN IMPLEMENTING SIMULTANEOUS ELECTIONS	71
A.	Requirements for Synchronisation of Elections	72
	i) Curtailment and Extension	72
	ii) Effect on Council of States / State Legislative Councils	77
	iii) Whether Ratification by States is Required	78
B.	Grounds for Disruption	80
	i) No-Confidence Motion	80
	ii) Hung Parliament/ Assembly	86
	iii) Budgetary defeat	89
C.	New House of the People/State Assembly for the “Remainder of the Term”	91
9	RESPONSES AND CONSULTATIONS	94
A.	Response from Stakeholders	94
B.	Consultations	97
C.	Consultations with Political Parties	99
D.	News items and other Articles	99
10	OTHER RELEVANT ISSUES	105
A.	Disqualification on the Ground of Defection to be decided expeditiously	105
B.	Bye-elections	109
C.	Selection of Leader of House by	109

	Consensus	
D.	Effective Exercise of Voting Rights by NRIs	110
11	CONCLUSIONS	112
12	DRAFT SUGGESTIONS / RECOMMENDATIONS	118
A.	Framework for Synchronisation of Elections	119
B.	Ratification by States	122
C.	No Confidence Motion	122
D.	Hung Parliament / Hung Assembly	122
E.	Budgetary Defeat	123
F.	Remainder of the Term	123
G.	Other Relevant Suggestions / Recommendations	123
Annexures		
I	List of State Legislative Assemblies for which Elections were held during 2014-2016	125
II	Election cycle in India from (2003- 2017)	126
III	Sixteen General Elections held so far	128
IV	Suggested Proposal for Simultaneous Elections and Approximate extension and curtailment of the State Assembly terms in months.	129
V	Summary of Written Representations Submitted by Political Parties	131
VI	Proceedings of the Consultation with Political Parties	147
	List of Cases	156
	References	160

CHAPTER -1
INTRODUCTION
SIMULTANEOUS ELECTIONS – MEANING AND SCOPE

1.1 In popular sense of the term, ‘simultaneous elections’ entails elections to all the three tiers of the Constitutional institutions i.e. House of the People (Lok Sabha), State Assemblies (Vidhan Sabha) and Local bodies taking place in a synchronised manner. What this effectively means is that a voter casts his or her vote for electing members to all the tiers of the Government on the same day.¹

1.2 So far as the ‘third-tier’ institutions are concerned, their number is too large and conduct of election to the same is primarily a State subject. As per the Constitution, the elections to the third tier institutions are directed and controlled by their respective State Election Commissions. Therefore, it would be extremely challenging, if not impossible, to synchronise and align election schedules of third-tier with that of the House of the People and State Legislative Assemblies.²

1.3 The need for having synchronised elections to the House of the People and State Legislative Assemblies has been debated for long. The issue gained momentum with the matter coming into the limelight at various forums of the Government. If the history of elections in India is looked at, one finds that during the first two

¹Bibek Debroy and Kishore Desai, “Analysis of simultaneous elections: The ‘What’, ‘Why’ And ‘How’” *available at:*
http://niti.gov.in/writereaddata/files/document_publication/Note%20on%20Simultaneous%20Elections.pdf.

²The total number of Gram Panchayats, Block Panchayats and District Panchayats in the country is estimated to be about 2.51 lakhs. Statistics *available at:*
http://www.panchayat.gov.in/documents/10198/456811/MoPR%20at%20a%20Glance_English%20%2820.09.2016%29.pdf.

decades after independence, general elections for the House of the People and the State Legislative Assemblies were held simultaneously, i.e., during the years 1951-52, 1957, 1962 and 1967. However, due to dissolution of certain State Assemblies in 1968 and 1969 followed by the dissolution of House of the People in 1970 and subsequent general elections in 1971, the cycle of simultaneous elections was disrupted.

1.4 In the Present Report, simultaneous elections would not mean that voting across the country for the House of the People and all the State Assemblies takes place on a single day. In a vast country like India, the general elections can take place only in phases, and the Election Commission of India (ECI) has been ensuring smooth conduct of these elections. If and when it is decided to hold simultaneous elections, the voters in a particular constituency would vote for State Assembly and Lok Sabha on the same day. The Present Report goes into the feasibility of simultaneous elections in the country and explores the potential roadblocks in conducting simultaneous elections in India and suggests a road map for the same.

1.5 As stated in para 1, on 16th April 2018, Department of Legal Affairs asked the Law Commission of India to examine the issue of holding simultaneous elections to the Lok Sabha and the State Legislative Assemblies and submit a report thereon. Therefore, in accordance with the reference made to the Commission, for the present Report, the term 'simultaneous elections' is taken to mean elections to the House of the People and the State Assemblies only.

CHAPTER – 2

FEASIBILITY OF SIMULTANEOUS ELECTIONS

2.1 Before going into the details of holding simultaneous elections and the ways and means to implement the same, it is necessary to deal with its feasibility; for the reason that while referring the matter to the Law Commission for study, the Ministry of Law and Justice posed an issue of its feasibility.

2.2 As stated in Chapter 1, the cycle of simultaneous elections was disrupted after 1967. The main reason behind the synchronised elections till then was the dominance and rule by one National political party and the regional parties were not powerful and influential. The indiscriminate use of Article 356 of the Constitution also contributed to disruptions of simultaneous elections. However, with the change in Indian polity, the regional political parties not only have increased in number, but have also marked their presence in the elections to the concerned State Assemblies. At present, the scenario is that at least one part of the country is witnessing an election throughout any given year. Here, the example of Delhi is relevant, which witnessed two Assembly elections and one general election between 2013 and 2015. Similarly, in a span of three years (2014-2016) the country witnessed one general election and 15 State Assembly elections (Please see **Annexure – I**). **Annexure-II** gives a picture of the continuous election cycle, which the country has been witnessing from 2003 to 2017. These facts corroborate that the country is continuously in an election mode and the time has arrived to highlight the need for simultaneous elections as against the fragmented and staggered election cycle prevalent currently, which continuously engages the attention of lawmakers and the public alike.

2.3 Therefore, it has become necessary to look into the feasibility of holding simultaneous elections in the country. For this purpose, several factors need to be examined. A brief analysis of these issues is discussed in the succeeding paragraphs.

A. Financial Implications

2.4 It is widely accepted that frequent elections lead to massive expenditure by Government and other stakeholders. Every year, the Government of India and/or the respective State Government incur expenditure to conduct, control and supervise elections. Besides the Government, candidates contesting elections and the political parties to whom they belong also incur huge expenditure. While the candidates normally incur expenditure on account of various logistical needs with a view to reaching out to the electorates, the political parties incur expenditure to run the party's electoral machinery during elections, canvassing by star campaigners and so on.

2.5 While discussing the expenditure on account of elections, whether simultaneous or staggered, the Commission is limiting the scope of its study to the expenditure incurred by the Government only, i.e., use of public funds, and not that by the candidates or parties. The expenditure on account of conduct of elections to the House of the People is borne by the Government of India and to the State Assemblies, by the concerned State Government. However, whenever the elections to the House of the People and the State Assemblies are held together, the expenditure is distributed between the Government of India and the State Governments in the ratio of 50:50 (equally).

2.6 As per the data provided to the Commission by ECI³, expenditure incurred on account of elections relate to:

- i) setting up of the polling stations and making necessary arrangements at polling booths / counting centres;
- ii) payment of TA/DA etc., to polling personnel / counting staff;
- iii) making transport arrangements for carrying polling and counting staff to the polling and counting centres and for the movement of election material and ballot boxes;
- iv) making temporary telephone facilities and electrical fittings, etc., to the polling booths / counting centres;
- v) purchase of election material like indelible ink, ammonia paper, etc., which are exclusively utilized for that particular election; and
- vi) miscellaneous expenditure for the purpose of smooth conduct of polling and counting.

2.7 In order to have an idea about the expenditure involved in conducting elections in the country, simultaneous or otherwise, an analysis of the trend of expenses is inevitable. The Commission could make such an analysis with the help of the data provided by the ECI. Although the data available does not clearly spell out the exact cost analysis, it has helped the Commission to infer certain significant propositions.

Table 1: Expenditure when Elections are held Simultaneously

S. No.	State	No. of ACs*	Expenditure# for Assembly Elections After 2014	Average expenses# per AC*
1	Andhra Pradesh	294	4,89,77,69,000.00	1,66,59,078.23
2	Arunachal Pradesh	60	15,89,99,041.00	26,49,984.02
3	Odisha	147	1,30,81,83,000.00	88,99,204.08
4	Sikkim	32	14,24,04,000.00	44,50,125.00

* Assembly Constituencies

Amount in Rupees

Source: Data provided by Election Commission of India

³ Vide letter No.3/ER/2018/SDR/311 dated 25th July 2018 addressed to the Law Commission of India.

2.8 The table above spells out the expenditure incurred for the elections to the four States that were held along with the elections to the House of the People in the year 2014. However, the following table, which shows the expenditure in the case when elections were held subsequent to the general elections in 2014, gives a glaring picture.

Table 2: Comparison of Expenditure when elections are held separately

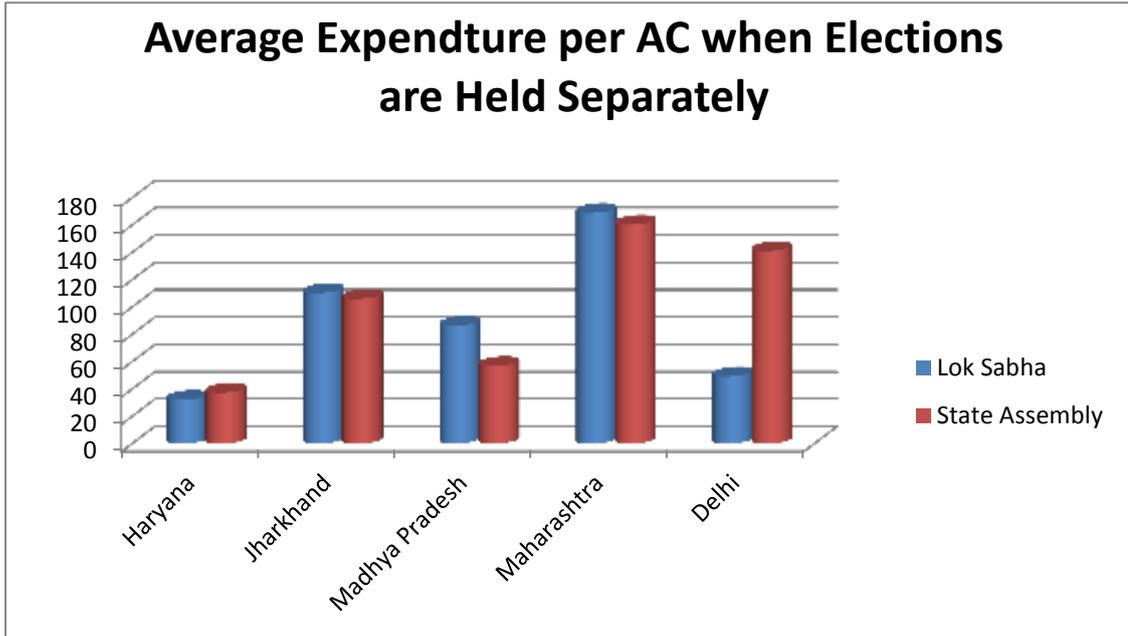
S. No.	State	No. of ACs*	Expenditure# for 2014 Elections for LS	Expenditure# for Assembly Elections After 2014
1	Haryana	90	28,90,43,000.00	33,72,89,000.00
2	Jharkhand	81	89,47,23,569.00	85,93,96,554.00
3	Madhya Pradesh	230	1,98,81,24,000.00	1,30,81,83,000.00
4	Maharashtra	288	4,87,00,00,000.00	4,61,86,49,000.00
5	Delhi	70	34,50,52,313.00	98,76,00,000.00

* Assembly Constituencies

Amount in Rupees

Source: Data provided by Election Commission of India

2.9 If the average expenditure per Assembly Constituency (AC) for elections to House of the People held in 2014 and to the State Assemblies held thereafter, are compared, it becomes evident that the two expenditures remained almost same, thus, proving the drainage of public money. In the case of Delhi and Haryana, the expenditure on account of Assembly elections surpassed that of the elections to House of the People. The chart given below gives an overall comparison of the expenses.



Expenditure in rupees (ten lakhs)
 Source: Data provided by Election Commission of India

2.10 The cost incurred by the ECI for conducting 2014 Lok Sabha elections alone was about Rs.3,586,2707609. Thus, segregated elections take away opportunities to optimise such costs and lead to yearly outflow of public money, significantly.

2.11 The ECI estimates that there will be about 10,60,000 polling stations for the elections to the House of the People in 2019. It further informed that as of now there is a shortfall of about 12.9 lakh Ballot Units, 9.4 lakh Control Units and about 12.3 lakh VVPATs, if simultaneous elections are to be held. Each Electronic Voting Machine (EVM) which includes Control Unit (CU), Ballot Unit (BU) and Voter Verified Paper Audit Trail (VVPAT) which costs about Rs.33,200. Thus, the ECI has informed that an expenditure of about Rs.4555 crores will be incurred for procurement of EVMs, for an imminent simultaneous election. The average shelf life of an EVM is about 15 years. At the prevailing rates, an amount of Rs.1751.17 crores for conduct of the second simultaneous elections in 2024 and Rs.2017.93 crores for the third simultaneous elections in 2029, will be

required for procurement of EVMs. Thereafter, keeping in view the shelf life of the EVMs, for the proposed forth coming simultaneous election in 2034, an amount of Rs.13,981.58 crores will be required for procuring new EVMs. ECI has clarified that, the above expenditure has been calculated on the basis of prevailing rates. It needs to be remembered that this expenditure will be recurring in nature at the interval of fifteen years on account of procurement of new EVMs. The expenditure for procurement of VVPAT is a new one, as use of VVPAT is made compulsory only from 2017.

2.12 If the elections to the State Assemblies are held with that of the House of the People, except for an additional EVM for each Polling Station, and additional election material (stationary etc.), no extra expenditure will be involved. Besides, in larger polling stations, there could be requirement of some additional polling staff, in view of the additional EVM.

2.13 EVMs (BU, CU and VVPAT) are re-usable with a shelf life of about 15 years and so conducting subsequent elections will become smoother. Hence, from financial considerations, implementing simultaneous elections seem to be not only feasible but also desirable and will result in reduction of enormous costs involved in separate elections. Even if the elections are proposed to be synchronised in such a manner as to be held at a particular interval, there will be substantial savings of public money.

B. Logistical Issues

2.14 The elections to the House of the People and State Assemblies are held using EVMs. Under the present system of electioneering, the same EVMs are used for elections in various States. Simultaneous elections would entail procurement of more

EVMs. Incremental requirement of EVMs gives rise to another problem regarding their storage. The ECI has stated that there is already a shortage of warehousing facilities and many States and UTs are forced to store the EVMs in private buildings and educational institutions. There will be a demand for more number of secured and conveniently located warehouses.

2.15 The ECI has also stated that increased number of EVMs will require more polling material, polling staff and additional vehicles. However, the Law Commission feels that the demand for additional vehicles and personnel will be marginally higher. For example, the polling party may require one or two additional hands when the elections are held simultaneously for the House of the People and the State Legislatures as additional EVMs will be used. So far as secure storage of EVMs is concerned, an arrangement needs to be worked out with the help of the State Governments.

2.16 Engagement of polling staff for significantly prolonged periods during elections is a mammoth, complex and time consuming activity. The ECI, to ensure smooth, peaceful and impartial polls, needs services of a significant number of polling officials from Government organisations. While conducting elections to the 16th Lok Sabha, the ECI took the services of approximately 10 million personnel as polling officials for running and supervising the election process across 9,30,000 polling stations of the country. This translates to an average of about 10.75 personnel per polling station.

2.17 For providing the required security arrangements, the ECI generally seeks assistance from Central Armed Police Forces (CAPF). As the demand for CAPF is typically higher than the supply, police forces such as State Armed Police, Home Guards, etc. are often deployed to complement the security arrangements. The role of such

security forces starts much before polling, and ends only after the counting of votes and declaration of results, effectively covering the entire duration of the elections. In the elections to the 16th Lok Sabha, the ECI deployed 1349 Companies of CAPFs.

2.18 While the deployment of polling officials is for a smaller duration (few days before elections and till the day of counting), the deployment of security forces is normally throughout the elections and they remain mobile from one place to another. Considering that one or the other State Assembly goes to polls every six months as stated previously, this situation leads to a lock-in of security forces for prolonged period of time. Such a situation takes away a big portion of such armed police force, which could otherwise be better deployed for other internal security purposes – the core responsibilities of these forces. An assessment of complete requirement of the security forces and their optimal deployment is beyond the capacity and time-frame available with the Commission. However, the Commission is confident that since the elections are to be held in phases and the only additional work is in relation to provision, storage and transport of additional EVMs, there should not be any effect on deployment of CAPFs. In light of above, the Commission is of the opinion that this issue could be tackled well by the ECI and the Ministry of Home Affairs.

2.19 The polling booths are most often located in schools, whether Government or private. The school staff and teaching personnel are directed to proceed for election duties, compromising their primary duty of imparting education. Apart from the day of poll, the schools remain closed even prior to the day of elections, for preparatory measures. Similar is the case with employees of Central and State Governments and the PSUs who are assigned election duty. The officials on such duty are required to abstain themselves from

their normal duties to attend training relating to the conduct of election, counting, etc. Holding staggered elections leads to such disruptions time and again. This makes holding of simultaneous elections more desirable.

C. Effect of Imposition of Model Code of Conduct

2.20 The Model Code of Conduct (MCC) is a set of guidelines applicable to political parties, candidates, the election machinery, the Government agencies, to ensure free and fair elections. Imposition of the MCC refrains the Government from (i) announcing any financial grants in any form or promises thereof; (ii) laying foundation stones etc., of projects or schemes of any kind except by civil servants; (iii) or make any promise of construction of roads, provision of drinking water facilities, etc.; or (iv) make any ad hoc appointments in Government, Public Undertakings, etc.

2.21 According to the ECI, only new projects or programmes, or concessions or financial grants in any form or promises thereof etc., which have the potential of influencing the voters in favour of the ruling party, are restricted. Ongoing projects, for which beneficiaries have been identified prior to the MCC becoming operative, remain unaffected. The ECI in its communication to the Law Commission, has clarified that it does not refuse approval for schemes undertaken for dealing with emergencies, calamities, welfare measures for the aged, etc. The MCC is restricted to the constituency or the State which is going to the polls and not in other areas. However, it is understood that the various Departments of the Government refer even routine matters to the ECI as a measure of abundant caution. As per a news item, the ECI has made no delay in disposing of the proposals received

from the Government, with some being disposed of within 24 hours⁴. In view of the above, MCC cannot be blamed for a complete administrative paralysis.

2.22 Having said that, it is a matter of common knowledge that when an election is taking place in any particular constituency/ State the policy decisions to be taken by the State/Centre Government(s), which are likely to influence voters and their voting pattern are avoided or put on hold resulting in deficit of Governance. At times, vital schemes get affected by ongoing elections even though the MCC is not in operation in the entire State/Country. The Government(s) may defer such schemes till the completion of the election process, thus slowing down the pace of their ambitious work.

D. Simultaneous Elections - Boon or Bane?

2.23 There is an argument that with simultaneous elections the ruling party will become autocratic without any checks and balances, and it will dramatically shrink the choice of the electorate. It is canvassed that it will be an advantage to the national parties over regional or local parties and national issues might eclipse the local ones⁵.

2.24 It is a known fact that in the 2014 general elections, the mood of the electorate was heavily in favour of Bhartiya Janata Party. But at the same time, the data of ECI shows that, in the case of Odisha, the Biju Janta Dal (BJD)(a regional party) increased its vote

⁴ The Hindustan Times dated 05 March 2017; available at <https://www.hindustantimes.com/india-news/model-code-of-conduct-not-an-obstacle-in-governance-reveals-poll-panel-data/story-ILZ8gwITdzo9GV15zQrZUK.html>.

⁵ Available at <https://www.firstpost.com/politics/simultaneous-elections-in-india-hard-to-see-any-benefits-but-list-of-drawbacks-continues-to-grow-4332007.html>.

share from 37.23% in 2009 to 44.77 % in Lok Sabha Elections in 2014, contrary to the national trend.

2.25 During the consultation with political parties, one of the State level political parties countered the argument that the State/ regional parties get marginalized, contending that the regional parties need to concentrate on the State Assembly seats and seats of the House of the People of their own State only. It is not so in the case of national parties, inasmuch as, they have to mobilise their entire machinery to contest all the seats to the House of the People as well as on all the seats to State Assemblies. Therefore, the disadvantage, if any, in the event of simultaneous elections taking place, is to the national parties, rather than to the State level parties.

2.26 Further, if the regional parties are able to flag the local issues appropriately before the electorate, the argument that the voters will get carried away by national issues in case of simultaneous elections, will prove to be flimsy. In 2014, for example, in Delhi, during the General Elections to the House of the People, there was a wave in favour of particular party and all the seven seats to the House of the People were won by that one party. However, just after that, when the election to Delhi Legislature was held just after few months in 2015, there was a complete back-swing and Delhi witnessed a sweep by the State Party, clearly indicating that the electorate had no confusion about whom they wanted at the Centre and who can address their local issues.

2.27 Another vital issue is that with continuing cycle of elections in one or the other part of the country, the political parties, including the ruling party at the Centre and the State(s), tend to invest their time and energy more on the elections, to ensure the win of their respective party(ies) than on the governance. This deviates the

attention of the lawmakers from core issues of good governance and development, to campaigning for elections. If the elections are going to be a once-in-five-years affair, the ruling parties can better dedicate their time to developmental activities, mandated to them by the electorate. More so there would be substantial reduction in hate speeches, violence and other law and order problems.

2.28 Frequent elections lead the political parties in power to take up populist measures instead of nationalist ones. It is widely perceived by political parties that providing individual benefits is the surest way to win over voters, especially the poor. This perception is in accordance with our political tradition that is directed more at the individual voter than interest groups. Indian politics is replete with numerous examples of political parties competing in promising individual benefits such as social welfare pensions, loan waivers, free housing, food subsidy, free electricity, etc. The Supreme Court, in *S. Subramaniam Balaji v. Government of Tamil Nadu & Ors.*, (2013) 9 SCC 659, observed that such practices shake the root of free and fair elections. Therefore, with reduction in the frequency of elections, such practices are bound to reduce substantially and there will be a better focus on taking up measures which are beneficial to public at large.

2.29 Simultaneous elections would reduce the role of black money in election funding since political parties will not be tempted to resort to illegal source of funding for elections. More so constant movement of money keeps gap for misuse of money wide open.

2.30 It is often alleged that though the MCC comes into play only from the date of announcement of elections, political parties in power start their preparation much before and roll out populist measures to ensure their win in the elections. If elections are to be held only once in five years, the minds of lawmakers of this country

will not be preoccupied with the ways and means of winning an election. Rather, they will be able to utilise this time in nation building activities.

2.31 It is also interesting to look at the voting pattern of people when the elections happen concurrently and separately. It has been contended in a number of studies that the simultaneous elections will increase voter-participation. It is a known fact that the voter turnout is considered to be the hallmark of representative democracy, since it demonstrates the vibrancy of political citizenship and civic spirit. According to a study undertaken by Mr Csaba Nikolenyi, a Montreal-based professor at Concordia University studying Indian elections, used basic formulae to calculate voter motivation⁶ 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 Indian state and national elections held concurrently and separately with this and other formulae, **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 time.**⁷ Shackel & Dandoy show that the simultaneity effect indeed has a significant positive impact on voter turnout, owing to

⁶ Known as the Riker-Ordeshook model, the formula was as follows: $pB + D > C$. In the formula, 'p' is the probability that the act of the individual's vote will decide the outcome of the election; 'B' is the benefit of the voter's favoured candidate being elected; 'D' stands for any other benefit from voting, such as the sense of fulfilling a particular duty; and 'c' is the cost of voting.

⁷ One nation, one election: Why Modi govt wants to go for simultaneous polls *available at:* https://www.business-standard.com/article/current-affairs/one-nation-one-election-why-modi-govt-wants-to-go-for-simultaneous-polls-118012500184_1.html; See also: Response Paper and Recommendation By Select Editors*and Members # of the NUJS Law Review *available at:* http://nujlawreview.org/wp-content/uploads/2018/05/NUJS-Law-Review-Working-Paper_Response-Paper-to-Law-Commission-Draft-Recommendations-on-Simultaneous-Elections.pdf.

greater stakes for the political agents, actors and participants, more focused campaigns centred on tackling a diversity of issues at multi-planar levels, as well as increased press coverage for all tiers of elections, rendering electoral campaigning more accessible both for contestants and voter.⁸ In Indian context if we reflect back on the elections held in the past in various States, simultaneous elections has led to increased voter turnout in 1999, for Karnataka, Maharashtra and Andhra Pradesh, by nearly 11.5%. In 1977, simultaneous elections in Kerala with national elections augmented voter turnout by nearly 20%. Similarly, simultaneous elections in north-eastern states with national elections, have been empirically shown to boost voter turnout by 21% in Arunachal Pradesh and 17% in Assam. Thus it can be concluded that simultaneous elections will indeed have a positive impact on the voter-turnout even in the geographically remoter states, another very important argument stressing on the need to have simultaneous elections.

E. Effect on Democratic and Constitutional Set up

2.32 The Commission has received several criticisms with regard to the idea of conducting simultaneous elections, citing constitutional and democratic issues. Such ideas are reflected both in the written responses received, and during the consultations that the Commission held. The issues democracy, federalism and doctrine of basic structure have been discussed in detail and suitably addressed in Chapter 6 of this Report.

⁸ Arjan H. Schakel & Régis Dandoy, Electoral Cycles and Turnout in Multilevel Electoral Systems, *West European Politics*, 37:3, 605-623 (2014).

F. To sum up

2.33 The polity and the democratic set up in any country is prone to continuous change. This is specifically true in the case of India, which is uniquely placed, owing to its unity in diversity. In order to develop into a mature and a vibrant democracy, the quest for increasingly productive and positive changes in the overall set up of the country are inevitable. The observation of Supreme Court in *Tamil Nadu Education Department Ministerial and General Subordinate Services Association & Ors. v. State of Tamil Nadu & Ors.*; AIR 1980 SC 379, is relevant in this context. The Court while dealing with the issue of seniority of teachers stated:

The wisdom of yesterday may obsolesce into the folly of today, even as the science of old may sour into the superstition now, and vice versa....**Once the principle is found to be rational the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy.** Every cause claims a martyr and however unhappy we be to see the seniors of yesterday becoming the juniors of today, this is an area where, absent arbitrariness and irrationality, the court has to adopt a hands-off policy. (emphasis added)

2.34 Similarly, in *State of Karnataka & Anr. v. Dr. Praveen Bhai Togadia*, AIR 2004 SC 2081, the Court observed:

Welfare of the People is the ultimate goal of all laws and State action and above all, the Constitution. They have one common object that is to promote well-being and larger interest of the society as a whole and not of any individual or particular groups carrying any brand names.

2.35 In view of the foregoing discussions, the Commission is convinced that there exists a viable environment necessitating the holding of simultaneous elections to the House of the People and the

State Legislatures. Simultaneous elections can be seen as a solution to prevent the country from being in constant election mode. Thus reducing government expenditure substantially, not diverting the already short-numbered security forces, and above all, without causing harm to the constitutional and democratic set up of the country

CHAPTER – 3

EXISTING PROVISIONS

3.1 While considering holding of simultaneous elections to the House of the People and the State Legislative Assemblies, a look at the existing provisions in the Constitution as well as other statutes, with regard to elections and stability of the Government in general, will hold merit. For example, the Constitution has set a maximum duration of five years for the House of the People and State Legislatures. The Representation of the People Act, 1950 and the Representation of the People Act, 1951 draws its powers from the Constitution. There are strong anti-defection laws in place. It is often contended that the existing scenario in the country gives several options to the voter with regard to his choice of representative. Pros and cons of such arguments are examined in detail in the ensuing chapters of this Report. Detailed scrutiny of the existing constitutional and statutory provisions will give an idea of the impact of resorting to any amendments to be suggested to them.

A. Constitutional Provisions

3.2 Articles 83 and 172 of the Constitution prescribe the maximum duration of five years for the House of the People and the State Legislative Assemblies, respectively. These articles provide that ‘unless sooner dissolved’, they shall continue for five years from the date of their first meeting. It further provides for extension of term of the House for a limited period only if a proclamation of emergency is in operation.

3.3 Articles 85(1) and 174(1) deal with sessions, prorogation and dissolution of Parliament and State Assemblies. They stipulate that the intervening period between the last session of the House of the People / State Legislative Assemblies and the first Session of the subsequent House / Assemblies shall not exceed six months.

3.4 Articles 113 and 203 prescribe the procedure with respect to estimates. The estimate for the proposed expenditure out of the Consolidated Fund of India / Consolidated Fund of the State, needs to be submitted to vote by Parliament / State Legislative Assembly, and failure to pass the same leads to termination of the terms of Council of Ministers, thus paving the way for change of Government.

3.5 Articles 75(3) and 164(2) provide that the Council of Ministers shall be collectively responsible to the House of the People or the State Legislative Assembly, as the case may be. These Articles thereby provide that the Council of Ministers will be in power till the time they enjoy the confidence of the majority of the Members of the House(s).

3.6 The Tenth Schedule to the Constitution deals with disqualification of a member of the House/Assembly on the ground of defection.

3.7 Article 243U deals with election, duration of municipalities and the duration of newly constituted municipalities on their premature dissolution.

3.8 Part XV of the Constitution deals with elections. Article 324 stipulates superintendence, direction and control of elections. Article 326 secures voting rights based on the principle of adult suffrage. Drawing power from Article 327, which details the power of the Parliament to make provisions with respect to elections to Legislatures, the Representation of the People Act, 1950 and the Representation of the People Act, 1951 were enacted. Article 328 enables the Legislature of a State, if the Parliament has not made such legislation, to make laws with respect to all matters relating to elections to the Legislatures of the States.

3.9 Part XVIII, deals with emergency provisions. When there is a Proclamation of Emergency in the country / State, the term(s) of the House of the People / State Legislative Assembly can be extended beyond stipulated period of 5 years.

B. Representation of the People Act, 1951

3.10 For the purpose of the present Report only limited number of sections of the Act, 1951 are relevant:

- a. Sections 14 and 15 of the Act, 1951 deal with notification for general election to the House of the People and the State Legislative Assemblies.
- b. Part IX of the Act, 1951 deals with bye-elections to the House of the People and State Legislative Assemblies.

C. Other statutes

3.11 Section 20A of the Representation of the People Act, 1950 deals with the special provisions for citizens of India residing outside India.

3.12 Rule 198 of the Rules of Procedure and Conduct of Business in Lok Sabha stipulates the admissibility and procedure with regard to a motion of no-confidence to be introduced in the House of the People.

3.13 The Commission also looked at the Acts dealing with local bodies prevalent in various States.

3.14 The above provisions have been examined in detail in different Chapters of the Report, and amendments, wherever necessary have been suggested.

CHAPTER - 4
REPORTS AND DISCUSSIONS AVAILABLE ON SIMULTANEOUS
ELECTIONS

4.1 The idea of simultaneous elections which, in effect, meant restoration of the earlier practice of holding such elections was floated by ECI in 1983. The Law Commission of India in its 170th Report on “Reform of Electoral Laws” (1999) recommended holding simultaneous elections as a part of electoral reforms. In 2012, one of the senior leaders of Bharatiya Janata Party, suggested to have simultaneous elections. In 2015, the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 79th Report suggested to hold simultaneous elections for long term good governance. It may be pertinent to mention here that the Commission could not come across report of any Government agency, after the discontinuance of concurrent elections in the second decade of independence, which spoke against the idea of simultaneous elections. Nevertheless, the Commission feels it prudent to look into the various reports available on the subject.

A. First Annual Report of the Election Commission of India, 1983:

4.2 In 1983, the Election Commission of India in its First Annual Report recommended holding simultaneous elections for the House of the People and the Legislative Assemblies of States, for the following significant reasons:⁹

⁹Election Commission of India, First Annual Report (April, 1984) *available at:* http://eci.nic.in/eci_main/eci_publications/books/genr/First%20Annual%20Report-83.pdf.

(1) Considerable savings on the colossal avoidable administrative and other expenditure incurred on account of holding of separate General elections, (Lok Sabha and State Legislative Assembly).

(2) Substantial economy through revision of electoral rolls for the House of the People and the State Legislative Assemblies simultaneously instead of undertaking them on a countrywide basis twice over in two different operations.

(3) For the conduct of elections, civilian personnel running into about twenty-five lakhs of officers and staff and a few lakhs of police personnel are deployed every time for about two to three months thereby seriously affecting their normal duties.

(4) During elections whether for the Lok Sabha or the Assemblies, the entire administrative set up throughout the country slows down considerably and all other normal functions and activities of the Government, including developmental work, are pushed to the background. These create a lot of hardships and sufferings to the common man. The situation continues for about 2 months during the conduct of every General election (Lok Sabha and State Legislative Assemblies).

(5) Whereas changes in the administrative set up including transfers that become necessary in the normal course are not permitted under the broad guidelines issued by the Election Commission, there are considerable pressures prior to the issue of the notification calling for a general election, to make wholesale changes, particularly at the district level.

(6) On account of the de-linking of the general elections to the House of the People from that of the State Legislative Assemblies, there is a duplication of the expenditure incurred by the candidates contesting elections and political parties which results in the pumping in of considerable resources, thereby indirectly affecting money supply in the economy. Further by such de-linking, the candidates at Parliamentary election need more money and resources to fight the

election singlehanded over a wide area without the backing and co-operation of companion candidates of the assembly segments. This also, it is suspected, tends to lead to difficulties for the candidates in keeping within the ceiling for election expenses.

(7) The dismantling of the temporary but complicated superstructure raised for the purpose of election by accretion of huge personnel is required to be done at the earliest and smoothly as of putting up the super-structure, and normal conditions should be restored quickly. In this respect also, simultaneous elections would be highly desirable.

Having regard to the above considerations, **the Elections Commission is of the firm view that a stage has come for evolving a system by convention, if it is not possible or feasible to bring about a legislation, under which the general elections to the House of the People and Legislative Assemblies of the States are held simultaneously** (emphasis added).¹⁰

No further discussion on the issue highlighted in the Annual Report seems to have taken place thereafter, for a long time, till the Law Commission of India considered it in the year 1999.

B. 170th Report of the Law Commission of India, 'Reform of Electoral Laws'(1999):

4.3 The Commission in its 170th Report (1999) noted that after 1967 holding of elections to the Lok Sabha and State Assemblies simultaneously got disrupted for several reasons such as frequent resort to Article 356 of the Constitution, the dissolution of the State Assembly by the Governor on recommendation of the Chief Minister of the State etc. The Commission observed that it is true that all the situations and eventualities in which Article 356 may be resorted to

¹⁰*Ibid.*

(the scope stood reduced substantially after the decision of Supreme Court in *S.R. Bommai v. Union of India*¹¹), cannot be foreseen. Therefore, 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.

C. Report of the National Commission to Review the Working of the Constitution, 2002 (NCRWC Report):

4.4 A NCRWC was appointed to examine, in light of the experience of the past years, as to how best the Constitution could respond to the changing needs of an efficient, smooth and effective system of governance and to the socio-economic development of modern India within the framework of Parliamentary democracy, and to recommend changes, if any, that were required in the provisions of the Constitution without interfering with its basic structure.¹² The Report *inter alia* suggested a viable course of action that could be adopted in case of Hung House in consonance with a 'constructive vote of no-confidence',¹³ both of which would be discussed later in the present Report.

D. 255th Report of the Law Commission of India 'Electoral Reforms', (2015):

4.5 This Report *inter alia* dealt with reforming the Anti-Defection Law presently effective in India, a topic which is addressed later in the present Report. The Commission recommended an amendment to the Tenth Schedule of the Constitution, so as to vest the power to decide on questions of disqualification on the ground of

¹¹AIR 1994 SC 1918.

¹² NCRWC Report (2002) available at: <http://lawmin.nic.in/ncrwc/ncrwreport.htm>.

¹³*Ibid.*

defection with the President or the Governor, as the case may be, (instead of the Speaker or the Chairman), who shall act on the advice of the ECI. The Commission was of the opinion that this would help to preserve the integrity of the Speaker's office.

E. 79th Report of Parliamentary Standing Committee, 2015

4.6 The Committee in its Report on "Feasibility of holding simultaneous elections to the House of the People (Lok Sabha) and State Legislative Assemblies" noted several justifications for holding simultaneous elections, *inter-alia* as follows:

- **The massive expenditure that is currently incurred for the conduct of separate elections:** It would reduce the massive expenditure incurred for conduct of separate elections every year. Presently, the cost of holding elections for Lok Sabha and Legislative Assemblies of States and UTs has been pegged at 4500 crores by the ECI.
- **The policy paralysis that results from the imposition of the Model Code of Conduct (MCC) during election time:** The imposition of MCC puts on hold the entire development programme and activities of the Union and State Governments in a poll bound State. It even affects the normal governance. Frequent elections lead to imposition of MCC over prolonged period of time. This often leads to policy paralysis and governance deficit.
- **Impact on delivery of essential services:** Holding of political rallies disrupts road traffic and also leads to noise pollution. If simultaneous elections are held, this period of disruption would be limited to a certain pre-determined period of time.
- **Burden on crucial manpower that is deployed during election time:** An illustration can be given of the 14th Lok Sabha Elections. The elections were held along with State Assembly Elections in Odisha, Andhra Pradesh, Sikkim and

Arunachal Pradesh. The Elections were spread over nine phases, and 1077 *in situ* companies and 1349 mobile companies of Central Armed Police Force (CAPF) were deployed.¹⁴

F. Working paper by NITI Aayog

4.7 In January 2017, NITI Aayog prepared a working paper titled “**Analysis of Simultaneous elections: the What, Why and How**” in which proposal to conduct elections to the House of the People and the State Legislative Assembly, simultaneously was deliberated upon. The report analysed the existing constitutional provisions, financial and logistical implications relating to simultaneous elections and worked out a framework for conduct of simultaneous elections.

4.8 The aforesaid reports indicate the desirability of holding simultaneous elections on more than one count. These reports also point out that heterogeneous needs of the nation will get reflected as national parties will be contesting elections focussing on regional issues and regional parties focussing on national issues, thereby bringing the regional parties into mainstream politics and promoting their growth.

G. Presidential Addresses

4.9 Shri Pranab Mukherjee, former President, in his address to the nation on the eve of Republic Day, 2017¹⁵, opined as under:

¹⁴79th Report of Parliamentary Standing Committee on “Feasibility of holding simultaneous elections to the House of the People (Lok Sabha) and State Legislative Assemblies” (December, 2015)

¹⁵ <http://pib.nic.in/newsite/PrintRelease.aspx?relid=157681>.

The time is ripe for a constructive debate on electoral reforms and a return to the practice of the early decades after Independence when elections to Lok Sabha and state assemblies were held simultaneously. It is for the Election Commission to take this exercise forward in consultation with political parties.

4.10 Shri Ram Nath Kovind, Hon'ble President of India, while addressing the Joint Session of the Parliament¹⁶, stated as under:

Frequent elections put on hold development programmes, disrupt normal public life, and impact essential services and burden human resource with prolonged periods of election duty. My government welcomes a constructive debate on simultaneous conduct of elections to Lok Sabha and the State Legislative Assemblies.

H. Constituent Assembly Debates

4.11 The Constituent Assembly did not discuss the issue of simultaneous elections as such. However, during the discussion on Article 289 of the Draft Constitution, to consider the desirability of having a multi member permanent Election Commission as against an *ad hoc* body appointed at the time when there is an election on the anvil, Prof. Shibban Lal Saksena, stated as under:

Our Constitution does not provide for a fixed four years election cycle like the one in the United States of America. The elections will probably be almost always going on in some province or the other. We shall have about thirty provinces after the States have been integrated. Our Constitution provides for the dissolution of the Legislature when a vote of no confidence is passed. **So, it is quite**

¹⁶ Address by Hon'ble President of India, Joint Session of Parliament, 31 January 2017, can be accessed through <http://164.100.47.194/Loksabha/Debates/textofdebate.aspx>.

possible that the elections to the various Legislatures in the provinces and the Centre will not be all concurrent. Every time some election or other will be taking place somewhere. It may not be so in the very beginning or in the very first five or ten years. But after ten or twelve years, at every moment some election in some province will be going on.**in our Constitution all the elections will not synchronise but they will be at varying times in accordance with the vote of no-confidence passed in various Legislatures and the consequent dissolution of the Legislatures.** (emphasis added).¹⁷

4.12 The above observation brings out two things – one, that the framers of the Constitution did not discuss the subject matter of holding simultaneous elections threadbare, perhaps, having in view that with the political maturity, a convention / practice would develop which will take care of this crucial aspect; and, the second imposition of President’s Rule in the State in the eventuality of vote of no-confidence would be rarely exercised. The Commission is mindful of the issue of vote of no confidence and has considered the same in Chapter 8 of this Report.

¹⁷Constituent Assembly Debates, Vol. VIII, 15th June 1949 *available at:*http://eci.nic.in/eci_main/eci_publications/books/miscell/Debate_in_Constituent_Assembly_On_Elections.pdf.

CHAPTER -5

INTERNATIONAL PERSPECTIVE

A. SOUTH AFRICA

5.1 In South Africa elections are held for National Assembly, Provincial Legislature and Municipal Councils in a five-year cycle. The electoral system for National and Provincial Assemblies is based on ‘party-list proportional representation’, which means that parties are represented in the proportion of electoral support to them. The total number of votes received by a party decides the number of seats it gets. Parties draw up lists of candidates for each of the legislatures they wish to contest, when the results are announced. The Independent Electoral Commission (IEC) works out how many people from each party-list should take up seats in the legislatures.¹⁸ For Municipal Councils, elections which are also held after every five years though not along with National and Provincial elections, there is a ‘mixed-member system’ in which, wards elect individual councillors alongside those named from party-lists.¹⁹

5.2 The National Assembly has four-hundred seats and each of the nine Provincial Legislatures has between thirty and ninety seats depending on population of the province. Electors cast their vote for the National and Provincial Legislatures on separate ballot papers. All registered political parties are represented on a Party Liaison

¹⁸ The Elections in South Africa *available at:*
<http://www.elections.org.za/content/Documents/Publications/2014-National-and-Provincial-Elections/Media-Guide--2014-National-and-Provincial-Elections>.

¹⁹ *Available at:*
<http://www.elections.org.za/content/Elections/Election-types>.

Committee that gives advice to and gets information from the Independent Electoral Commission.²⁰

B. SWEDEN

5.3 The electoral system in Sweden is proportional, entailing that the parties are given a number of representatives in the elected assembly proportional to their share of the votes.²¹ Elections to Sweden's County Councils and Municipal Councils occur simultaneously with the general elections (elections to *Riksdag*²² every four years). Whereas, elections to the Municipal Assemblies occur on the second Sunday of September after every five years.

C. BELGIUM

5.4 In Belgium one can vote in five different types of elections.²³

- European elections: representatives for the European Parliament;
- Federal elections: for the Federal Parliament (the Chamber of Representatives);
- Regional elections: for the legislative bodies of the federated regions, e.g., the Flemish Parliament, the Walloon Parliament,

²⁰*Supra*

²¹Swedish Electoral System *available at*:

<https://www.informationsverige.se/Engelska/Samhalle/Samhallsorientering/Pages/Det-svenska-valsystemet.asp>Tenth.

²²Riksdag is the National Legislature and Supreme decision-making body of Sweden.

²³Elections in Belgium *available at*:

<https://www.vlaanderen.be/en/authorities/elections-belgium>.

the Parliament of the Brussels Capital Region, the Parliament of the German-speaking Community;

- Provincial elections: for the Provincial Council;
- Municipal elections: for the Municipal Council.

Elections for the Federal Parliament are normally held every five years, coinciding with the European (and consequently also regional) elections.²⁴

D. INDONESIA

5.5 The Constitutional Court of Indonesia, while reviewing Law No. 42 Year 2008 concerning Presidential Elections, vide decision No.14/PUU-XI/2013, held that article 3 paragraph 5, article 12 paragraph 1 and 2, and article 112 of the Presidential Election Law are unconstitutional.²⁵ The Constitutional Court held that Indonesia will hold the presidential elections and legislative elections concurrently starting 2019, on the ground that Law No.42 of 2008 was contrary to the constitutional provision.²⁶

E. GERMANY

5.6 The doctrine of basic structure is clearly brought out in the German Constitution 1949. The system prevalent in Germany,²⁷ is

²⁴*Ibid.*

²⁵ Gabriella Oroh, Sh, Benefits of Simultaneous elections in Indonesia *available at*: <http://imansjahputra.com/articles-and-publications/r/benefits-of-simultaneous-election-in-indonesia>, See also: Court rules one voting day in 2019 <http://www.thejakartapost.com/news/2014/01/24/court-rules-one-voting-day-2019.html>.

²⁶ <https://media.neliti.com/media/publications/226553-election-design-following-constitutional-b3374324.pdf> (see also: <http://www.scirj.org/papers-0315/scirj-P0315241.pdf>).

²⁷ Article 67 (constructive vote of no-confidence) reads as under:

that the *Bundestag* (i.e. Lower House) cannot simply remove the Chancellor with a vote of no-confidence. The 'constructive vote of no-confidence' puts an embargo on ousting the Chancellor as the opponents must not only disagree with his or her governance but also agree on a replacement.²⁸The German Constitution (1919) became unworkable especially in the sphere of 'division of powers', where the Chancellor had to be supported both by the President and the majority in the *Bundestag*. Due to this, there had been permanent clashes between State authorities, leading to frequent removal of Chancellors. To minimise the occurrence of this situation, the *Parlamentarischer Rat* (Parliamentary Council, in Bonn) - the West German Constituent Assembly prepared the German Constitution, 1949, also called 'Basic Law of the Federal Republic of Germany, 1949'. It handed over the Executive power explicitly to the ruling Government and limited the Presidential power mostly to representative tasks, making the Chancellor a powerful political player. Under the provisions of Basic Law of Germany, the only option for the *Bundestag* is to express its disapproval for the Government leader, by passing the motion containing the name of his successor (Art.67). This should be supported by majority of Deputies. If the motion is passed successfully then the Cabinet has to resign.

5.7 German federal set up has provisions with regard to elections and stability of the Government, etc., which are definitely

"67.(1) The Bundestag may express its lack of confidence in the Federal Chancellor only by electing a successor with the majority of its Members and requesting the Federal President to dismiss the incumbent. The Federal President must comply with the request and appoint the person elected.

(2) Forty-eight hours must elapse between the motion and the vote."

²⁸ The Chancellor and the Cabinet *available at:*
<http://countrystudies.us/germany/153.htm>.

imitable. Hence, German scenario has been vastly discussed at the appropriate points in this Report.

F. FORMS OF SIMULTANEOUS ELECTIONS THE WORLD OVER

5.8 It is noted that simultaneous elections, in one form or the other, do exist in various parts of the world. Countries like Philippines, Brazil, Bolivia, Columbia, Costa Rica, Guatemala, Guyana, Honduras, Nicaragua et al, follow a system of simultaneous elections. However, these countries follow Presidential form of Government and the election of President and the elections to the Legislative are held together²⁹.

G. UNITED KINGDOM (Fixed Term Parliament)

5.9 There are various types of elections in the United Kingdom: elections to the House of Commons of the United Kingdom, elections to the European Parliament (not presently), local elections, and mayoral elections etc. Within each of these categories, there may be bye-elections as well as general elections.³⁰

5.10 The Parliament of Westminster introduced a fixed term for the Parliament by enacting Fixed Term Act 2011, which provides a term of 5 years for general elections. The Act set the first date of the general election thereafter to be 7th May 2015, and provided that general elections from thereon would be scheduled on the first Thursday of May in every fifth year. The Act 2011 specifies that early elections can be held only if a motion for it is agreed either by at least

²⁹ <https://media.neliti.com/media/publications/226553-election-design-following-constitutional-b3374324.pdf>.

³⁰ Types of Government *available at*: <https://www.gov.uk/elections-in-the-uk>.

two-thirds of the whole House or without division; or if a motion of no confidence is passed and no alternative government is confirmed by the Commons within 14 days thereof.³¹

³¹Fixed Term Act 2011 *available at:*
<http://www.legislation.gov.uk/ukpga/2011/14/contents/enacted>.

CHAPTER-6
SIMULTANEOUS ELECTIONS VIS-À-VIS DEMOCRACY, BASIC
STRUCTURE AND FEDERALISM

6.1 There have been a range of opinions regarding the feasibility and desirability of simultaneous elections. One of the arguments raised against simultaneous elections has been that it goes against the Principles of Democracy and Federalism enshrined in the Constitution. In order to know whether simultaneous elections actually violate the principles of democracy, tinkers with the basic structure of the Constitution or its federal structure, it is necessary to examine these issues analytically.

A. Democracy

6.2 The democratic set-up of the country has always been recognised as a basic feature of the Constitution, along with other features like Supremacy of the Constitution, Rule of law, Separation of powers, Power of Judicial Review under Articles 32, 226 and 227 etc.³² In a democratic republic it is the will of the people which is paramount and forms the basis of the authority of the Government. The will is expressed in periodic elections based on universal adult suffrage where the voter expresses his choice of, or preference for a candidate. Thus the executive has a primary responsibility to serve the nation and enlighten the citizens to further strengthen a democratic state. Free and fair elections would alone guarantee the growth of healthy democracy in the country. The fair denotes equal

³² Vide: *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461; *Minerva Mills Ltd. v. Union of India*, AIR1980 SC 1789; *P.V Narsimha Rao v. State(CBI/SPE)*, AIR 1998 SC 2120; *Union of India v. Association for Democratic Reforms*, AIR 2002 SC 2112; and *In the matter of Special Reference No. 1 of 2002(Gujarat Assembly Election Matter)*, AIR 2003 SC 87.

opportunity to all people. “Voting is formal expression of will or opinion by the person entitled to exercise the right on the subject or issue”.³³

6.3 In a democracy all citizens have equal political rights. Democracy means “actual, active and effective exercise of power by the people i.e., political participation of the people in running the administration of the Government. It conveys the state of affairs in which each citizen is assured of the right of equal participation in the polity³⁴.”

6.4 In *Kihoto Hollohan v. Zachilhu*, AIR 1993 SC 412, the Supreme Court reiterated its views on Democracy and Elections in the following words:

“Democracy is a part of the basic structure of our Constitution; and rule of law and free and fair elections are basic features of democracy. One of the postulates of free and fair elections is provision for resolution of election disputes as also adjudication of disputes relating to subsequent disqualifications by an independent authority....³⁵”

6.5 In *Kuldip Nayar v. Union of India (UOI) and Ors.*, AIR 2006 SC 3127 the Supreme court, while dealing with the question of political party system *vis-à-vis* democracy observed that “*parliamentary democracy and multi-party system are an inherent part of the basic structure of Indian Constitution. It is political parties that set up candidates at an election who are predominantly elected as*

³³ *Schedule Caste and Schedule Tribe officers Welfare Council v. State of UP*, AIR 1997 SC 1451 and *State of Punjab v. G.S Gill* AIR 1997 SC 2324; *Peoples Union for Civil Liberties v. Union of India* (2013) 10 SCC 1.

³⁴ *R.C. Poudyal v. Union of India*, AIR 1993 SC 1804.

³⁵ See also: *Union of India v. Association for Democratic Reforms*, AIR 2002 SC 2112; and *People’s Union for Civil Liberties v. Union of India*, (2013)10 SCC 1.

Members of the State Legislatures.” Further, the Court, placing reliance on *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 observed that “*a Parliamentary Democracy like ours functions on the basis of the party system. The mechanics of operation of the party system as well as the system of Cabinet Government are such that the people as a whole can have little control in the matter of detailed law-making*”.

6.6 From the above said discussion it can be inferred that political party system is an inherent part of democracy and in democracy all the citizens have equal political rights with actual, active and effective exercise of power. Here, the will of the people is paramount and provides for the authority of the Government. The will of people is expressed in periodic elections based on universal adult suffrage through secret ballot. The Constitution declares in the preamble amongst other things, India to be a democratic republic. The democracy is a part of the Basic Structure.

B. Doctrine of Basic Structure

6.7 The concept of basic structure gives coherence and durability to a Constitution as it has a certain intrinsic force in it. In India, ‘Basic Structure’ is a judicial innovation. The term was used for the first time in the case of *Kesavananda Bharati & Ors. v. State of Kerala & Anr.*, AIR 1973 SC 1461, wherein the Supreme Court held that the basic structure of the Constitution is not a ‘vague concept’. It includes:

1. The supremacy of the Constitution.
2. Republican and Democratic form of Government and sovereignty of the country.

3. Secular and federal character of the Constitution.
4. Demarcation of power between the legislature, the executive and the judiciary.
5. The dignity of the individual (secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.
6. The unity and the integrity of the nation.

6.8 In order to understand the doctrine of basic structure one has to examine the German Constitution. The doctrine is enshrined in Articles 1 to 19 of the German Basic Law – German Constitution 1949. These principles are based on the premise that democracy is not only a form of government but also a philosophy of life based on the appreciation of dignity, value and the inalienable rights of each human being. The Basic Law provides, *inter alia*, that human dignity, human rights and freedom of faith and conscience are inviolable. They also provide for right to life and physical integrity; equality before law; right to personal honour and privacy; occupational freedom; inviolability of the home; right to property and inheritance. **The essence of basic rights could, under no circumstance, be affected.**

6.9 Article 20 provides that Germany is a democratic and a Social Federal State. State authority is derived from the people through elections. All Germans have right to resist anyone seeking to abolish the constitutional order, if no other remedy is available.

6.10 Article 79 lays down the procedure to amend the Basic Law by supplementing a particular provision or expressly amending the same. **However, amendments to the Basic Law affecting the principles laid down in Articles 1 and 20 or affecting the division of federation i.e. participation of Centre and State in the legislative process are inadmissible.**

6.11 The provisions under the German Constitution deal with rights, which are not mere values, rather, they are justiciable and capable of interpretation. Thus, those values impose a positive duty on the State to ensure their attainment as far as practicable. The State must facilitate the rights, liberties and freedoms of the individuals.

6.12 The Supreme Court of Pakistan, in *Fazlul Quader Chowdhry & Ors. v. Muhammad Abdul Haque* PLD 1963 SC 486, while considering a Presidential Order under Article 224 of the Constitution dealing with elections, observed:

The aspect of the franchise, and of the form of Government are fundamental features of a Constitution, and to alter them, in limine in order to placate or secure the support of a few persons, would appear to be equivalent not to bringing the given Constitution into force, but to bringing into effect an altered or different Constitution.

6.13 Coming back to the Indian scenario, the Supreme Court, in *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845 observed that the Constitution “*formulated a solemn and dignified preamble which appears to be an epitome of the basic features of the Constitution. Can it not be said that these are indicia of the intention of the Constituent Assembly to give a permanency to the basic features of the Constitution?*”

6.14 In *Minerva Mills Ltd. & Ors. v. Union of India & Ors.*, AIR 1980 SC 1789, the Apex Court held that the “*fundamental rights occupy a unique place in the lives of civilised societies and have been variously described in our Judgments as ‘transcendental’, ‘inalienable’*”

and 'primordial'....The features or elements which constitute the basic structure or framework of the Constitution or which, if damaged or destroyed, would rob the Constitution of its identity so that it would cease to be the existing Constitution but would become a different Constitution.... Therefore, in every case where the question arises as to whether a particular feature of the Constitution is a part of its basic structure, it would have to be determined on consideration of various factors such as the place of the particular feature in the scheme of the Constitution, its object and purpose and the consequence of its denial on the integrity of the Constitution as a fundamental instrument of country's governance.” Whether a particular feature forms part of the basic structure has to be necessarily determined on the basis of that provision of the Constitution. Further, so far as the power to amend the Constitution under Article 368 is concerned, “one cannot legally use the Constitution to destroy itself”, as the doctrine of constitutional identity requires. “The Constitution is a precious heritage and, therefore, you cannot destroy its identity.” The theory of basic structure is based on the principle that a change in the thing does not involve its destruction, and destruction of a thing is a matter of substance and not of form³⁶.

6.15 In *Smt. Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299, the Supreme Court noted that the principle of **free and fair elections** is an essential postulate of democracy, and which, in turn, is a part of the basic structure of the Constitution. The Bench expressed their opinion on the issue differently, i.e. democracy was an essential feature forming part of the basic structure and struck down Clause (4) of Article 329A which provided for special provision as to

³⁶ See also: *Vaman Rao v. Union of India*, AIR 1981 SC 271; *Sub-Committee on Judicial Accountability v. Union of India*, AIR 1992 SC 320; *Raghunath Rao v. Union of India*, AIR 1993 SC 1267; and *Justice K S Puttaswamy v. Union of India*, AIR 2017 SC 4161.

elections to Parliament in the case of Prime Minister and Speaker, on the ground that it damaged the democratic structure of the Constitution; that there were four unamendable features which formed part of the basic structure, namely, "(i) *India is a sovereign democratic republic; (ii) Equality of status and opportunity shall be secured to all its citizens; (iii) The State shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion and (iv) The nation shall be governed by a government of laws, not of men.*" These, according to them, were "*the pillars of our constitutional philosophy, the pillars, therefore, of the basic structure of the Constitution.*"

6.16 In fact the said clause(4) had taken away the power of judicial review of the courts as it abolished the forum without providing for another forum for going into the dispute relating to the validity of election of the Prime Minister. It extinguished the right and the remedy to challenge the validity of such an election. The complaints of improprieties, malpractices and unfair means have to be dealt with as the principle of free and fair elections in a democracy is a basic feature of the Constitution, and thus, clause (4) was declared to be impermissible piece of constitutional amendment.

6.17 However, it was also observed:

The concept of a basic structure, as brooding omnipresence in the sky, apart from specific provisions of the Constitution, **is too vague and indefinite** to provide a yardstick to determine the validity of an ordinary law. (emphasis added)

6.18 In *S.R. Bommai v. Union of India*, AIR 1994 SC 1918, the Supreme Court explained the concept of basic structure of the constitution, while dealing with the issue of exercise of the power by the Central Government under Article 356 of the Constitution and

held that secularism was an essential feature of the Constitution and part of its basic structure.

6.19 In *M Nagaraj & Ors. v. Union of India & Ors.* AIR 2007 SC 71 the Constitution Bench of the Supreme Court dealing with the issue of basic structure observed that “axioms like secularism, democracy, reasonableness, social justice, etc. are overarching principles which provide linking factor for principles of fundamental rights like Articles 14, 19 and 21. These principles are beyond the amending power of Parliament. They pervade all enacted laws and they stand at the pinnacle of the hierarchy of constitutional values”. Such rights have to be respected and cannot be taken away.

6.20 The framers of the Constitution have built a wall around the fundamental rights, which has to remain forever, limiting the ability of the majority to intrude upon them. That wall is a part of basic structure.³⁷

6.21 Thus, “*for a constitutional principle to qualify as an essential feature, it must be established that the said principle is a part of the constitutional law binding on the legislature. Only thereafter, the second step is to be taken, namely, whether the principle is so fundamental as to bind even the amending power of Parliament i.e. to form a part of the basic structure.*”³⁸

6.22 When an issue is raised regarding the basic structure, the question does arise as to whether the amendment alters the structure of the constitutional provisions. “*The criterion for determining the*

³⁷ *I.R. Coelho (dead) by L.R.s v. State of Tamil Nadu*, AIR 2007 SC 861; See also *Kesavananda Bharati & Ors. v. State of Kerala & Anr.*, AIR 1973 SC 1461.

³⁸ *M. Nagaraj*, *Supra*.

*validity of a law is the competence of the law-making authority. The competence of the law-making authority would depend on the ambit of the legislative power, and the limitations imposed thereon as also the limitations on the mode of exercise of the power.”*³⁹

6.23 The aforesaid structure is built on the basic foundation, i.e., the dignity and freedom of the individual. This is of supreme importance. This cannot be destroyed by any form of amendment. Parliament cannot expand its power of amendment under Article 368 so as to confer on itself the power to repeal, abrogate the Constitution or damage, emasculate or destroy any of the fundamental rights or essential elements of the basic structure of the Constitution or of destroying the identity of the Constitution. *“They constitute the ark of the Constitution..... To destroy the guarantees given by Part III in order purportedly to achieve the goals of Part IV is plainly to subvert the Constitution by destroying its basic structure”*⁴⁰.

6.24 In *I.R. Coelho (dead) by L.R.s v. State of Tamil Nadu*, AIR 2007 SC 861, a Nine Judge Bench of the Supreme Court laid down the concrete criteria for basic structure principle, observing:

Since the power to amend the constitution is not unlimited, **if changes brought about by amendments destroy the identity of the constitution, such amendments would be void.....**every improper enhancement of its own power by Parliament, be it clauses 4 and 5 of Article 329A, or Section 4 of Forty-second Amendment, have been held to be incompatible with basic structure doctrine, as they introduced new elements which altered the identity of the Constitution, or deleted the existing elements from the Constitution by which the very core of the Constitution is discarded (Emphasis added).

³⁹ *Ibid*

⁴⁰ *M. Nagaraj, Supra.*

6.25 Articles 14, 19 and 21 represent the fundamental values and form the basis of rule of law, which is a basic feature of the Constitution.

6.26 For instance, Parliament, in exercise of its amending power under Article 368, can make additions in the three legislative lists contained in the Seventh Schedule of the Constitution, but it cannot abrogate all the lists as that would abrogate the federal structure, which is one of the basic features of the Constitution.

6.27 To qualify to be a basic structure it must be a "*terrestrial concept having its habitat within the four corners of the Constitution.*" What constitutes basic structure is not like "a twinkling star up above the Constitution." It does not consist of any abstract ideals to be found outside the provisions of the Constitution. The Preamble no doubt enumerates great concepts embodying the ideological aspirations of the people but these concepts are particularised and their essential features delineated in the various provisions of the Constitution. It is these specific provisions in the body of the Constitution which determine the type of democracy which the founders of that instrument established; the quality and nature of justice, political, social and economic which they aimed to realise, the content of liberty of thought and expression which they entrenched in that document and the scope of equality of status and of opportunity which they enshrined in it. These specific provisions enacted in the Constitution alone can determine the basic structure of the Constitution. These specific provisions, either separately or in combination, determine the content of the great concepts set out in the Preamble. It is impossible to spin out any concrete concept of basic structure out of the gossamer concepts set out in the Preamble. The specific provisions of the Constitution forms the yarn from which the basic structure has to be woven.

6.28 In *Supreme Court Advocates on Record Association v. Union of India*, AIR 2016 SC 117, the Supreme Court held that there are declared limitations on the amending power conferred on Parliament which cannot be breached. Breach of a single provision of the Constitution is sufficient to render the entire legislation *ultra vires* the Constitution. The Court held that the basic structure of the Constitution includes supremacy of the Constitution, the republican and democratic form of Government, the federal character of distribution of powers, secularism, separation of powers between the Legislatures, Executive and the Judiciary, and independence of the Judiciary⁴¹.

6.29 Thus, 'Basic' means the base of a thing on which it stands and on the failure of which it falls. Hence, the essence of the 'basic structure of the Constitution' lies in such of its features, which if amended would amend the very identity of the Constitution itself, ceasing its current existence. It, as noted above is, not a "vague concept" or "abstract ideals found to be outside the provisions of the Constitution". Therefore, the meaning/extent of 'basic structure' needs to be construed in view of the specific provision(s) under consideration, its object and purpose, and the consequences of its denial on the integrity of the Constitution as a fundamental instrument of governance of the country.

i) Right of the People qua the Elections

6.30 Democracy is governance by the people. It is a continual participative operation, not a cataclysmic, periodic exercise. India has adult franchise and general elections as constitutional

⁴¹ See also: *Samsher Singh v. State of Punjab*, AIR 1974 SC 2192; *Union of India v. Sankalchand Himatlal Sheth*, (1977) 4 SCC 193; and *Naval Kishore Mishra v. High Court of Judicature at Allahabad*, AIR 2015 SC 1332.

compulsions. 'The right of election is the very essence of the Constitution'. The heart of the Parliamentary system is free and fair elections periodically held, based on adult franchise, although social and economic democracy may demand much more.⁴²

6.31 A democracy runs smooth on the wheels of periodic and pure elections. Elections are the barometer of democracy and the contestants the lifeline of the Parliamentary system and its set up.⁴³

6.32 In a democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens. Democracy based on "free and fair elections" is regarded as a basic feature of the Constitution⁴⁴.

ii) Right to Vote and Right to Elect (Right to Caste Vote)

6.33 Article 326 provides that 'elections to House of the People and the Legislative Assemblies of States to be on the basis of adult suffrage' thus securing the right to vote to an Indian citizen, who is not less than eighteen years of age, subject to certain conditions. The Apex Court had consistently held⁴⁵ that right to vote, though fundamental to democracy, is, anomalously enough, not a Fundamental right but a Constitutional right, a Common Law right or a Civil right . It is only a statutory right; so is the right to be elected; so is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to

⁴² *Mohinder Singh Gill & Ors. v. The Chief Election Commissioner & Ors.*, AIR 1978 SC 851.

⁴³ See: *Chanda Singh v. Choudhary Shiv Ram Verma & Ors.*, AIR 1975 SC 403; and *S.R. Chaudhuri v. State of Punjab & Ors.*, AIR 2001 SC2707.

⁴⁴ Vide: *Kesavananda Bharati v. Union of India*, AIR 1973 SC 1461; and *Kuldip Nayyar & Ors. v. Union of India & Ors.*, AIR 2006 SC 3127.

⁴⁵ Vide: *N. P. Poonuswami v. Returning Officer, Namakkal Constituency*, AIR 1952 SC 64; *Kabul Singh v. Kundan Singh & Ors.*, AIR 1970 SC 340; *Jyoti Basu & Ors. v. Debi Ghosal & Ors.*, AIR 1982 SC 983; *Rama Kant Pandey v. Union of India*, AIR 1993 SC 1766; *Mohan Lal Tripathi v. Distt Magistrate Rae Bareilly*, AIR 1993 SC 2042; *Thampanoor Ravi v. Charupara Ravi & Ors.* AIR 1999 SC 3309; and *People's Union for Civil Liberties v. Union of India*, AIR 2003 SC2363;

dispute an election. Thus, these statutory creations are subject to statutory limitation.

6.34 Highlighting the distinction between the right to vote and making a choice of a certain candidate via that vote, the Apex Court in *Kuldip Nayar* (supra), held that the casting of vote in favour of one or the other candidate tantamounts to expression of opinion and preference, and that the final stage in the exercise of voting right marks the accomplishment of freedom of expression of the voter; and, that is where Article 19(1)(a) is attracted. The Court further held that the right to vote originates from the Constitution and in accordance with the constitutional mandate contained in Article 326, the right has been shaped by the statute, i.e. the Representation of People Act, 1951. The right to vote, therefore though not a fundamental right is certainly a constitutional right.

6.35 Further, in *Desiya Murpokku Dravida Kazhagam (DMDK) & Anr. v. Election Commission of India*, (2012) 7 SCC 340 the Court held that "...every citizen of this country has a constitutional right both to elect and also be elected to any one of the legislative bodies created by the Constitution". The right to participate in electoral process, either as a voter or as a candidate is a constitutional right.

6.36 Reiterating the above in *Rajbala & Ors. v. State of Haryana & Ors.* AIR 2016 SC 33, the Supreme Court held the "right to vote" if not a fundamental right is certainly a "constitutional right", and "it is not very accurate to describe it as a statutory right, pure and simple", Further, the freedom of voting i.e. choosing a candidate to vote for, as distinct from the right to vote, is a facet of the fundamental right enshrined in Article 19(1)(a).

6.37 In *Government of NCT of Delhi v. Union of India & Anr.*, (2018) 8 SCALE 72, the Supreme Court has categorically held that

“Though this **right to vote is not a fundamental right**, yet it is a right that lies at the heart of democratic form of government. The right to vote is the most cherished value of democracy as it inculcates in the people a sense of belonging.”[Emphasis added]

6.38 Thus, in view of the above it can be concluded that the right to vote or contest elections is not a fundamental right, it is at most a Constitutional right. The freedom of voting i.e. choosing a candidate to vote for, however, amounts to freedom of expression and thus, comes under the ambit of Article 19(1)(a) of the Constitution.

iii) Right to Contest Elections

6.39 With respect to the right to contest in Panchayat elections, the Supreme Court in *Javed & Ors. v. State of Haryana & Ors.*, AIR 2003 SC 3057 held that in view of Part IX of the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right i.e. a right originating from the Constitution and given shape by statute. The Court further noted that "right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute

6.40 In *K. Krishna Murthy (Dr.) & Ors. v. Union of India & Anr.*, (2010) 7 SCC 202, the Constitution Bench of the Supreme Court recorded that “it is a well-settled principle in Indian Law, that the right to vote and contest elections does not have the status of fundamental rights. Instead, they are in the nature of legal rights. ”

6.41 In *Rajbala* (supra), the Supreme Court clarified that an examination of the scheme of the Constitution indicates that every person who is entitled to be a voter by virtue of the declaration contained in Article 326 is not automatically entitled to contest in those elections. Certain further restrictions are imposed on a voter's right to contest elections. These various provisions, by implication, create a constitutional right to contest elections to these various

constitutional offices and bodies. Such a conclusion is irresistible since there would be no requirement to prescribe constitutional limitations on a non-existent constitutional right.

6.42 Subsequently, the same bench of the Apex Court in *Alagaapuram R. Mohanraj & Ors. v. Tamil Nadu Legislative Assembly & Ors.*, AIR 2016 SCC 867, unequivocally held that the right to contest an election to the legislative bodies established by the Constitution was **not a fundamental right**. Acquisition of the membership depends on the decision of the electorate and is conferred by a process established by law. Even after election, the tenure is limited. Fundamental rights do not come into existence upon the volition of others. They inhere in the citizens and are capable of being exercised independently without the need for any action or approval of others subject only to the restrictions imposed by law.

6.43 Thus, in view of the above judicial pronouncements, it stands clarified that **the right to vote and the right to contest election are not fundamental rights. These are the rights germinating from the Constitution, and are, therefore, constitutional rights, given further shape by the Representation of People Act, 1951, thereby also making them statutory rights.** The foregoing discussion leads to the further conclusion that given their placement in the Constitutional scheme and their objects and purposes, these rights are not included in the 'basic structure' of the Constitution.(emphasis added)

C. Federalism

6.44 In a federal system of government there is a division of power between the Central (Federal) Government and State Governments, in contrast to the unitary system of Government. The Constitution of United States is one such example which is federal in

nature. In case of the United States the separate and independent States first formed a Confederation (1781) and then transformed into a Federation (1789). The States have their own Constitutions, the federal Constitution is the supreme law and binding on all the States. Any amendment to the American Constitution is required to be ratified by three-fourths of the States.

6.45 Dickey⁴⁶ calls it a political contrivance for a body of States which desires a Union but not unity. Federalism, therefore, is a concept which unites separate States into a Union without sacrificing their own fundamental political integrity⁴⁷.

6.46 The Indian Constitution provides for a dual system of government consisting of a Union government and a number of State Governments duly created by the Union through various State Reorganisation Acts; and distributes powers between them. Further, the Constitution is supreme, and the said Governments derive their powers from it. This supremacy of the Constitution is guarded by the Superior Courts. The power to interpret the Constitution and declare any act of the Union or State Governments which violates the provisions of the Constitution as null and void is vested in the Supreme Court and the High Courts.

6.47 The foundation for the federal setup of India was laid down in the Government of India Act, 1935, providing for distribution of legislative powers between the Union and the States, which was subsequently adopted in the Constitution of India as three lists under the Seventh Schedule. **Indian federalism is not territory related**

⁴⁶ A. V. Dicey, *Law of the Constitution* (London, 1927).

⁴⁷ See: *S.R Bommai v. Union of India* , AIR 1994 SC 1918.

rather it provides systematic and structural principles connecting various provisions of the Constitution⁴⁸.

6.48 In the Constituent Assembly, while moving a Draft Constitution, Dr. B R Ambedkar said:

The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation and that the Federation not being the result of an agreement, no State has the right to secede from it. The federation is a Union because it is indestructible. Though the **country** and the people **may be divided into different States for convenience of administration**, the country is one integral whole, its people a single people living under a single *imperium* derived from a single source⁴⁹ (Emphasis added).

6.49 Dr. Ambedkar, while moving draft of Article 277A in the Constituent Assembly, stated that even though the Centre has been given powers to override the provinces, our Constitution is federal in nature. However, he further explained the limitation of the federalism envisaged in the Constitution by stating that “*when we say that the Constitution is a Federal Constitution it means this, that **the Provinces are as sovereign in their field which is left to them by the Constitution as the Centre is in the field which is assigned to it.***” (Emphasis added).

⁴⁸ *Automobile Transport (Rajasthan Limited) v. State of Rajasthan*, AIR 1962 SC 1406; *ITC Limited v. Agricultural Produce Market Committee*, AIR 2002 SC 852; *State of West Bengal v. Union of India*, AIR 1963 SC 1241; *State of Rajasthan v. Union of India*, AIR 1977 SC 1361; and *Kuldip Nayar v. Union of India*, AIR 2006 SC 3127.

⁴⁹ Motion *re*. Draft Constitution, 4th November 1948; Constituent Assembly Debates Official Report, Vol. VII Reprinted by Lok Sabha Secretariat, New Delhi, Sixth Reprint, 2014.

6.50 Shri K M Munshi, while speaking on the superintendence, direction and control of elections (i.e., Art. 289 of the draft Constitution) in the Constituent Assembly, stated as below:

The Centre should have a larger measure of control over the affairs which affect the national existence as a whole. Even in America in which it was not a question of the Centre decentralising itself, but thirteen, independent States coming together first in a sort of confederacy, and then in a federation, what do we find? After the depression of 1929, agriculture, education, industry, unemployment, insecurity, all passed gradually by various means under the control or influence of the Centre. There, the Constitution is water-tight and they had to go round and round in order to achieve this result. There cannot be smaller units than a nation today; even a nation is a small unit in the light of the international situation. This idea that provincial autonomy is the inherent right of the Provinces, is illusory. Charles Merriam one of the leading political thinkers in America in his book called "The Need for Constitutional Reform", with reference to the States of U.S.A., says, " Most State do not now correspond to economic and social unities and their position as units of organisation and representation may be and has been seriously challenged." In our country the situation is different. From the Councils Act of 1833 till the Government of India Act of 1935, there has been central control over the provinces and it has proved wholesome. The strength, the power and the unity of public life which India has developed during the last one hundred years is mainly due to centralised administration of the country. I would warn the Members how are still harping on the same subject to remember one supreme fact in Indian history that the glorious days of India were only the days, whether under the Mauryas or the Moghuls, when there was a strong central authority in the country, and the most tragic days were those when the central authority was dismembered by the provinces trying to resist it. We do not want to repeat that fatal mistake. We want that the provincial sphere should be kept intact, that they should enjoy a large measure of autonomy but

only subject to national power. When national danger, comes, we must realise that the Centre alone can step in and safeguard against the chaos which would otherwise follow. I therefore submit that this argument about Provincial Autonomy has no a priori theoretical validity. We have to judge every subject or matter from the point of view of what the existing conditions are and how best we can adjust the controls, either Central or Provincial, to secure maximum national efficiency⁵⁰.

i) Supreme Court on Indian Federalism

6.51 The Supreme Court has consistently held that federalism is one of the basic structures of the Indian Constitution; though it presents the combination of a federal structure with unitary features, yet India is not a Federal State in the traditional sense of the term. The Court further observed that it does contain some traditional characteristics of the federal system, namely supremacy of Constitution, Division of Power between the Union and the States and existence of an Independent Judiciary⁵¹.

6.52 In *Re. Berubari Union and Exchange of Enclaves Reference under Article 143(1) of the Constitution of India*, AIR 1960 SC 845, the Supreme Court observed:

Unlike other federations, the Federation embodied in the said Act was not the result of a pact or Union between separate and independent communities of States who came together to certain common purposes and surrendered a part of their sovereignty. The constituent units of the federation were deliberately created and it is significant

⁵⁰ Constituent Assembly Debates, 16 June 1949, Vol. VIII, 2014, Sixth Reprint, Lok Sabha Secretariat, New Delhi.

⁵¹ Vide: *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461; *Satpal v. State of Punjab & Ors.*, AIR 1981 SC 2230; *Pradeep Jain v. Union of India*, AIR 1984SC 1420; *Ganga Ram Moolchandani v. State of Rajasthan*, AIR 2001 SC 2616; and *ITC Ltd. v. Agricultural Produce Market Committee*, AIR 2002 SC 852.

that they, unlike the units of other federations, had no organic roots in the past. Hence, in the Indian Constitution, by contrast with other Federal Constitutions, the emphasis on the preservation of the territorial integrity of the constituent States is absent.

6.53 In *State of West Bengal v. Union of India*, AIR 1963 SC 1241, the Supreme Court held that the Indian Constitution did not propound a principle of absolute federalism. Though the authority was decentralized, this was mainly due to the arduous task of governing the large territory. The court outlined the characteristics, which highlight the fact that the **Indian Constitution is not a 'Traditional Federal Constitution'**. *Firstly*, there is no separate Constitution for each State as is required in a traditional federal setup. The Constitution is the supreme document, which governs all the States. *Secondly*, the Constitution can be altered by the Union Parliament alone and the constituent States have no power to alter it.

6.54 In *Union of India v. H.S. Dhillon*, AIR 1972 SC 1061, the Court took note of the fact that, under the Government of India Act, 1935, the residuary power was not given either to the Union Legislature or to the Provincial Legislatures; but under the Constitution, by virtue of Article 248, read with Entry 97 in List I of the Seventh Schedule, the residuary power has been conferred on the Union. This arrangement substantially differs from the scheme of distribution of powers in the Constitution of United States of America where the residual powers are with the States.

6.55 In *State of Karnataka v. Union of India*, AIR 1978 SC 68, the Supreme Court observed that the Constitution has, in it, not only features of a **'pragmatic federalism'** which, while distributing legislative powers and indicating the spheres of governmental powers of State and Central Governments, is overlaid by strongly 'unitary' features. This is particularly exhibited by lodging in Parliament the

residuary legislative powers, and in the Central Government the executive power of appointing certain constitutional functionaries including High Court and Supreme Court Judges. The Central Government is empowered to issue appropriate directions to the State Governments and even displace the State Legislatures and the Governments in emergency situations, vide Articles 352 to 360 of the Constitution. The expression “federation” or “federal form of government” has no definite meaning. It broadly indicates a division of powers between a Central (federal) Government and the units (States) comprised therein. The Court also observed that the Constitution is not of a federal character where separate, independent and sovereign States could be said to have joined to form a nation as in the case of United States of America or in some other countries of the world⁵².

6.56 In *S. R. Bommai v. Union of India (Supra)*, the Court held that the Indian Constitution is ‘**quasi federal**’ because it is a mixture of the federal and unitary elements, leaning more towards the latter. The Court further observed that “*federal State is a political convenience intended to reconcile national unity and integrity and power with maintenance of the State’s right. The end aim of the essential character of the Indian federalism is to place the nation as a whole under control of a national Government, while the States are allowed to exercise their sovereign power within their legislative and coextensive executive and administrative sphere. The common interest is shared by the Centre and the local interests are controlled by the States.*” Thus, the Court explained the essence of federalism as the “distribution of power of the State among its coordinate bodies”, each “organised and controlled by the Constitution”.

⁵² See also: *State of Rajasthan v. Union of India*, AIR 1977 SC 1361.

6.57 In *Rameshwar Prasad v. Union of India*, AIR 2005 SC 4301, the Supreme Court held that “*the expression federation or federal form of government has no fixed meaning. It broadly indicates a division of powers between a Central (Federal) Government and the units (States) comprised therein.*”

6.58 Indian Constitution is not true to any traditional pattern of federalism. The model is broadly based on federal form of government but with a tilt towards the Union. In *Kuldip Nayar & Ors. v. Union of India*, AIR 2006 SC 3127, the Supreme Court observed:

The Indian Union has been described as the “holding together” of different areas by the Constitution-framers, unlike the “coming together” of constituent units as in the case of USA and the confederation of Canada. Hence, the Rajya Sabha was vested with a contingency-based power over the State Legislatures under Article 249, which contributes to the “quasi-federal” nature of the Government of the Indian Union.

6.59 In *Jindal Stainless Ltd. & Ors. v. State of Haryana & Ors.*, AIR 2016 SC 5617, the Court observed that the legal position appears to be fairly well settled that the Constitution provides for a quasi-federal character with a strong bias towards the Centre⁵³.

6.60 While stressing upon the need of a strong Centre, the Supreme Court in *Union of India v. V Sriharan*, (2016) 7 SCC 1, observed:

To be alive to the real nature of federal set-up we have in our country, which is not comparable with any other country and having extraordinarily different features in different States, say different religions, different castes, different languages,

⁵³ See also: *State Bank of India v. Santosh Gupta* AIR 2017 SC 25.

different cultures, vast difference between the poor and the rich, not a case of independent States coming together to form a federation as in the case of the United States of America. Therefore, the absolute necessity to establish a strong Centre to ensure that when it comes to the question of Unity of the Nation either from internal disturbance or any external aggression, the interest of the Nation is protected from any evil forces. The establishment of a strong Centre was therefore a necessity as felt by our Founding Fathers of the Nation. In this context Article 355 of the Constitution requires to be noted under which the Centre is entrusted with the duty to protect every State against external aggression and internal disturbance and also to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution.

6.61 In *UCO Bank v. Dipak Debbarma*, (2017) 2 SCC 585, the Court noted the federal character of the Constitution, and the need to maintain the federal balance which has been envisaged in the Constitution to prevent any usurpation of power either by the Centre or the States.

6.62 The Supreme Court in *Government of NCT of Delhi v. Union of India & Anr.*, (2018) 8 SCALE 72, decided on July 04, 2018, held that federalism is a type of governance in which the political power is divided into various units i.e. the Centre/Union and the States; defining the term ‘federalism’ “as a form of government in which there is division of powers between one general/central and several regional authorities, each within its sphere interdependent and co-ordinate with each other”.

6.63 The Apex Court further noted that the States under the constitutional scheme “were not carved as separate islands each having a distinct vision which would unnecessarily open the doors for a contrarian principle or gradually put a step to invite anarchism”; and, observed that the spirit of ‘**collaborative federalism**’ requires

coordination amongst the Union and the State Governments, which in turn requires the Union and the States to adopt a collaborative/**cooperative** federal architecture.

6.64 The Apex Court in this judgment also discussed '**pragmatic federalism**', and noted that while the essential characteristics of federalism such as duality of governments, distribution of powers between the Union and the State Governments, supremacy of the Constitution, existence of a written Constitution and most importantly, authority of the Courts as final interpreters of the Constitution are all present under our constitutional scheme; however, the Constitution also embodies certain features which can be perceived as deviations from federalism, also giving it a unitary character. And, in this manner, the Court noted that, ours is a form of federalism that incorporates the traits and attributes of sensibility and realism. That "‘pragmatic federalism’, for achieving the constitutional goals, leans on the principle of permissible practicability."

6.65 The political sovereignty is distributed between the Union and the States with greater weightage in favor of the Union. Another reason which mitigates the theory of the supremacy of States is that there is no dual citizenship in India. Thus, the Court concluded that **the structure of the Indian Union as provided by the Constitution is centralised, with the States occupying a secondary position vis-à-vis the Centre**; hence, the Centre possesses the requisite powers to acquire properties belonging to States.

ii) Indian Constitution – Unitary or Federal?

6.66 According to Constitutional experts, the Constitution provides for a **quasi-federal structure**, which is **federal in form** but **unitary in spirit**. During a debate on the supremacy of the House of the People with regard to passage of Bills, Shri Brajeshwar Prasad,

one of the Members of the Constituent Assembly, stated that our country adopted federalism to tide over the challenge of two-nation theory and to persuade the Indian Princes to surrender part of their sovereignty. He said that the Constitution is “partly federal and partly unitary, and more unitary than federal in character.”⁵⁴

6.67 Federalism as embedded in the Constitution is limited to the legislative competence of the Union and the States on the three lists of the Seventh Schedule. The Indian Constitution does not provide for an absolute federation in strict traditional sense. The power regarding one of the important aspects of federalism, i.e., **the territorial integrity of the States**, lies with the Central Government. For example, Art. 3 gives the Union Government complete liberty to reorganise the States in any manner it desires.

6.68 In light of the argument placed before the Commission time and again that the Indian Constitution is federal in nature and simultaneous elections will affect Federalism, thereby affecting the basic structure, the Commission deems it proper to analyse the issue in detail.

6.69 **Unitary nature of the Constitution**

- I. The Preamble of the Constitution refers to Fraternity, Unity and Integrity of the nation. In order to give effect to the same the constitution leans in the favour of a strong centre while distributing the powers and functions between the centre and the States.

⁵⁴ Constituent Assembly Debates, 20 May 1949, Vol. VIII, 2014, Sixth Reprint, Lok Sabha Secretariat, New Delhi.

- II.** Article 1 of the Constitution speaks of the “**Union of States**” and the word ‘Federation’ is missing. Thus our structure of governance is altogether different from the federal structure of the USA, Canada and Australia, where State Units have all powers except for the specified powers such as Finance, Defence, Foreign affairs, Diplomatic or Consular representation, United Nation, War and Peace and Citizenship etc., which are with the Federal Government.
- III.** The Parliament is empowered to admit into the union, or establish, new States on such terms and conditions as it thinks fit (**Article 2**).
- IV.** The Union Parliament is empowered to form a new State by reorganising boundaries of existing States, increase the area of any State, diminish their areas or alter their boundaries or even their names (**Article 3**).
- As a consequence, the Reorganisation of States, 1956 was enacted and in exercise of the power under the said Act, new States were carved out and various changes in the territories of particular States were made.
- V. Single Citizenship:** It provides for single citizenship ,an integrated judiciary, uniformity at the top levels, and above all gives greater powers to the Union Government (**Article 5**).
- VI. Strong Union Government:** During the President’s Rule or in case of proclamation of a national emergency, the Union Government can legislate on the subjects in the State List and can also control the executive powers of the State Government.
- VII. Union Law prevails:** In case there is a conflict between a Union law and a State law, the State Law shall be void to the extent of the repugnancy. (**Article 254**).
- VIII. Governors** of the States are appointed by the President. (**Article 155**).

- IX. No Separate Constitution for the States:** States do not have separate Constitution of their own. They derive their powers from the same Constitution as the Centre, i.e., the Constitution of India.
- X. Judicial System:** There is a **Single Judicial System in India**. The highest judicial forum is the Supreme Court which lays down the law of the land (**Art. 141**).
- XI.** While the Parliament has power to legislate on any subject of the Union List, the residuary powers also vest with the centre. The purpose of conferring residuary power on the Union has been to create a strong centre. (**Article 248 r/w Entry 97 List I**).
- XII.** Union control is considered necessary for the purpose of achieving rapid industrial and economic progress.
- XIII.** In national interest, with two-third majority, Rajya Sabha can authorise Parliament to make laws on any subject in the State List (**Article 249**).
- XIV.** In the event of National Emergency, Parliament has the power to make laws with respect to the subjects in the State List also (**Article 250**).
- XV.** As against a federal Constitution, which contains internal checks and balances, the Indian Constitution confers supreme power upon the High Courts and Supreme Court to invalidate any action which violates any provision of the Constitution.
- XVI.** On the request of two or more States, Parliament can legislate on a particular subject in the State List (**Article 252**).
- XVII.** The Parliament can make laws on subjects of State List to comply with the International Agreements, Treaties (**Article 253**).

- XVIII.** The Parliament can establish any additional courts for better administration of laws made by the Parliament or any existing laws with respect to a matter falling within the Union List (**Article 247**).
- XIX.** The Parliament has extraordinary powers to make laws for extra territorial operations and to make laws on any issue relating to any of the Entry of List I and List III of the Seventh Schedule (**Article 245**).
- XX.** The distribution of powers is to facilitate local governance by the States and national policies to be decided by the Centre.
- XXI.** The Parliament can alter / omit / add the entries in any of the three Lists of the Seventh Schedule to the Constitution. By the Constitution (One Hundred and First Amendment) Act, 2016, the Parliament introduced the Goods and Services Tax. Large number of Articles dealing with power of the Centre and States of imposing taxes, e.g. Arts. 248, 249, 250, 268, 269, 270, 271, 286, 366 and, even Article 368, have been amended. It further amended the Seventh Schedule, wherein large number of subjects in Entry No.84 of List I have been substituted. Entry No.52 of List II has been amended; Entry No.54 of List II has been substituted; Entry No.55 of List II stood omitted; and Entry No.62 of List II has also been substituted. In Article 368 of the Constitution, in Clause(2), in the proviso, in Clause (a), for the words and figures “article 162 or article 241”, the words, figures and letter “article 162, article 241 or article 279A” were substituted. The Amendment Act was ratified by more than one-half of the States, and consequently, the Goods and Services Tax Act, 2017 came into force.
- XXII.** The States have to depend largely on financial assistance on Union. States are in certain cases allowed to collect and retain duties imposed by the Union (**Articles 268-273**).

- XXIII.** Union may give grants to certain States (**Article 275**), Central Government may give financial assistance to a State for major projects (**Article 282**).
- XXIV.** State Legislature cannot impose a tax on the sale or purchase of goods where such sale or purchase takes place outside the State or in the course of import of goods or export of goods, out of the territory of India (**Article 286**).
- XXV.** State Legislature cannot impose any restriction on the free trade, commerce and intercourse throughout the territory of India (**Articles 301 & 303**).
- XXVI.** The Constitution provides for federal supremacy and thus if any entry in any of the three Lists overlaps, the entry in List I will prevail. (**Article 246**).
- XXVII.** The executive power of the Union extends to giving of such directions to the State as may appear necessary and it will be the duty of the State concerned to carry out the same (**Article 256**).
- XXVIII.** The Executive power of the Union extends also to construct and maintain the means of communication as part of its functions with respect to naval, military and air force (**Article 257**).
- XXIX.** The President can entrust functions, duties in relation to any matter to which the executive power of the Union extends to the State Government or to its officers with the consent of the Government (**Article 258**).
- XXX.** The Governor of a State with the consent of the Government of India can entrust to the Government of India or to its officers any function in relation to any matter to which the executive powers of the State extends. (**Article 258 A**).
- XXXI.** The Parliament can make law(s) for adjudication of any dispute or complaint with respect to the use, distribution or

control of waters of any inter-State river or river valley
(Article 262).

XXXII. Where any State fails to comply with any directions given in the exercise of the executive power of the Union the President can hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution, meaning thereby, the States are bound to abide by the directions of the Central Government **(Article 365).**

6.70 In view of the above, it is evident that the Indian Constitution is not federal in a strict legal sense. The term 'Federalism' is being used in liberal sense as the Constitution provides for division of legislative powers. Thus, it is called 'quasi-federalism', 'pragmatic federalism', 'collaborative federalism' or 'cooperative federalism'. The States have been carved out for administrative convenience. The Central Government on assessment of the situation can either move either on the federal or unitary basis.

6.71 The Indian Union is federal, but the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically coordinated, and socially uplifted. In such a system, the States cannot stand in the way of legitimately and comprehensively planned development of the country in the manner directed by the Central Government. The Constitution of India creates a Central Government which is "amphibian", in the sense that it can move either on the federal or unitary plane according to the needs of the situation and circumstances of the case. An assessment of the "situation" in which the Union Government should move either on the federal or unitary plane is a matter for the Union Government itself to

decide and no one else. A conspectus of the provisions of our Constitution is more unitary than federal⁵⁵.

6.72 A similar view has been reiterated by the Supreme Court in *Shamsher Singh v. State of Punjab*, AIR 1974 SC 2192, observing that the Parliamentary system of “quasi-federalism” was accepted, rejecting the substance of Presidential style of Executive. The Constitution is both unitary as well as federal depending on the need of the circumstances.

6.73 At this juncture, it becomes necessary to mention that the Commission, in its earlier Reports proceeded on the premise that India has a federal structure. It was for the simple reason that the issues involved therein were of legislative competence under List II of Seventh Schedule to the Constitution. This should not be confused with the unitary or federal nature of the Constitution discussed in this Report as the issues involved in simultaneous elections are within the legislative competence of Parliament.

⁵⁵*State of Rajasthan v. Union of India*, AIR 1977 SC 1361

CHAPTER- 7
ALLEGATION OF COLOURABLE LEGISLATION IN THE CONTEXT
OF SIMULTANEOUS ELECTIONS

7.1 It has been contended by large number of persons / associations that the whole exercise of changing the law for holding the simultaneous elections is a colourable exercise of power as it is with the *mala fide* object to change the form of Government.

7.2 The question does arise as to whether there can be allegation of *mala fide* against the legislature in enacting a particular enactment / law or amending the Constitution. The issue is no more *res integra*. It is to be noted that any expression pointing out at colourable exercise of legislative power or fraud on the Constitution, would simply mean the incompetence of the legislature to enact a law.⁵⁶ The Supreme Court, in *State of Punjab v. Gurdial Singh*, AIR 1980 SC 319, explained as to what amounts to colourable exercise of power, observing that when power is exercised in bad faith to attain ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal, it is called colourable exercise of power.

7.3 In *R.S. Joshi v. Ajit Mills Ltd.*, AIR 1977 SC 2279, the Court held that “*malice or motive is beside the point and it is not permissible to suggest parliamentary incompetence on the score of mala fides*”.

7.4 In *K.C. Gajapati Narayan Deo v. State of Orissa*, AIR 1953 SC 375, the Constitution Bench of the Supreme Court, while dealing with the issue held that the doctrine of colourable legislation does not

⁵⁶ *R.S. Joshi v. Ajit Mills Ltd.*, AIR 1977 SC 2279.

involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine revolves itself into the question of the competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant.

7.5 In *K. Nagaraj v. State of Andhra Pradesh*, AIR 1985 SC 551, the Supreme Court observed that:

...the ordinance-making power being a legislative power, the argument of mala fides is misconceived. The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. Its reasons for passing a law are those that are stated in the Objects and Reasons and if no reasons are so stated, as appear from the provisions enacted by it. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This kind of 'transferred malice' is unknown in the field of legislation.

7.6 Similarly, in *G. C. Kanungo v. State of Orissa*, AIR 1995 SC 1655 the Court categorically held that the "mala fides or ulterior motives attributed to a State Legislature in making a law within its competence can never make such law unconstitutional, is well-settled."

7.7 In *Naga People's Movement of Human Rights v. Union of India*, AIR 1998 SC 431, the Court observed:

The use of expression "colourable legislation" seeks to convey that by enacting the legislation in question the Legislature is seeking to do indirectly what it cannot do directly. But ultimately the issue boils down to the question whether the Legislature had the competence to enact the Legislation because if the impugned Legislation falls within the competence of the Legislature the question of doing something indirectly which cannot be done directly does not arise.

7.8 In *State of Kerala & Ors. v. Peoples Union for civil Liberties, Kerala State Unit & Ors.*, (2009) 8 SCC 46, the Supreme Court held as under:

The doctrine of 'Colourable Legislation' is founded on legislative competence of the State. An act of mala fide on the part of the legislature also is beyond the province of judicial review. In fact **no motive can be attributed to the Legislature for enacting a particular statute**. The question in regard to the constitutionality of the statute must be considered keeping in view only the provisions of the Constitution. (Emphasis added)

7.9 In *B.P. Singhal v. Union of India*, (2010) 6 SCC 331, the Constitution Bench of the Supreme Court held that “*mala fides* may be a ground for judicial review of administrative action but is not a ground for judicial review of legislations or constitutional amendments”.

7.10 The same view has been reiterated by the Supreme Court in *Board of Trustees, Ayurvedic and Unani Tibia College v. State of Delhi (now Delhi Admn.)*, AIR 1962 SC 458; *R.M.D.C. Mysore Private Limited v. State Of Mysore*, AIR 1962 SC 594; *A.R.P., Maharashtra v. Ranjit P. Gohil*, AIR 2003 SC 1266; *Dharam Dutt & Ors. v. Union of India*, AIR 2004 SC 1295; *State of Himachal Pradesh v. Narain Singh*, (2009) 13 SCC 165; *State of Tamil Nadu v. K. Shyam Sunder*, AIR 2011 SC 3470; and *Cheviti Venkanna Yadav v. State of Telangana*, AIR 2016 SC 4982.

7.11 In view of the above decisions the law can be summarised to the effect that the validity of a statute or constitutional amendment can be examined only on the ground of legislative competence or on the anvil of the constitutional principles, and the issue of mala fide cannot be raised against the legislature for enacting a statute or amending the Constitution. If the legislature is competent to enact a

particular law, the motives which impelled it towards such an enactment are irrelevant. On the other hand, if the legislature lacks competence, the question of motive does not arise at all. Whether a statute is constitutional or not, is thus, always a question of competence/power of the legislature to enact that statute. Therefore, the argument that it would be a colourable legislation lacks merit.

CHAPTER – 8
ISSUES IN IMPLEMENTING SIMULTANEOUS ELECTIONS

8.1 From 1951-1967, general elections to the House of the People and all the State Legislative Assemblies were held simultaneously; However, this practice got disrupted after 1967, due to premature dissolution of some of the Legislative Assemblies in 1968 and 1969 and the House of the People in 1970.⁵⁷ Now, synchronisation of these elections will require amendment in the relevant provisions of the Constitution and certain provisions of other Statues that will provide the required framework for its implementation. At the same time to ensure that this synchronisation is not hampered later or affected adversely, and, therefore, necessary care is to be taken to provide for stability to the House of the People and State Assemblies.

8.2 Holding simultaneous elections will bring with it certain requirements as given below, which have been duly addressed in the following paragraphs:

- i. Curtailment and extension of terms of the House of the People/ State Legislative Assemblies;
- ii. Amendment to the relevant provisions of the Constitution
- iii. Amendment to the Representation of People Act, 1951
- iv. The ratification by the States to these Constitutional amendments.

8.3 Once the elections are synchronised i.e. simultaneous elections are restored, it will be necessary to ensure that the

⁵⁷See Annexure III.

synchronisation continues and does not get disrupted. Disruption is likely to take place on the following grounds which need to be taken care of:

- i. No-Confidence Motion
- ii. Hung Parliament / Assembly
- iii. Budgetary Defeat

8.4 After taking care of the impediments and possible causes of disruptions to the House of the People / State Assemblies, in order to ensure the continuity of cycle of simultaneous elections, it is also important to deal with the concept of 'remainder term of the House(s)'.

A. Requirements for Synchronisation of Elections

i) Curtailment and Extension

8.5 Articles 83(2) and 172(1) of the Constitution deal with the tenure of the House of the People and the State Assemblies providing that the term will be of five years 'unless sooner dissolved' by the President and the State Governors respectively. In the past, a Private Member Bill was introduced in the Lok Sabha which suggested amendments in Articles 172 and 326 of the Constitution.⁵⁸ Similarly, another Constitution (Amendment) Bill, to increase the feasibility of simultaneous elections, introduced in the Council of states, suggested appropriate amendments in Articles 83 and 172 of the Constitution⁵⁹.

⁵⁸ Constitutional Amendment Bill (2017), Bill No. 245 of 2017, introduced in the Lok Sabha by Shri Rajiv Pratap Rudy, M.P.

⁵⁹ Constitution (Amendment) Bill (2017), Bill No. IX of 2017, introduced in the Rajya Sabha by Shri Narayan Lal Panchariya, M.P.

8.6 The Commission is of the view that, to achieve the object of synchronisation of the elections to the House of the People and the State Legislative Assemblies, as a one-time measure, the term of the House of the People or State Legislative Assemblies may require curtailment or extension/enhancement. So far as curtailment of the term is concerned, the Constitution does provide an option for doing so voluntarily by virtue of the phrase ‘unless sooner dissolved’ and not by operation of law; but as far as the enhancement of the term is concerned, that will be possible only with an amendment to the Constitution.

8.7 By virtue of the phrase “unless sooner dissolved” there is no Constitutional hurdle in premature dissolution of the House of the People or the State Legislative Assemblies, before expiry of a full term of five years, voluntarily. Moreover, it may be observed that technically all the House of the People (till date) have been dissolved prior to completion of their actual five-year terms as the process of fresh elections gets completed before the expiry of their terms. In seven instances mid-term polls had to be conducted (Please see **Annexure – III**).

8.8 The Commission worked out a framework of elections to the State Legislative Assemblies to be synchronised with that of the House of the People to be held in 2019 and 2024 (It may be stated here that the elections to the Legislative Assembly of Jammu and Kashmir has not been considered by the Commission for synchronisation, owing to the fact that the term of the Assembly is for 6 years). The Commission came across the fact that elections to at least 13 State Assemblies, could be synchronised with the elections to the House of the People in the year 2019 which will require constitutional amendment to provide for curtailment and extension, both. Out of the thirteen States, five States, viz., Andhra Pradesh,

Arunachal Pradesh, Odisha, Sikkim and Telangana, are already scheduled with the elections to the House of the People. Elections to four State Legislative Assemblies, viz., Haryana, Jharkhand, Maharashtra and NCT of Delhi (Union Territory with Legislature), can also be held in 2019, subject their voluntarily agreeing to take recourse to Article 172(1) or by the operation of law. In case of the other four States, i.e., Chhattisgarh, Madhya Pradesh, Mizoram and Rajasthan, extension of the term of the House up to six months is required to attain synchronisation with the elections to the House of the People. Such an extension is permissible only under Art.356. This will also entail constitutional amendment.

8.9 In case of the remaining the sixteen States and Puducherry (Union Territory with Legislature), holding simultaneous elections in 2019 will be impracticable because their terms will have to be curtailed substantially to achieve this, particularly in the case of States like Uttar Pradesh, Gujarat and Karnataka, which went to polls only in 2017/2018. To tackle this situation, the Commission feels it appropriate that the elections to these State Legislative Assemblies be conducted in the end of 2021, which will be approximately midway in the term of the House of the People, assuming that the term of the Seventeenth House of the People begins in mid-2019. In such a scenario, the maximum period by which any State Assembly is to be extended is by thirteen months (in the case of Bihar) and the maximum period of curtailment is seventeen months (in the case of Karnataka). To achieve the object of complete synchronisation, it will have to be provided by transitory provisions in the Constitution that the term of the Assemblies so constituted after the elections proposed to be held in 2021, will be for 30 months or till June 2024, whichever is earlier. Thereafter, elections to the House of the People and the State Legislative Assemblies can be held every five years,

simultaneously. This will also require suitable constitutional amendment.

8.10 In case the above time frame is found to be not workable, **a second option** could be that once it is decided to synchronise the elections of 13 States along with the elections to the House of the People in 2019 and the rest of sixteen States and one Union territory with legislature in 2021, elections will be synchronised in such a manner that they are held only twice in five years – elections to the House of the People and twelve States and one Union territory with legislature in mid-2024 and elections to sixteen States and one Union territory with legislature in end of 2026. For details, please see **Annexure – IV**.

8.11 As stated hereinabove, for holding simultaneous elections, curtailment or extension/enhancement of the term of the State Legislative Assemblies is required. The Commission is well aware that the words ‘unless sooner dissolved’ appearing in Articles 83(2) and 172(1) would require amendment to provide for legal backing if any step to curtail the terms of State Legislative Assemblies is to be taken. Similarly, for extension of term of the State Legislative Assemblies, there is no provision in the Constitution, but for Article 356. Article 356 specifically deals with failure of constitutional machinery in a State and it cannot be resorted to, to meet the objective of synchronisation of elections. Therefore, the Commission is of the opinion that for the purpose of synchronisation of elections, the Union Parliament may be empowered to extend or curtail the term(s) of some of the State Legislative Assemblies, as needed, for appropriate period(s). This could be achieved by making necessary amendment(s) to Article 172 of the Constitution or by inserting a new clause to that Article, enabling the Union Parliament to bring about the desired

extension / curtailment of the State Legislative Assemblies for synchronising elections.

8.12 The Commission feels that amendment to Article 83(2) may not be necessary since it is the elections to the State Legislative Assemblies that are to be synchronised with that of the House of the People, and the question of curtailment or extension of the term of the House of the People does not arise, going by the framework suggested by the Commission in this Report.

8.13 With regard to the Representation of the People Act, 1951, provisos to sections 14 and 15 of, which deal with the notification for elections to the House of the People and the State Legislative Assemblies, may also be amended, if felt necessary. Such amendment could be, if not on permanent basis, as a one-time measure.

8.14 As a **third option**, if it is not possible for some reasons to conduct simultaneous elections as discussed in this report, then, all elections falling due in one calendar year could be conducted together during such part of the year, which is conducive to all the State Legislatures involved and / or the House of the People, if sooner dissolved. Even for this alternative, amendments may be necessary to the provisions contained in Articles 85(1) and 174(1) of the Constitution and the provisos to sections 14 and 15 of the Representation of Peoples Act 1951, because it may require marginal curtailment or extension of the term of some State Legislative Assemblies. However, resorting to this alternative is not going to bring any material change and relieve the country from being continuously in election mode.

ii) Effect on Council of States / State Legislative Councils

8.15 With the curtailment or extension of the term of the State Assembly the election of candidates for the Council of States and respective State Legislative Councils by that State Assembly, during the period so curtailed or extended, as the case may be, will also get affected.

8.16 For this purpose the Commission studied the relevant data. The number of elected members in the Rajya Sabha is 233 and as on 02.08.2018, there is one vacancy.⁶⁰

Total number of M Ps retiring between 2018-2024⁶¹

No. of MPs(Rajya Sabha) Retiring between 2018-2024	Year /Month	Representing States
8	2019(June-July)	Assam, Tamil Nadu
73	2020 (February-November)	Maharashtra, Odhisa, West Bengal, Tamil Nadu, Assam, Rajasthan, Gujarat, Jharkhand, Bihar, Madhya Pradesh, Chhattisgarh, Haryana, Andhra Pradesh, Telangana, Madhya Pradesh, Manipur, Himachal Pradesh, Meghalaya, Arunachal Pradesh, Karnatka, Mizoram, Uttrakhand, UP
8	2021 (February-October)	Jammu & Kashmir, Kerela, Pudduchery
76	2022 (April-August)	Himachal Pradesh, Tripura, Assam, Nagaland, Punjab ,Andhra Pradesh, Telangana, Nagaland, Madhya Pradesh, TamilNadu, Chattisgarh, Karnatka, Odhisa, Rajasthan, UP, Maharashtra, Uttrakhand ,Bihar, Jharkhand, Haryana
10	2023 (July – August)	Goa, West Bengal, Gujarat

⁶⁰<http://164.100.47.5/Newmembers/statepositionssummary.aspx>.

⁶¹ STRENGTHWISE PARTY POSITION IN THE RAJYA SABHAAS ON 13.07. 2018 available at: <http://164.100.47.5/newmembers/SrchRetListonMnth.aspx>.

iii) Whether Ratification by States is Required

8.17 Article 368 lays down the procedure for amendment of the Constitution. The proviso to Article 368 (2) enlists certain provisions of the Constitution which if amended will also require ratification by not less than one half of the States. This (Proviso) was introduced with a view to give effect to the federal principles. Its scope is confined to the limits prescribed therein and is not to be construed so as to take away the power conferred by the main part of Article 368(2)⁶².

8.18 The limitations referred to hereinabove are of two types, i.e., substantive and procedural. Substantive limitation prohibits any kind of amendment which may alter the basic structure of the Constitution. However, the procedural limitation deals with the manner in which the amendment is to be carried out, if permissible in law, e.g., ratification of amendment by State Legislative Assemblies. The proviso to Article 368(2) deals with the following Articles:

- a) Articles 54- Election of President, 55- Manner of Election of President, 73- Executive Powers of the Union, 162- Executive Powers of State or 241-High Courts for Union Territories; or
- b) Chapter IV of Part V- The Union Judiciary, Chapter V of Part VI- The High Courts in the States, or Chapter I of Part XI- Distribution of Legislative Powers; or
- c) any of the Lists in the Seventh Schedule; or
- d) the representation of States in Parliament; or
- e) the provision of this Article.

⁶² Vide; *Kihoto Hollohan v. Zachilhu & Ors.*, AIR 1993 SC 412; *Southern Mahratta Railway Company v. Bazwada Municipality* (1944) 71 I.A 113; and *Commissioner of Income Tax Mysore v. Indo- Mercantile Bank Ltd.*, AIR 1959 SC 713.

8.19 Article 328 of the Constitution enables the States to make laws with respect to all matters related to or in connection with the elections to the Assemblies. This power is subject to the provisions of the Constitution and to the laws made by the Parliament, if any, in this regard. As democracy and federalism, are the essential features of the basic structure of the Constitution⁶³, it may be contended that decision of holding ‘simultaneous elections’ affects the States. This contention is elaborately discussed in Chapter 6 of this Report.

8.20 Parliament by the 52nd Amendment inserted the Tenth Schedule in the Constitution. Para 7 thereof barred the jurisdiction of courts in the following terms –

“Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.”

8.21 The Supreme Court while upholding the Constitutional validity of the Tenth Schedule, declared Para 7 to be unconstitutional on the ground that:

.....this extinction of the remedy alone without curtailing the right, since the question of disqualification of a Member on the ground of defection under the Tenth Schedule does require adjudication on enacted principles, results in making a change in Article 136 in Chapter IV in Part V and Articles 226 and 227 in Chapter V in Part VI of the Constitution
..... it is undisputed that the proviso to clause (2) of Article 368 is attracted requiring ratification by the specified number of State Legislatures before

⁶³ S.R. Bommai, *supra*. See also, *Kihoto Hollohan v. Zachillhu & Ors.*, AIR 1993 SC 412; *P.V. Narsimha Rao v. State (CBI/SPE)*, AIR 1998 SC 2120; *People’s Union for Civil Liberties v. Union of India* (2013) 10 SCC 1.

presentation of the Bill seeking to make the constitutional amendment to the President for his assent.⁶⁴

Thus, Para-7 of the Tenth Schedule was declared unconstitutional on the ground of removing the court's power of judicial review.

8.22 Some constitutional amendments do not necessarily require ratification by States as was in the case of Fifty-second Amendment. However, the then Government decided to seek ratification to Sixty-second Amendment Bill 1988⁶⁵ only with a view to ensure that the amendment does not fail on the ground of absence of ratification.

8.23 The Commission is of the opinion that the amendments discussed in this Report do not fall under the purview of Proviso to Article 368(2). In view of the residuary powers vesting with Parliament under Article 248 read with Entry 97 of the Union List and where Parliament has exercised the power to legislate under Article 327, seeking the ratification by the States may be considered optional, as an abundant caution, while making relevant amendments to the Constitution under Article 368.

B. Grounds for Disruption

i) No-Confidence Motion

8.24 As it stands today, a no-confidence motion can be moved when the ruling party *prima facie* is not in majority, may be on

⁶⁴ *Kihoto Hollohan v. Zachillu*, AIR 1993 SC 412.

⁶⁵ 52nd Amendment available at: <http://legislative.gov.in/constitution-fifty-second-amendment-act-1985>.

account of defection and in the case of a coalition government, when any of the supporting party withdraws the support. No-confidence motion is a powerful tool to oust the Government, as the Council of Ministers is collectively responsible to the House and remains in office till it enjoys the confidence of majority of members of Lok Sabha or the State Legislative Assemblies, as the case may be.

8.25 It may be noted that the Constitution does not make a reference to either a 'confidence motion' or a 'no-confidence motion'. Article 75 provides that the Council of Ministers shall be collectively responsible to the House of the People. This implies that the majority of Members of Lok Sabha must support the Prime Minister and his/her Cabinet. Similarly Article 164(2) provides that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

8.26 A 'no-confidence motion' can be moved in the Lok Sabha as well as the State Assemblies. In the case of State Assemblies, if a no-confidence motion is passed, the Governor may at his discretion invite a person who puts forward a claim, to form a government, giving him an opportunity to prove his majority by a floor-test. In the event that claim fails then as a last resort the Governor, under Article 356 of the Constitution, may recommend President's rule in the State. However, such a course is not possible in the case of Lok Sabha.

8.27 Rule 198 of the Rules of Procedure and Conduct of Business in Lok Sabha, specifies the procedure for a "motion of no-confidence." If there are fifty MPs in favour of the motion, the Speaker will allot a date for discussion on such motion. After the House

debates and votes on the motion and if a majority of the members of the House vote in favour of the motion, and the motion is passed, then the Government stands ousted.⁶⁶

8.28 The no confidence motion as it stands affects the stability of the Government and does not provide for any alternative arrangement. In Germany Bundestag - the lower house cannot remove the Chancellor by a vote of no-confidence. A constructive vote of no confidence is to be moved suggesting agreed replacement of the Chancellor. Article 67 of the German Constitution provides for taking up both the motions of 'no-confidence' and 'confidence', simultaneously and their fates are interconnected, if one of them fails the other one also meets the same fate.⁶⁷ By necessary amendments in the Constitution, relevant statutes and rules, a similar system can be provided.

8.29 With the introduction of constructive vote of no-confidence' the Government will have better stability and will be ousted only when the member or the group of members come forward with a proposal to form an alternative government. The unique element of this system is that there will have to be an **agreement on a candidate to lead an alternative Government, and name of such a candidate has to be proposed while introducing the no-confidence motion.**

8.30 The elections to the Panchayats are governed by Part IX of the Constitution introduced by the Constitution (Seventy-third)

⁶⁶ M.R. Madhavan, "Rules of Confidence" *The Indian Express*, July 12, 2008.

⁶⁷ The 'constructive vote of no-confidence' has been adopted in several other countries such as Spain, Hungary, Slovenia, Albania, Poland, Belgium and Israel.

Amendment Act, 1992 whereas elections to the Municipalities are governed by Part IX A of the Constitution introduced by the Constitution (Seventy-fourth) Amendment Act 1992.

8.31 In light of the above discussion it is pertinent to have a look at Section 16(2) of the Uttar Pradesh Municipal Corporation Act, 1959, [U.P. Act No. 2 of 1959], which deals with the motion of no confidence against the Mayor, stating that “*no notice of a motion of non-confidence under this section shall be received within two years of the assumption of office by the Mayor*”. The Act further stipulates in section 16(14A)(b) that “*in case the non-confidence motion against a Mayor is rejected no notice of any subsequent motion of non-confidence in that Mayor shall be received within a period of one year from the date of such rejection.*”⁶⁸ Similar provisions exist in the Bihar Municipal Bill, 2007 (section 25(4)), and Madhya Pradesh Municipalities Act, 1961 (section 43-A). Section 53 of the Rajasthan Municipalities Act, 2009 provides for a similar provision with variance of time frame, i.e., no notice of motion of no confidence is to be received within one year of assumption of office by the Chairperson / Vice-Chairperson, and if the motion of no confidence fails, no subsequent motion shall be moved until the expiration of two years. Thus, a provision to ensure stability of the third tier government does exist in the relevant statutes governing the local bodies in various States. Such provisions help in ensuring stability to some extent and put a check on repeated and unwarranted notices for no-confidence motions.

⁶⁸ See also: Sub-sections (3) and (4) of section 14 of the Uttar Pradesh Panchayati Raj Act, 1947.

8.32 Therefore, taking a clue from these statutes, a similar provision can be incorporated for imparting stability to Lok Sabha and State Assemblies, and this will not be contrary to the spirit of the Constitution.

8.33 The Law Commission in its 170th Report (1999), had suggested introduction of motion of no-confidence in the incumbent Government with a motion of confidence in the alternative Government simultaneously by the following new Rule 198-A of the aforesaid Rules:

Rule 198-A

(1) Once a no-confidence motion is taken up for discussion and voted upon as contemplated by sub-rule (3) and (4) of Rule 198, no fresh motion expressing want of confidence in the Council of Ministers shall be permitted to be made for a period of two years from the date of voting upon such motion.

(2) Once a motion expressing confidence in the Council of Ministers is made pursuant to the direction of the President, no motion expressing want of confidence in such Council of Ministers shall be permitted to be moved for a period of two years.

(3) No leave shall be granted under Rule 198 to a motion expressing want of confidence in the Council of Ministers; unless it is accompanied by a motion expressing confidence in a named individual. Only the motion expressing confidence in a named individual shall be put to vote.

8.34 It was further suggested that it would be appropriate if a similar rule is made by all the Speakers by amending the respective Rules of Procedure governing their respective Legislative Assemblies.

8.35 If a rule on the suggested line will be incorporated it will bring in stability of Lok Sabha and State Legislative Assemblies as no 'motion of no-confidence' will be introduced in Lok Sabha / State Assemblies within two years of the formation of a Government, and no subsequent motion will be moved again within a period of one year from the date of rejection of the previous motion. Further, the 'motion of no-confidence' may be replaced with 'constructive vote of no-confidence', i.e., a member or group of members moving no-confidence motion would have to simultaneously put forward a proposal for forming an alternative Government.

8.36 The Government may consider amending Rule 198 of the Rules of Procedure and Conduct of Business in Lok Sabha to give effect to the suggestions above. The State Assemblies or their respective Speakers, may also amend the relevant provisions under the rules of procedure and conduct of business in State Assemblies, on the above lines. The natural consequence of the course of action discussed in the foregoing paras will be that the frequent midterm poll can be avoided and the synchronisation of elections of the House of the People and the State Legislative Assemblies may continue, ensuring better stability of the Governments at the Centre and the States.

ii) Hung Parliament/Assembly

8.37 Another situation which may arise and is required to be dealt with is that of Hung Parliament/Assembly. It is a situation where a single political party or a pre-poll alliance does not have enough elected members to secure an overall majority.

8.38 The Sarkaria Commission⁶⁹ considered the issue relating to Hung Assembly and suggested a possible guideline for overcoming the difficulty posed by the issue. It suggested a uniform method to be followed in the order of preference by the Governor while selecting Chief Minister i.e. when no party has an absolute majority in the Legislative Assembly as under: (i) An alliance of parties formed prior to the elections; (ii) The largest single party staking a claim to form the government with the support of others, including the “independents.”; (iii) A post-electoral coalition of parties, with all the parties in the coalition joining the Government; (iv) A post-electoral alliance of parties, with some of the parties in the alliance forming the Government and the others supporting the Government from outside. Later, in 2007, Punchhi Commission also broadly agreed with this recommendation.

8.39 The issue of the duties of the Governor in the event of Hung Assembly came up for consideration before the Allahabad High Court in *H.S Jain v. U.O.I.*, (1997)29 ALR 159. The Court referred to the powers of the Governor and stated that a bare reading of Article 164(2) of the Constitution makes it clear that the Council of Ministers shall

⁶⁹1st Report of the Sarkaria Commission available at <http://interstatecouncil.nic.in/report-of-the-sarkaria-commission>. See also: Report of the Punchhi Commission on Centre-State Relations available at <http://interstatecouncil.nic.in/report-of-the-commission-on-centre-state-relations>.

be responsible to the Legislative Assembly. Therefore, the Governor must appoint the Council of Ministers, who has the support or confidence of the Assembly and the Chief Minister who has the support of the majority in the Assembly. In a situation like that of Hung Assembly, the Court stated that on the failure of Governor to find anyone who enjoys the support of the majority in the Assembly, the Governor shall ask the Assembly in which leadership the Assembly has confidence and this can be done under Articles 174 (2) and 175. In this manner, the Assembly can itself inform the Governor, in whom it has the confidence and the Governor can appoint such a person as the Chief Minister. Such a procedure logically flows from Article 164(2) and is the only possible alternative to avoid dissolution. In an attempt to find a solution to the issue, the Court referred to the practice in Japan, where the National Diet of Japan chooses the leader and the Emperor appoints him/her as the Prime Minister. The Court also noted that a similar suggestion is made by Brian Thompson that the British Prime Minister may be elected by the House of Commons. At the same time, the Court was not oblivious to the fact that there could be practical problems in sending a message to the Assembly to choose a leader in whom it has confidence, in view of the provisions of Tenth Schedule.

8.40 A member of the House/Assembly may seek support from other political parties, to form a Government. However, if their respective political parties issue whips, barring support to such a member, and if they go against the party whip to support his or her endeavour, it would render them disqualified under paragraph 2(1)(b) of the Tenth Schedule. The Tenth Schedule provides for the disqualification of member(s) of political parties on the ground of defection. In the event a member of the House does not abide by the

whip issued by the party to vote or abstain from voting as per the directions of the party, he or she stands disqualified.⁷⁰

8.41 In *Kihoto Hollohan v. Zachillhu*, AIR 1993 SC 412, the Court felt that the existence of the Tenth Schedule of the Constitution further strengthens the importance of the political parties in our democratic set-up. Rejecting the argument that the political party is not a democratic entirety, and that Whip issued under the Tenth Schedule is unconstitutional, the Court reiterated that the Parliament was empowered to provide that the Members are expected to act in accordance with the ideologies of their respective political parties and not against it.

8.42 It may be noted here that the Report of NCRWC (2002) suggested that in order to improve the stability of the House/Assembly, defections should not be permitted, either by individuals or groups. It was further suggested, that if a legislator wished to leave his or her party or vote against it, he or she should vacate their respective seat and contest on a fresh platform. The vote cast by a defector should also be invalidated. The Report mentions another option by which the House of the People/ State Legislative Assembly can elect its leader as it elects the Speaker. The leader so elected may be appointed as the Prime Minister/Chief Minister to form the Government. To ensure the stability of such Government, it should be removable only on a constructive vote of no-confidence.⁷¹ The option regarding constructive vote of no confidence is discussed in the subsequent part of this Report.

⁷⁰ Constitution of India, Tenth Schedule, Para 2(1)(b).

⁷¹ NCRWC Report (2002), *supra*.

8.43 If there is a deadlock as no political party gets a majority, the President/Governor, as the case may be, may ask the leader of the political party having the largest number of members in the House to explore the possibility of forming a Government, with the support of a pre-poll alliance partner, or with any other political party.

8.44 In case of failure of the aforesaid options, the only alternative will be that of 'mid-term' elections. So far as State Assemblies are concerned, under the Constitution, President's rule can be imposed for a maximum period of three years under clause (4) of Article 356 of the Constitution, subject to various limitations specified in the said Article. But so far as the Union is concerned, the option of President's Rule is not available and therefore the only recourse left will be to have mid-term elections.

iii) Budgetary defeat

8.45 The most important power of the Parliament is its effective control over public finances; similar is the power of State Legislative Assemblies. The Power of the Lok Sabha/Legislative Assembly to deal with financial matters is exclusive. It is in the Lok Sabha/ Legislative Assembly, the financial matters are put to vote and the passing of the Budget is an important matter as there are Constitutional implications of budgetary defeat which would mean that the Government no longer enjoys the confidence of the House, and in such a scenario the government will have no option but to resign.

8.46 The Council of States and State Legislative Councils have a subservient role in comparison to House of the People and State Legislative Assemblies, in this regard.

8.47 The problem of budgetary defeat will arise when the ruling party (the Government) loses the support of majority or in the case of a coalition Government, the Alliance Partners withdraw their support at the time of passing of Budget.

8.48 Article 113(2) of the Constitution provides that the estimates relating to expenditure, other than charged expenditure as provided under Article 113(1), is to be submitted in the form of demands for grants. As per 113(3) no demand for a grant shall be made except on the recommendation of the President. Thereafter, the grants under Article 113(2) are made into a Bill to provide for appropriation out of the Consolidated Fund of India.

8.49 A Member of the House can move cut motions to reduce the amount of demand. Such motions are used to criticise the Government, discuss policy questions, criticise the administration, discuss the conduct of executive and suggest economy in government expenditure. Cut motions are freely moved by the members when the demands for grants are being considered in House of the People. These are generally not pressed to the point of voting, for the Government will always use the power of Whip and majority to defeat such a motion. Acceptance of such a motion would amount to expressing lack of confidence in the Government and would involve the resignation of Government. It is the exclusive privilege of the House of the People to grant money demanded by Government.

8.50 For the purpose of stability of government which is *sine qua non* for simultaneous elections and to prevent the fall of Government on the ground of non-passage of the Finance Bill and Appropriation Bills, their smooth passage is required. In case there is a budgetary defeat, the Government is bound to fall and in case no alternate government is formed, mid-term poll becomes inevitable.

8.51 Budgetary defeat of a Government has never happened in the history of politics in India. In 1999, when there was a coalition Government at the centre, budget was not held up in the House of the People in spite of the Government having lost the vote of confidence, all political parties cooperated in passing of the bill.⁷² However, the Commission feels that, in an eventuality when there is a threat of budgetary defeat, efforts must be made to arrive at a consensus, to avoid mid-term elections.

C. New House of the People/State Assembly for the “Remainder of the Term”

8.52 The term of the House of the People and State Legislative Assembly is for five years, unless sooner dissolved. However, in case the House of the People/State Legislative Assembly gets dissolved prematurely in spite of the measures taken to provide stability, and midterm elections takes place, then, in order to maintain the cycle of simultaneous elections, it becomes important to deal with the question of duration of such newly formed House.

8.53 The Constitution (Seventy-fourth Amendment) Act 1992, introduced Part IX A, containing Articles 243P to 243Z and 243ZA to 243ZG. Article 243U deals with duration of Municipalities. Clause (4) of this Article provides that the newly constituted Municipality upon dissolution of the Municipality before expiration of its duration, shall continue only for the **remainder of the period** for which the dissolved Municipality would have continued under clause (1) had it not been so

⁷² Yashwant Sinha, How to navigate a tricky Parliament *available at*: <https://www.thequint.com/voices/opinion/yashwant-sinha-on-passing-reform-in-parliament>.

dissolved. Also, in case of bye-elections i.e whenever a casual vacancy occurs in the House of the People / Legislative Assembly of State due to death, resignation or removal of any member, the newly elected member holds the office (membership) only for the remainder period. Sections 154(3), 156(2) of the Act, 1951 provide that in the case of Council of States / State Legislative Councils, the representatives elected through bye-elections to fill in the casual vacancies will hold office only for the remainder term. Even in case Council of Ministers loses the confidence of the House and another political party is in a position to prove its majority to form a new Government, the term of such Government / Council of Ministers is for the remaining term only.

8.54 Section 151-A of the Act 1951 elucidates the time frame for filling up the casual vacancies in House of the People, Council of States, State Legislative Council and State Legislative Assemblies. It states that the vacancy shall be filled within six months of its occurrence. However, the proviso thereto provides that if the remaining term of that vacancy is less than one year then it is not necessary to conduct elections.

8.55 Though the Act 1951 does not explicitly deal with the term of the newly elected member to fill in the casual vacancy occurring in the House of the People or the State Assemblies, it is implicit that the term of such member will be for the remainder period of the respective House. In sections 147 to 151 of Act, which primarily deal with bye-elections, the term 'casual vacancies' is used to imply that the vacancy is for the current House only. Proviso to section 151A provides that if the remainder of the term of a member in relation to a vacancy is less than one year, no bye-election need to be conducted. It is evident that the incumbent of the casual vacancy will hold office only till the expiry of the term of the current House. A

member, who has been elected to a casual vacancy occurred in the Sixteenth Lok Sabha, cannot continue to be a member of the Seventeenth Lok Sabha.

8.56 Thus, it may be noted that “Remainder Term” is not a foreign concept to the Constitution and other relevant statutes. It is, therefore, felt that the concept of **remainder term** which is applicable to the individual must also be applicable for the whole House, in case of mid-term elections.

8.57 In order to facilitate the constitution of a new House of the People or State Assembly for the ‘remainder of the period’ that is left of the previous House of the People or State Assembly’s prescribed five-year term, appropriate amendments to Articles 83 and 172 of the Constitution and Sections 14 and 15 of the Act, 1951 will be required.

8.58 While recommending about the ‘remainder term’, the Commission is mindful of the fact that if the House is dissolved more than once during the period of five years, it will be practically difficult to conduct elections repeatedly for the remaining of the term of the House. However, it is a known fact that after a lot of instabilities during the decade of nineties the House of the People has witnessed a comparatively greater amount of stability. The credit for this goes to the enlightened electorate and the responsible political parties, who ensured that the nation does not waste its resources on elections repeatedly. This, along with the provisions contained in section 14 of the Act, 1951 could be considered as a positive aspect of synchronising elections.

CHAPTER-9

RESPONSES AND CONSULTATIONS

9.1 The Law Commission of India, in its meeting held on 17 April 2018, unanimously decided to elicit public opinion on the Draft Working Paper on simultaneous elections. Subsequently, a public appeal seeking opinion of all the stakeholders, was put up on the website of the Commission. The Commission received responses, which have been analysed hereinbelow.

A. Response from Stakeholders

9.2 A substantial number of the responses received, do not specifically answer the queries put up by the Commission. Most of the people/organisations have suggested general electoral reforms. Some of them have supported the idea of simultaneous elections without giving reasons for the same.

9.3 The counter arguments advanced by many had been that Indian voters are susceptible to intimidation, threats for physical harm, allurements or appeal on the basis of caste, religion and regionalism. The said factors influence their voting behaviour. It is for these reasons that in spite of the best efforts made by the Supreme Court through its judicial pronouncements and steps taken by the Election Commission of India a large number of our representatives in the Parliament and the State Assemblies have criminal backgrounds.

9.4 Another argument that has been advanced to oppose simultaneous elections is that it would suppress local / regional issues and would adversely affect the interests of the local people as it may change the voting pattern, persuading the electorate to vote for

the candidates of the same political party for the Parliament and as well as for the State Legislative Assembly

9.5 One of the responses expressed apprehensions that if the Parliament or Legislative Assemblies are prematurely dissolved before completing five years term to hold simultaneous elections it will not be possible for government to fulfil the promises made in party manifesto and “there will be irretrievable breakdown of the sacrament that exist between people and Parliament. Moreover the pending bills would automatically lapse and would not be taken up by the newly elected government.”

9.6 Ambedkar Party of India has made a detailed representation through Shri Vijay Deorao Mankar (National President). However, it mostly concerns itself with electoral reforms, for holding free and fair elections, along with proposal for amendment to the Companies Act, 2013.

9.7 Shri H S Brahma, former Chief Election Commissioner suggested that simultaneous elections would reduce disruptions in the social, political, economic and civic life of citizens. It will reduce the huge expenses incurred for conducting elections which even by a rough estimate is around Rs.3500-4000 crores per election. In addition to that, an equal amount is spent by the political parties/individual candidates. Eventually this outflow is recovered by candidates and parties by unlawful means. He also expressed his concern that frequent elections are a threat to the security and safety of India as a large number of Paramilitary forces are diverted even from sensitive border areas during elections, which render the borders prone to infiltration of terrorist/ anti national elements. Last but not the least, he raised another issue about the election panel being targeted every time when an election is held with the allegations of

bias and favouritism in announcement and conduct of Elections which will decrease with reduction in the number of elections.

9.8 Shri V Narayanasamy, Hon'ble Chief Minister of Puducherry has raised serious doubts about the implementation of simultaneous elections. He is of the opinion that the parliamentary power could not be invoked to nullify/reduce the term of the House of the People or the State Assembly and the same should continue for five years since it is the people who has given this mandate to the Parliament / State Legislature by exercising their right to vote. Thus, the term of the Houses should not be curtailed. He elucidated that simultaneous elections run contrary to the concept of no confidence motion. The passing of no confidence motion results in dismissal of the Government and results in bye-election, therefore, it will render the implementation of simultaneous elections highly improbable. Also simultaneous elections increase the possibility of entire country being ruled by the Government of one political party or coalition partners. The simultaneous election would adversely affect the Federal system of governance. The federalism is a basic feature of the Constitution. By making reference to the provisions of sections 68, 69 and 70 of the Representation of People Act 1951, it is urged that the concept of simultaneous elections would be in contravention of the statutory provisions of the Act 1951. There is possibility of voting pattern being effected as people might vote for same party for the House of the People and State Legislatures, which is very harmful to democracy.

9.9 Justice K L Sharma, former Judge of Allahabad High Court, suggested that the no-confidence motion should not be permitted to be tabled before the expiry of three years of the commencement of the term of the House. He further suggested to replace the no-confidence motion by a constructive no confidence motion.

9.10 It has also been suggested by some of the stakeholders that once a no-confidence motion fails, another such motion should be brought not before expiry of two years.

9.11 A group of students of the National University of Judicial Sciences Kolkata while dealing with the issue of effect of simultaneous elections on voting pattern states with the support of statistical data taken from the official website of the Election Commission of India that it is not necessary that the vote share of regional parties decreases in the event of simultaneous elections. It is the regional parties who reap the benefit at the cost of the vote percentage of the national parties rather than it being the other way around.

9.12 The working paper submitted by a group of students of the National Law School of India University Bangalore has suggested introduction of right to recall for a limited purpose. They have also pointed out that the simultaneous elections conducted in Ukraine and Indonesia have helped in greater national integration within regional agenda. Countries which have simultaneous elections, like Sweden, South Africa have a very small population and Sweden has a proportional electoral system which means parties are given a number of representatives in the elected Assembly proportionate to their share of votes. Thus a similar system may not work in the Indian scenario.

B. Consultations

9.13 The Commission attended the “Seminar on Simultaneous Elections” organised by the India International Centre, New Delhi, on 24 April 2018, wherein many eminent speakers including Shri M N Venkatachallaiah, former Chief Justice of India, Dr. Subhash Kashyap, Shri Soli J. Sorabjee, Shri Salman Khurshid, Shri Shivraj Patil, et al participated.

9.14 The Commission met the Election Commission of India on 16 May 2018. On behalf of the Election Commission, the Chief Election Commissioner, two other Election Commissioners, three deputy Election Commissioners and other officials discussed legal and factual issues on the subject. Discussions on operational and managerial aspects of simultaneous elections were also held.

9.15 In a reply to the queries of the Law Commission, the Election Commission informed about the additional expenditure to be incurred on account of procurement of new EVMs. The details have already been discussed in Chapter 2.

9.16 The Election Commission suggested that holding all elections falling due in a year together, during a specified period, by amending sections 14 and 15 of the Representation of the People Act, 1951, is a more viable option than opting for simultaneous elections. This will help in avoiding the requirement of additional EVMs for simultaneous elections.

9.17 The Representatives of the Association for Democratic Reforms (ADR) met the Commission on 23 July 2018. ADR opined that holding simultaneous elections is like implementing a self-serving statute. It will affect the choice of the voter and his right choice will not be reflected during such elections, thus infringing the freedom of speech and expression. Any amendment in the Constitution or any other statute would be for *mala fide* reasons as the very purpose of holding simultaneous elections is to have a unitary system. With regard to expenditure, ADR said that expenditure cannot be a consideration when it comes to democracy. They claimed it will affect the basic structure of the Constitution and federalism as it would change the system into a 'unitary structure'. Judicial pronouncements in this regard viz., *Kesavananda Bharti*, *Minerva Mills*, etc. were referred to. ADR further stated that the argument that

Model Code of Conduct (MCC) affects governance is a misconception. Instead, the governance is affected due to non-observance of the oath of office taken by the Ministers who are bound to discharge their constitutional duty instead of concentrating on elections. The organisation stated that simultaneous elections are unconstitutional and against the principles of democracy.

C. Consultations with Political Parties

9.18 The Commission *vide* letter dated 14 June 2018, requested seven national parties and 49 State level political parties, recognized by the Election Commission of India, to share their views and ideas on holding of simultaneous elections to House of the People and State Legislatures, and also invited them for an interaction. Twenty-six political parties (5 National Parties and 21 State Parties) submitted their written representations. A summary of their responses is at **Annexure V**. Out of these, 16 parties (4 National Parties and 12 State Parties) attended the discussions held on 7th, 8th and 10th July 2018, 3rd August and 13 August, 2018, in the Commission. In addition to these 16 parties, 5 more State level political parties took part in the discussions.

9.19 The views put forth by the political parties during the discussions are at **Annexure VI**.

D. News items and other Articles

9.20 The Commission also took note of various articles published in the newspapers/magazines on the issue.

9.21 Shri Bhairon Singh Shekhawat, the late Vice President of India, in his article titled “*Frequent Elections Impacting Governance*” in Outlook dated 9th July 2003⁷³, criticised the frequent cycle of elections that our country goes through and stated that frequent elections lead to causality of public governance. Populist measures take the place of long term nationalist measures. Further he stated that political expediency takes over genuine public welfare and national interests. Frequent elections generate demands for larger campaign funds, vote bank tend to be nurtured and polarised on caste lines. While referring to simultaneous elections he stated that restoring simultaneous elections will reinstate the dignity and credibility of Lok Sabha and State Assemblies which are the highest elected democratic institutions in our federal democratic setup. He also made suggestions on certain constitutional amendments which must be done in order to synchronise elections to the House of the People and State legislative Assemblies.

9.22 Prof. Neera Chandoke in her article in Hindu dated 07th May 2018 had raised doubt about the validity of simultaneous polls on the ground that it will prevent citizenry from keeping their elective representatives under a constant threat that they may reject him/her in the next midterm elections if he/she does not perform well.

9.23 According to her, a fixed system of elections provides representatives with a go-given chance to ignore the constituency for five years and come back only during the silly season. “*We do not trust our representatives. We subject them to reasonable scepticism. This is the best protection against managed democracy*”.

⁷³ <https://www.outlookindia.com/website/story/frequent-elections-impacting-governance/220697>.

9.24 Prof. Jagdeep S. Chhokar, has in the Issue Brief No. 8 *simultaneous elections striking at the root of Parliamentary Democracy* published by the Hindu Centre for Politics and Public Policy, Chennai, has urged that simultaneous elections would destroy the federalism under Indian Constitution which is a basic feature. This view had also been supported by Maj. Gen Anil Verma (head and National coordinator) of Association for Democratic Reforms which is an NGO working in the area of Electoral and Political Reforms. The counter argument to this has been that India does not have the federalism in *stricto sensu*. It is only for political and administrative reasons that the States have been carved out.

9.25 Prof. Jagdeep S. Chhokar in his article dated May 07, 2018 in Tribune has said:

Forcibly linking the state assembly elections to the Lok Sabha elections will clearly work to reduce the importance of states in the national scheme of things and will therefore be a violation of the 'basic structure.' It follows that any amendments done to the Constitution to enable simultaneous elections will not stand judicial scrutiny because it is clearly a clandestine move towards changing the federal character of the Constitution to a unitary one.

9.26 A study published by IDFC institute published in Hindu quoted by Niti Aayog in its report concluded:

On average, there is a 77 per cent chance that the Indian voter will vote for the same party for both the State and Centre when elections are held simultaneously the authors of this study analysed electoral data for four rounds of Lok Sabha elections – 1999, 2004, 2009 and 2014. They chose States whose elections coincided with the above elections and noted that “trend of choosing the same party has gone from 68 per cent in 1999 to 77 per cent in 2004 to 76 per cent in 2009 and 86 per cent in 2014” implying that “the ability or willingness of the voter to vote differently is only decreasing with time.”⁷⁴

⁷⁴ Bibek Debroy, *supra*.

9.27 However a counter argument has been put forward by the Niti Aayog itself in its Report on simultaneous elections that it's not necessary that local issues would be subsided on account of simultaneous elections. In India voting is a complex phenomenon driven by a variety of factors which includes incumbency of government, organisational strength of political parties in the State Assembly/political constituencies, stand of political parties on various national and State issues, political pacts between parties and many other factors.⁷⁵ Also, irrespective of whether elections are held simultaneously or separately, there is no scientific data available to conclude on the voting behaviour of the electorate of the State concerned. One has to look at the ground realities before coming to the conclusion that simultaneous elections would influence the voting pattern of the electorate in favour of the parties having strong base at the centre. There have been other examples where voters have voted for the smaller/State/regional parties even in elections to the House of the People irrespective of larger national trends in favour of selective national parties. It is erroneous to assume that a particular parameter would over-simplify the complexity of voting behaviour of Indian electorate.

9.28 N. Bhaskar Rao in his article on *Are Simultaneous Polls good for governance?* In the Tribune dated April 20, 2018 has raised similar issues as referred to earlier:

The one election idea undermines the regional parties, local leaders and regional agenda. It promotes prospects one leader, one party. It has implications to the spirit of the federalism.

9.29 A counter argument has been advanced that the regional party has to take care of elections for the limited number of

⁷⁵*Ibid* at 20.

parliamentary seats and only those seats for the State Assembly from where it is fielding its candidates, while the national parties have to manage a bigger show, i.e., for 542 seats of the House of the People and a very large number of seats for all the State Assemblies, benefitting the regional parties.

9.30 Justice P.B Sawant, former Judge Supreme Court of India in his article *Keep the Polls Apart* in Indian Express dated July 23, 2018 stated that simultaneous elections will lead to interference with the Governance of States by Union Government. According to him the constitution of legislative assemblies and formation of State Governments are autonomous functions. He is of the opinion that people vote differently for the House of the People and the State Assemblies for various reasons. It is also stated that if it is now decided to hold elections to the different State Assemblies along with the election to House of the People, the Assemblies whose tenure has not expired and in some cases, which have been constituted a year or few months earlier will have to be dissolved. He opines that power conferred by Articles 352,355 and 356 is limited and can be exercised only in the circumstances mentioned therein. He raised questions about the legality of simultaneous elections as well.

9.31 Former Chief Election Commissioner S Y Qureshi opined in one of his articles, “...elections are polarising events which have accentuated casteism, communalism, corruption and crony capitalism. If the country is perpetually on election mode, there is no respite from these evils. Holding simultaneous elections would certainly help in this context⁷⁶”.

⁷⁶ “Holding Simultaneous LS, Assembly Polls Desirable, but not feasible” available at <https://www.thequint.com/voices/opinion/holding-ls-assembly-polls-together-is-desirable-but-not-feasible> (last seen on 23 July 2018).

9.32 The then Minister for Urban Development Shri M. Venkaiah Naidu, in his article pointed out that frequent elections adversely impact the focus of Governments and political parties. Then need to win the next election makes short-term political imperatives an immediate priority. As a result, sound long-term economic planning often takes a back seat. There have been various instances in the past when Governments have preferred to put off/postpone implementation of difficult structural reforms due to elections the direct cost of which is borne by the needy electorate. ⁷⁷This causes loss of public confidence, besides tremendous financial cost to the State. ⁷⁸

9.33 Shri Bhupendra Yadav BJP MP (Rajya Sabha) in his interview titled “*Should India have simultaneous elections?*” published in *The Hindu* dated February 2nd 2018, Supported the idea of simultaneous elections contending that it will curb illicit finances as elections continue to be a conduit for black money and corruption. Frequent electoral cycles disrupt normal public life by impacting the delivery of essential services.

9.34 Thus, the issue of holding simultaneous elections has received a mixed response, as the Commission noticed from the views expressed by various stakeholders in different forums and the consultations that the Commission held with the stakeholders.

⁷⁷ ANALYSIS OF SIMULTANEOUS ELECTIONS : THE “WHAT”, “WHY” AND “HOW” A Discussion Paper, Para 2.8, Page 4.
http://niti.gov.in/writereaddata/files/document_publication/Note%20on%20Simultaneous%20Elections.pdf.

⁷⁸ ‘One Nation-One Poll’ and the Quest for Political Hegemony Smita Gupta.

CHAPTER – 10

OTHER RELEVANT ISSUES

10.1 While considering the issue of holding of simultaneous elections, the Commission came across other relevant issues, which, if left unattended, will have a serious bearing on the exercise of holding simultaneous elections. These issues relate to delay in deciding the cases of disqualification by the Chairman / Speaker under the Tenth Schedule to the Constitution, bye-elections to casual vacancies, election of leader of the House by consensus, and effective exercise of right to vote by NRIs, etc.

A. Disqualification on the Ground of Defection to be decided expeditiously

10.2 During the course of consultations with various stakeholders, political parties, an issue came up before the Commission i.e Disqualification on the ground of defection to be decided expeditiously. The issue does not directly relate to the simultaneous elections however it will be appropriate to deal with it, since it ensures stability of the House.

10.3 The Tenth Schedule to the Constitution, popularly known as anti-defection law, was introduced by way of the fifty-second amendment. According to Para 6 of the schedule it is the Chairman / Speaker who has the final authority to decide on the issue of disqualification of member on the grounds of defection. Para 7, which excluded the jurisdiction of the courts to decide on the issue of defection, was struck down by the Supreme Court in the case *Kihoto Hollohan* (Supra). The Court further equated the Chairman / Speaker

with the position of a Tribunal and like in the case of any Tribunal, the decisions were subject to judicial review⁷⁹. Further, Para 6 is silent on the issue of timeframe within which Chairman / Speaker has to render his/her decision.

10.4 In *State of Gujarat v. Patel Raghav Natha*, AIR 1969 SC 1297, the Court observed that if the legislature in its wisdom has not prescribed any period for exercising the adjudicatory powers i.e. for deciding a matter, it does not mean that such a matter can be delayed for an indefinite period. It can be understood to mean that the law requires the power to be exercised / matter to be decided within a 'reasonable time'. The length of 'reasonable time' in such cases must be determined in light of the nature of the proceedings/order and the facts of the case under consideration.

10.5 Section 86(7) of the Act, 1951 provides for concluding the trial of the election petition within six months from the date of its presentation before the court. This is suggestive of the fact that such issues, if not decided expeditiously, may become infructuous. Drawing an analogy, the issue of disqualification under the Tenth Schedule is also required to be decided at the earliest.

10.6 The aforesaid course is required to be followed mandatorily not only to avoid any miscarriage of justice but also to avoid the matter becoming infructuous. More so, excessively delaying the matter will leave the aggrieved party remediless. Therefore, efforts must be made to ensure that such matters are disposed of

⁷⁹ Dr. Subhash C Kashyap, *Anti-Defection Law and Parliamentary Privileges*, Second Edn., 2003 Universal Law Publication Ltd.

expeditiously. The power conferred upon an authority by a statute cannot be used arbitrarily at a belated stage⁸⁰.

10.7 Further, inordinate delay or non-action may tantamount to arbitrariness on the part of Statutory Authority, and may fall within the ambit of Article 14 of the Constitution. Consequently, the party seeking a remedy may be left in a precarious position permanently being in a state of uncertainty⁸¹.

10.8 Para 6(1), of the Tenth Schedule to the Constitution imparts a 'constitutional finality' to the decision of the Chairman or the Speaker, as the case may be, with respect to all matters under the Tenth Schedule. The Supreme Court while examining the constitutional validity of Para 7 in *Kihoto Hollohan v. Zachilhu & Ors.*, AIR 1993 SC 412, did not disapprove the said proposition. It is imperative for the Chairman/Speaker of the House to decide these matters in reasonable time, so as to give the provision its intended effect.

a. 'Power coupled with Duty'

10.9 The other underlying facet of the power of the Chairman/Speaker of a House under Paragraph 6(1) of Tenth Schedule is the duty to exercise that power and not to leave the matter undecided. This power is, therefore, coupled with the duty to act and exercise that power as and when invoked. The House of Lords in *Julius v. Lord Bishop of Oxford*, (1880) 5 App. Cas. 214, observed:

⁸⁰ See: *Sulochana Chandrakant Galande v. Pune Municipal Transport*, AIR 2010 SC 2962.

⁸¹ See: *Ibrahima patnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy*, AIR 2003 SC 3592; *State of Andhra Pradesh v. T. Yadagiri Reddy*, (2008) 16 SCC 299; *State of Orissa v. Kanhu Charan Majhi*, (2014) 1 SCC 156; and *Rajendra Shankar Shukla v. State of Chhattisgarh*, AIR 2015 SC 3147.

There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so.

10.10 Power under Para 6(1), has been conferred on the Speaker/Chairman for public benefit, it entails within itself a duty to exercise it when the circumstances so demand; it is, in this manner, a duty that cannot be “shirked or shelved nor can it be evaded.”⁸²

10.11 The vesting of any power in a public authority by virtue of statute is viewed as trust, it is coupled with a duty to exercise the same in larger public and societal interest. Such power should then be exercised having due regard to the public interest.

10.12 Not exercising that power at all or exercising the same at a belated stage may render the issue infructuous and that will not be in public interest.

10.13 The question as to whether the speaker can be directed by the Court to take a decision on the issue of defections awaits resolution by the Constitution Bench of the Supreme Court.⁸³

⁸² Vide: *Commissioner of Police, Bombay v. Gordhandas Bhanji*, AIR 1952 SC 16; *Yogeshwar Jaiswal v. State Transport Appellate Tribunal & Ors.*, AIR 1985 SC 516; *Ambica Quarry Works & Ors. v. State of Gujarat & Ors.*, AIR 1987 SC 1073; and *Delhi Administration v. Manohar Lal*, (2002) 7 SCC 222.

⁸³ *S.A. Sampath Kumar v. Kale Yadaiah & Ors.*, (2016) 6 ALT 44.

10.14 If the Speaker / Chairperson does not decide the issue and keep the matter pending, it could give rise to allegations of partiality on part of the Speaker, who may be alleged to be acting at the behest of the ruling party, which has installed him or her as the Speaker or Chairperson. The Commission feels that in such cases, the minority judgment of Justice J S Verma in *Kihoto Hollohan* (supra), which stated that the issues relating to disqualification must be decided by the independent adjudicator and not by the Speaker / Chairperson, becomes relevant and requires consideration.

10.15 In light of the above, the Commission is of the view that any question/matter/dispute under the Tenth Schedule must be decided by the Chairman or the Speaker of a House, as the case may be, as expeditiously as possible; and not later than six months from the date of raising of such question/matter/dispute. Accordingly, an appropriate amendment may be carried out in the Tenth Schedule.

B. Bye-elections

10.16 All bye-elections falling due in a year can be held together at a fixed time Department-Related Parliamentary Standing Committee on Personnel, Public Grievances Law and Justice, Rajya Sabha in its 79th Report 2015 stated that all seats falling vacant in a particular year be conducted together on a pre-determined date/time frame. Moreover the suggestion of the Election Commission of India included in this report has also suggested fixing two windows of one and a half months each for holding all bye-elections which may be due in a particular year.

C. Selection of Leader of House by Consensus

10.17 The Speaker of the House of the People, State Legislative Assembly is chosen in the very first meeting of the House of the

People, State Legislative Assembly held after elections. There are no qualifications or credentials necessary for being the Speaker of the House of the People or State Legislative Assembly however he or she must be a member of the House/Assembly. Usually a member of the party enjoying majority gets chosen as the Speaker. However, there have been many instances where the Speaker is chosen from the opposition party or a party of coalition.⁸⁴As the Speaker of the House/Assembly is chosen by consensus between the party/parties in majority and in the Opposition, it is felt that on similar lines the Leader of the majority party i.e., the Prime Minister/Chief Minister, may also be selected to lead the House/Assembly. This will potentially provide stability to the House/Assembly.

D. Effective Exercise of Voting Rights by NRIs

10.18 India has a large number of people who live abroad temporarily or permanently on account of education, employment, business and other such reasons. Earlier these citizens were not able to participate in the election process due to the provisions of the then prevailing law on Elections like only a citizen ordinarily resident within the territorial limits of a constituency in the country is eligible to be registered as voter in that constituency. As a result, a large number of non-resident Indians are unable to enrol themselves as voters in their home constituencies.⁸⁵

⁸⁴Election of Speaker *available at:*

<http://speakerloksabha.nic.in/roleofthespeaker.asp#election>.

⁸⁵ Report of Committee for Exploring Feasibility Of Alternative Options for Voting By Overseas Electors *available at:*

http://eci.nic.in/eci_main1/current/NRI%20Voting_Final%20draft23012015.pdf.

10.19 Eventually as a result of demand from various sections of NRI's the provisions of Representation of Peoples Act 1950 were amended by Representation of Peoples Amendment Act 2010 (36 of 2010) w.e.f. 10.02.2011. A new section 20A has been introduced which permits registration in electoral rolls of persons who are (a) citizens of India (b) not included in electoral rolls, (c) have not taken up the citizenship of any other country, and (d) are absent from the ordinary place of residence.⁸⁶

10.20 The provisions of the Registration of Electoral Rules 1960, also were amended, and a new form 6-A was inserted for making application for such enrolment by NRIs.

10.21 The number of such voters is large and significant.⁸⁷ Accordingly, simultaneous elections would make voting more convenient for NRIs as they will be able to vote in elections to Legislative Assembly and the House of the People on the same day.

⁸⁶ The Representation of People Amendment Bill 2010 *available at:* <http://www.prsindia.org/billtrack/the-representation-of-the-people-amendment-bill-2010-1249>.

⁸⁷ A total of 11,846 overseas citizens were enrolled in the finally published electoral rolls as revised with reference to 1st January, 2014 *available at:* http://eci.nic.in/eci_main1/current/NRI%20Voting_Final%20draft23012015.pdf.

CHAPTER 11

CONCLUSIONS

11.1 Since the reference has been received from the Government, it could be construed that the Government is considering the idea of simultaneous elections. The implementing agency for elections in the country, viz., the ECI has, in 1983, in its first Annual Report, well before this Commission started its study, expressed its willingness publicly to undertake the exercise. During the discussion with the Commission, the ECI supported the idea and projected their logistical and financial requirements for conducting simultaneous elections.

11.2 The Commission's analysis of financial implications, logistical issues, effect of Model Code of Conduct and constitutional and legal provisions, with regard to holding of simultaneous elections in the country points to the fact that there is a feasibility to restore simultaneous elections as it existed during the first two decades of India's independence [Chapter -2].

11.3 The Commission examined the existing provisions – constitutional and legal – with regard to conduct of elections in general, in the country. The Commission also studied the various reports and data relating to the subject and found that the available Government data is in support of the restoration of simultaneous elections. [Chapters – 3 & 4].

11.4 The Commission has delved into every possible data and report – both Government as well as non-Government – and has articulated its opinion in favour of holding simultaneous elections. In the preceding chapters also the Commission has carefully taken into consideration the apprehensions of the stakeholders and has

addressed them while formulating the Report. During the course of study, the international perspective has also been viewed and having found suitable, the German concept of constructive vote of no-confidence is incorporated in the recommendations [Chapter - 5].

11.5 Utmost care has been taken to ensure that any suggestion made or inferences drawn by the Commission conforms to the Constitutional principles. The issues of democracy, basic structure, federalism, etc. have been appropriately addressed. Care has also been taken to ensure that the rights of the citizens are not compromised in any manner. Free and fair election is an essential part of a democracy. Even today, premature dissolution of House(s) and mid-term polls are frequent in the country. Thus holding simultaneous elections, by no means, affect democratic set up of India. The right vote or contest elections are statutory / constitutional rights and in no manner could be fundamental rights. Thus, even by stretch of imagination, it cannot be argued that holding simultaneous elections would adversely interfere with basic structure of the Constitution. Similarly, as the process of simultaneous elections does not alter any of the Entries in the three Lists contained in Seventh Schedule of the Constitution, and it does not interfere with legislative competence of the Centre or the States, the contention that it would tinker with the concept of federalism is devoid of any merit. Therefore, the Commission comes to the inescapable conclusion that restoring simultaneous elections will, in no way, affect the basic structure of the Constitution, democracy and the quasi-federal nature of the Constitution. [Chapter - 6]

11.7 The intent of the Government of the day is very often questioned whenever it comes to a major change in the system. This is also true with regard to the idea of simultaneous elections. There have been allegations and accusations in the media that such a move

is politically motivated. The Commission, in its study looked into these allegations and concluded that the intent of the Legislature(s), as and when a statute is enacted, cannot be questioned [Chapter - 7].

11.8 The issues that may come in the way of simultaneous elections to the House of the People and the State Legislative Assemblies have been examined by the Commission in detail. The Commission widely studied the subject and suggests the ways to (i) achieve synchronisation by constitutional and legal amendments to be carried out; (ii) ensure stability of the Central and State Governments; and (iii) continue with the cycle of simultaneous elections, once synchronisation is achieved.

11.9 One of the major issues that had been engaging the attention of the Commission was a question as to how to bring about stability of Government at the Centre as well as in the States. On in-depth study, the answer to this question was found in the existing constitutional framework itself. A paradigm shift of this magnitude will surely entail changes in the Constitution and other statutes. The Commission has taken all precautions to address the contradictions and overlaps involved, while suggesting these Constitutional and statutory changes. Though the concept of assured fixed term for the Parliament, constructive vote of no confidence and ensuring stability to the House of the People and State Legislative Assemblies have not been discussed in detail in our statute books. The Commission has, after detailed deliberations, modulated these ideas in the Indian context, and recommended to adopt them either from the world over or from within Indian jurisprudence [Chapter -8].

11.10 The Commission would like to place on record its appreciation for overwhelming response received from various stakeholders. Many spared their precious time to meet the

Commission and guided us via their written replies. While there was wholehearted support from certain corners, some raised apprehensions about the idea and objected to it. The Commission has considered the issue from constitutional, legal, political, and social perspectives in finalising the Report [Chapter -9].

11.11 Apart from the issues strictly relating to holding simultaneous elections, the Commission came across certain other related issues as well, which are closely associated with the subject. The issues like delay in deciding the cases of disqualification by the Chairman / Speaker under the Tenth Schedule to the Constitution, bye-elections to casual vacancies, election of leader of the House by consensus, and effective exercise of right to vote by NRIs, etc. were also considered by the Commission [Chapter 10].

11.12 The Constitution Bench of the Supreme Court, referring to 'Merchant of Venice' by Shakespeare, in *Charan Lal Sahoo etc. etc. v. Union of India & Ors.*, AIR 1990 SC 1480, observed that, "*to do a great right" after all, it is permissible sometimes "to do a little wrong"*. The emphasis here is that something done in greater national interest may appear to some as not right. Those who are against the idea of holding simultaneous elections will tend to look at it from a bleak perspective and will put to forefront its disadvantages only. However, if the idea is looked at in a broader perspective, it will be seen that it is for the larger public good and welfare of the country.

11.13 Any major decision that has a direct impact on the polity of the country has to be taken after taking the stakeholders into confidence. The Commission has been holding the view that any law that is not acceptable to the masses is not capable of being implemented. Hence, a move towards holding simultaneous elections will have to be made after building a political and public consensus.

For, any decision by the Government has to be for the benefit of the masses because after all, democracy is 'of the people, for the people, by the people'. As rightly put by Chanakya in Arthshastra, प्रजासुखेसुखम् राज्ञः प्रजानां तु हिते हितम् meaning ***the happiness of the king vests in the happiness of his subjects, and he must see his interest in the interest of his subjects***. Therefore, the Government of the day, before taking such an important decision of holding simultaneous elections, which will address the rights of the citizens to vote and to have a government of their choice, should try and build a consensus of the public in general and the political parties, in particular.

11.14 As a first step towards creating consensus on the issue of holding simultaneous elections, a conference of the Chief Ministers of States, belonging to a particular political party, was held on 28 February 2018 in New Delhi. As per newspaper reports available, the participating members in the conference were in favour of the proposal. It is also understood that as a follow up of the conference, some State Governments like Uttar Pradesh and Chhattisgarh have brought out reports favouring holding of simultaneous elections.

11.15 What will be required at this point is more deliberations, involving the leaders of all other political ideologies, to bring about a general consensus. The Commission is of the opinion that the Government will be required to take necessary steps in this direction before taking a final decision to hold elections to the House of the People and State Assemblies simultaneously.

11.16 Keeping in view the Constitutional, legal and the prevailing political and social circumstances in the country, and also the suggestions and opinions received from various quarters, the Commission would like to conclude that the time has come for India to revert to simultaneous elections in the greater national interest.

The various options that could be pursued and the constitutional and statutory amendments required to give effect to the foregoing have been discussed in detail in this Report, and have been summarised in the succeeding Chapter.

CHAPTER -12
DRAFT SUGGESTIONS / RECOMMENDATIONS

12.1 The idea of holding simultaneous elections in the country has been engaging the attention of the ruling party, the opposition, the academia and the public in general, alike. The study on the subject had to be comprehensive since it has an impact on the social, political, legal and the constitutional set up of the country. The Commission, while formulating its recommendations has considered the opinion from various sections of the society as well as from the stakeholders and taken utmost care to address the apprehensions raised by them in this regard. Both the views expressed in support and the criticism of the idea, have been taken into consideration in a balanced manner and the Commission has come out with the best possible framework which is most viable in the Indian context.

12.2 The Commission is aware of the fact **that holding simultaneous elections is not possible within the existing framework of the Constitution**. Therefore, it has suggested certain inevitable constitutional amendments. The Commission has ensured that the amendments to the Constitution and other statutes are kept to the barest minimum. **Thus, the Commission recommends holding of simultaneous elections to House of the People and the State Legislative Assemblies** (except the State of Jammu and Kashmir). Such an exercise will,

- a. save public money;
- b. help reducing the burden on administrative set up and security forces; and
- c. ensure better implementation of government policies on time and the administrative machinery of the country will

be continuously engaged in developmental activities rather than in electioneering.

A. Framework for Synchronisation of Elections

12.3 In order to achieve holding simultaneous elections, terms of certain State Legislative Assemblies will require curtailment / extension, necessitating amendment to the Article 172 of the Constitution. The Commission recommends the following framework for synchronising the elections in the country:

Option - I

- a) As a **first option**, elections to twelve State Assemblies and one Union Territory (with legislature), could be synchronised with the elections to the House of the People in the year 2019.
 - i) Out of these, **elections to the Legislative Assemblies of five States**, viz., Andhra Pradesh, Arunachal Pradesh, Odisha, Sikkim and Telangana are due with the elections to the House of the People, and, **therefore, stand synchronised.**
 - ii) **If there is political will, and consensus is arrived at, elections to four State Assemblies**, viz., Haryana, Jharkhand, Maharashtra and NCT of Delhi (Union Territory with Legislature), **can also be held along with the House of the People and the five States mentioned in (i) above, in 2019, subject their voluntarily agreeing to take recourse to Article 172(1) or by the operation of law.**
 - iii) **In case of the other four States** viz., Chhattisgarh, Madhya Pradesh, Mizoram and Rajasthan, where

elections are due in early January of 2019 (Chhattisgarh, Madhya Pradesh and Rajasthan) and end of 2018 (Mizoram), extension of up to six months is required to attain synchronisation with the elections to the House of the People in 2019, which will entail amendment to Article 172 of the Constitution.

In case of the remaining 16 States and Puducherry (Union Territory with Legislature), holding simultaneous elections in 2019 will be impracticable. Therefore, the elections to these State Legislative Assemblies can be conducted towards the end of 2021, which will be approximately midway of the term of the House of the People, assuming that the term of the Seventeenth Lok Sabha begins in mid of 2019. In such a scenario, the maximum period by which any State Assembly is to be extended will be by thirteen months (in the case of Bihar) and the maximum period of curtailment is seventeen months (in the case of Karnataka). **The term of the State Legislative Assemblies so constituted as a result of the elections in 2021 shall be only for thirty months or till June 2024, whichever is earlier. Thereafter, elections to the House of the People and all the State Legislative Assemblies and Union Territories (with legislatures) can be held together from 2024, completely synchronising the elections.**

Option - II

- b) **As a Second option**, once the elections to twelve State Legislative Assemblies and one Union Territory (with Legislature), are synchronised along with the elections to the House of the People in 2019 and the remaining sixteen State Legislative Assemblies and one Union Territory (with Legislature) by the end of 2021, the elections will stand

synchronised in such a manner that they are held only twice in five years, repeating the cycle of the elections to the House of the People and thirteen States (including one Union Territory with Legislature) in mid-2024 and elections to seventeen States (including one Union Territory with Legislature) by the end of 2026. This will result in elections only twice in a period of five years.

Synchronisation of elections as given in **Option - I** above will, therefore, require suitable amendment to Article 172 of the Constitution or insertion of a new clause to that Article, for **(i)** extension/curtailment of the terms of Legislative Assemblies of certain States; and **(ii)** limiting the terms of the State Legislative Assemblies constituted as a result of the elections to be held in end of 2021, so as to be synchronised with the elections to the House of People to be held in mid-2024. For **Option - II**, Amendment only as mentioned at **(i)** above will be required and the cycle of simultaneous election will be such that elections are held twice in a period of 5 years, i.e., mid-2019, end-2021, mid-2024, end-2026, etc.

Also, if felt necessary, provisos to sections 14 and 15 of the Representation of the People Act, 1951, which deal with the notification for elections to the House of the People and the State Legislative Assemblies, respectively, may also be amended, along with a sunset clause.

Option - III

- c) As a **third option**, if it is not possible for some reasons to conduct simultaneous elections as discussed in the above two options, then, it is recommended that all elections falling due in one calendar year be conducted together during such part of the

year, which is conducive to all the State Legislatures involved and / or the House of the People (if sooner dissolved). Even for achieving this option, the provisions contained in Articles 85(1) and 174(1) of the Constitution and the provisos to sections 14 and 15 of the Representation of Peoples Act 1951 may be amended suitably.

B. Ratification by States

12.4 Even though the proposed Constitutional amendments do not fall within the purview of Proviso to clause (2) of Article 368 the Government may seek ratification by not less than one-half of the States as an abundant caution.

C. No Confidence Motion

12.5 In order to ensure stability of the Government(s) and its further sustenance, the Commission recommends that the concept of 'constructive vote of no-confidence' may be adopted. The option of limiting the number of such motions during the term of the given House / Assembly may also be considered. Rule 198 of the Rules of Procedure and Conduct of Business in Lok Sabha may suitably be amended. Amendments on similar line should be made in the Rules of Procedure of various State Legislative Assemblies.

D. Hung Parliament / Hung Assembly

12.6 In the event of a Hung House / Assembly, all efforts must be made by the President / Governor, as the case may be, to install a Government that will enjoy the support of the House / Assembly, giving an opportunity to the largest party along with their pre-poll or post-poll alliance(s). Still, if no government could be formed, the President / Governor may call for an All-Party meet to tide over the stalemate. If the above two options fail, mid-term polls becomes

inevitable. However, the duration of the House / Assembly so constituted shall be only for the remainder of the term, as suggested later in this Report.

E. Budgetary Defeat

12.7 In order to address the issues arising out of budgetary defeat leading to the fall of the incumbent Government, by loss of support of the House at Centre/State or where alliance partner/s withdraw their support on account of the budgetary proposals, the Commission recommends that efforts to build a consensus must be made to avoid mid-term polls. In the event all such efforts fail, mid-term polls will ensue.

F. Remainder of the Term

12.8 In order to ensure that cycle of simultaneous elections is not disrupted, the Commission recommends that a House constituted upon the dissolution of the House before the expiration of its duration should continue only for the remainder of the term for which the dissolved House would have continued, had it not been so dissolved. This could be achieved by adding a proviso to Articles 83(2) and 172(1) of the Constitution.

G. Other Relevant Suggestions / Recommendations

12.9 In order to expedite the adjudication of the issue of disqualifications on the ground of defection under the Tenth Schedule, the Commission recommends that such issues must be decided by the Chairman or the Speaker of a House, as the case may be, as expeditiously as possible, but not later than a period of six months from date of raising of such an issue. For this purpose, the Tenth Schedule may be appropriately amended.

12.10 Holding of bye-elections at various intervals also causes avoidable expenditure. Therefore, the Commission recommends that

all bye-elections falling due in one calendar year be conducted together during such part of the year, which is conducive to all the State Legislatures involved and / or the House of the People. To achieve this, the relevant provisions of the Act, 1951 be amended.

ANNEXURE - I

**List of State Legislative Assemblies for which elections were held
during 2014 to 2016**

Sl. No.	NAME OF STATE	DATE OF ELECTION (POLLING DATE)
<u>2014</u>		
1	Andhra Pradesh	April/May
2	Arunachal Pradesh	April
3	Odisha	April
4	Sikkim	April
5	Maharashtra	October
6	Haryana	October
7	Jharkhand	November/December
8	Jammu and Kashmir	November/December
<u>2015</u>		
9	Bihar	October/November
10	Delhi	February
<u>2016</u>		
11	Assam	April
12	Kerala	May
13	Puducherry	May
14	Tamil Nadu	May
15	West Bengal	April/May

ANNEXURE - II

ELECTION CYCLE IN INDIA FROM (2003- 2017)

- In 2003, elections were held for nine legislative assemblies of Himachal Pradesh, Meghalaya, Nagaland, Tripura, Mizoram, Chhattisgarh, Madhya Pradesh, NCT of Delhi, and Rajasthan.
- In 2004, elections to the State Legislative Assemblies were held in six states. Four (Andhra Pradesh, Karnataka, Orissa and Sikkim) had assembly election simultaneous with the Lok Sabha, while as Maharashtra and Arunachal Pradesh elections were held later in the year.
- In 2005, elections to the State Legislative Assemblies were held in three Indian states i.e., Bihar, Haryana and Jharkhand. Since no government could be formed in Bihar, fresh elections were held in October–November the same year.
- In 2006, the five states that went into poll were Assam, Kerala, Tamil Nadu, West Bengal and Puducherry.
- In 2007, the State Assembly elections in India took place for seven states i.e., Goa, Himachal Pradesh, Manipur, Punjab, Uttarakhand, Uttar Pradesh and Gujarat.
- In 2008, elections to 10 legislative assemblies were held. The first batch of elections for the year were held for the Legislative Assemblies of the states of Meghalaya, Nagaland and Tripura. Subsequently, elections to the state Assembly of Karnataka was held. This was the first election to be held under the new boundaries drawn up the Delimitation Commission of India. Following Karnataka, elections were held in four states - Chhattisgarh, Madhya Pradesh, Mizoram and Rajasthan - and in the National Capital Territory of Delhi (NCT). Later in the year, elections to the state Assembly of Jammu and Kashmir were held.
- In 2009, the general elections to the 15th Lok Sabha were held. The Andhra Pradesh and Orissa Legislative Assembly elections took place concurrently with the Lok Sabha elections. In the same year, elections to 4 other legislative assemblies were held. These included Arunachal Pradesh, Haryana, Jharkhand and Maharashtra.
- In 2010, elections were held for the legislative assembly of Bihar.
- In 2011, elections were held elect legislatures in 5 states i.e., Assam, Kerala, Tamil Nadu, West Bengal and Puducherry.
- In 2012, elections to 7 legislative assemblies were held. Election for the assemblies of Manipur, Punjab, Uttarakhand, Uttar Pradesh and Goa took place in the first quarter of the year,

whereas the elections were held in Himachal Pradesh and Gujarat in the last quarter of the year.

- In 2013, legislative Assembly elections were conducted for nine legislative assemblies i.e., Chhattisgarh, Tripura, Meghalaya, Nagaland, Karnataka, Mizoram, Delhi, Madhya Pradesh and Rajasthan
- In 2014, legislative assembly elections took place for eight states Andhra Pradesh, Arunachal Pradesh, Haryana, Jammu and Kashmir, Jharkhand, Maharashtra, Odisha and Sikkim. In first phase, the legislative elections in Arunachal Pradesh, Andhra Pradesh, Odisha and Sikkim took place along with the 16th Lok Sabha elections. The elections in Andhra Pradesh were for the two states created on June 2 i.e., Telangana and Andhra Pradesh (post division).
- In 2015, two state legislative assembly elections were held i.e., Bihar and Delhi.
- In 2016, elections were held for the legislative assemblies of five states i.e., Tamil Nadu, West Bengal, Kerala, Puducherry and Assam.
- In 2017, elections were held for legislative assemblies of 7 states i.e., Punjab, Goa, Uttar Pradesh, Uttarakhand, Manipur, Himachal Pradesh and Gujarat.

ANNEXURE - III
SIXTEEN GENERAL ELECTIONS HELD SO FAR

Lok Sabha	Date of Last Election	First sitting	Scheduled date of Expiration of term	Date of Dissolution	Actual Term
1 st	21-Feb-52	13-May-52	12-May-57	4-Apr-57	5 years
2 nd	15-Mar-57	10-May-57	9-May-62	31-Mar-62	5 years
3 rd	25-Feb-62	16-Apr-62	15-Apr-67	3-Mar-67	5 years
4 th	21-Feb-67	16-Mar-67	15-Mar-72	27-Dec-70	3 years & 10 months
5 th	10-Mar-71	19-Mar-71	18-Mar-77	18-Jan-77	5 years & 10 months
6 th	20-Mar-77	25-Mar-77	24-Mar-82	22-Aug-79	2 years & 5 months
7 th	6-Jan-80	21-Jan-80	20-Jan-85	31-Dec-84	5 years
8 th	28-Dec-84	15-Jan-85	14-Jan-90	27-Nov-89	5 years
9 th	26-Nov-89	18-Dec-89	17-Dec-94	13-Mar-91	1 year & 3 months
10 th	15-Jun-91	9-Jul-91	8-Jul-96	10-May-96	5 years
11 th	7-May-96	22-May-96	21-May-01	4-Dec-97	1 year & 6 months
12 th	7-Mar-98	23-Mar-98	22-Mar-03	26-Apr-99	1 year & 1 month
13 th	4-Oct-99	20-Oct-99	19-Oct-04	6-Feb-04	4 years & 4 months
14 th	10-May-04	2-Jun-04	1-Jun-09	18-May-09	5 years
15 th	13-May-09	1-Jun-09	31-May-14	18-May-14	5 years
16 th	12-May-14	4-Jun-14	3-Jun-19	NA	NA

ANNEXURE - IV

SUGGESTED PROPOSAL FOR SIMULTANEOUS ELECTIONS AND APPROXIMATE EXTENSION AND CURTAILMENT OF THE STATE ASSEMBLY TERMS IN MONTHS.

**SYNCHRONIZATION OF ELECTIONS
ROUND 1 - 2019**

STATE ASSEMBLY ELECTIONS ALREADY SYNCHRONISED WITH
LOK SABHA ELECTIONS 2019

S.no	State Legislative Assemblies	Term Upto	June 2019 (April- May)
1	Andhra Pradesh	June 2019	No change
2	Arunachal Pradesh	June 2019	No change
3	Odhisia	June 2019	No change
4	Sikkim	June 2019	No change
5	Telangana	June 2019	No change
6	Lok Sabha/ House of the People	June 2019	No change

STATE ASSEMBLIES WHICH WILL REQUIRE CURTAILMENT TO BE
SYNCHRONISED WITH THE LOK SABHA ELECTION IN 2019.

S. no	State Legislative Assemblies	Term Upto	June 2019 (April- May)
1	Haryana	Nov. 2019	Curtail 5 months
2	Jharkhand	Jan. 2020	Curtail 7 months
3	Maharashtra	Nov.2019	Curtail 5 months
4	NCT of Delhi	Feb. 2020	Curtail 8 months

STATE LEGISLATIVE ASSEMBLIES WHICH WILL REQUIRE
EXTENSION TO BE SYNCHRONISED WITH LOK SABHA ELECTIONS
IN 2019

S. no	State Legislative Assemblies	Term Upto	June 2019 (April- May)
1	Chhattisgarh	Jan. 2019	Extend 5 months
2	Madhya Pradesh	Jan. 2019	Extend 5 months
3	Mizoram	Dec. 2018	Extend 6 months
4	Rajasthan	Jan.2019	Extend 5 months

STATE LEGISLATIVE ASSEMBLIES TO BE HELD TOGETHER IN 2021

ROUND 2 - 2021

S. no.	State Assembly/ Lok Sabha	Term Upto	Dec 2021 (Oct – Nov) 2021
1	Assam	June 2021	Extend 6 months
2	Bihar	Nov 2020	Extend 13 months
3	Goa	March 2017	Curtail 3 months
4	Gujarat	Jan. 2023	Curtail 13 months
5	Himachal Pradesh	Jan. 2023	Curtail 13months
6	Karnataka		Curtail 17months
7	Kerala	June 2021	Extend 6 months
8	Manipur	March20 2022	Curtail 3 months
9	Meghalaya	March 2023	Curtail 15 months
10	Nagaland	March 2023	Curtail 15 months
11	Punjab	March 2022	Curtail 3 months
12	Tamil Nadu	June 2021	Extend 6 months
13	Tripura	March 2023	Curtail 15 months
14	Uttrakhand	March 2022	Curtail 3 months
15	Uttar Pradesh	March 2022	Curtail 5 months
16	West Bengal	June 2021	Curtail 6 months
17	Puducherry	June 2021	Extend 6 months

ANNEXURE – V
SUMMARY OF WRITTEN REPRESENTATIONS SUBMITTED BY
POLITICAL PARTIES

1. All India Trinamool Congress

OPINION: Against simultaneous elections; Contrary to Constitutional Provisions [Articles 83 (2) and 172 (1) Basic Structure]

- They believe that simultaneous elections to Lok Sabha and State Legislatures would be contrary to the Constitutional Provisions and will not be feasible.
- In their opinion, Articles 83(2) and 172(1) form the basic structure of the constitution. As mentioned under these articles, the terms for House of the People and Legislative Assemblies are fixed, i.e. 5 years from the date appointed for the first meeting and no longer, unless dissolved sooner. Apart from these provisions, no other provision can provide for the scope of reduction of the term of any House. Any attempt to go beyond the scope of the above mentioned articles will be in violation of the same.

- In a situation where at the Centre, a single party forms the government with the support of an ally, and the latter withdraws support, the government will fall, and re-elections will have to be conducted within 6 months. In this case the state government will have to be dissolved as well to conduct elections simultaneously.

Similarly, in a State, if there is a coalition government and the allies withdraw support, fresh elections will have to be conducted, for which all the state assemblies and the House of Parliament will have to be dissolved for simultaneous elections. The said procedure will be impractical and not feasible because there will be a drainage of public wealth. Elector has the right to elect a government for 5 years and the same cannot be curtailed with simultaneous elections.

Along with these points, the fact that certain governments were elected recently in the past 2 year or maybe a few months back should not be ignore.

- Regional political parties play an important role in shaping the dynamics of the Indian polity. Unlike initially when there were 2-3 national parties, many state parties have attained national party status. In such a situation, it will be unlikely for a single party to gain majority in the Parliament without the support of regional parties, which will make the government more susceptible to lose majority frequently.

Such a situation might lead to constitutional crisis and instability in the democracy.

Simultaneous elections could even lead to an 'Emergency-like' situation.

- Constitutional benches of the Hon'ble Supreme Court have held that the basic structure of the Constitution cannot be amended and Articles 83(2) and 172(1) form a part of the basic structure.

India has a multi-party democratic system where one party rule is not feasible or possible.

2. Samajwadi Party

OPINION: In favor of simultaneous elections

- Simultaneous elections for Centre and State Legislative Assemblies should start from 2019 itself.
- In case of a coalition government at the Centre as well as at the State level, at the time of formation of the government, the allied parties while presenting a list of all the members for the coalition government to the President/Governor, should give in writing that throughout the tenure of the government, no party will withdraw the support and will continue to work together. This will help in avoiding the situation of a hung parliament/assembly due to withdrawal of the support by one or more of the allies.
- A provision should be made under the relevant legislation where, if any member of the coalition government withdraws support, in that case the membership of all the members of the said party should be canceled by the Speaker mandatorily.
- In case of a weak majority, members of the ruling party, from both House of Commons and Legislative Assemblies, are lured by either a position in the house/assembly or by monetary offerings to leave the party and topple the government. Such members should not only be devoid of the right of voting, but their membership should also be cancelled mandatorily.
- In certain cases it has happened that the Speaker did not deliver the decision for a long time in case of defection where members changed their party. In order to expedite the process, a provision should be made where a time cap should be put on the decision making time period, where the decision should be conveyed within a maximum of one week.
- Despite of all the above mentioned proposals, if a situation arises where a government is toppled/falls, the elections should be conducted only for the remainder period.

3. All India Anna Dravida Munnetra Kazhagam

OPINION: In favour of simultaneous elections, with certain reservations.

- The Tamil Nadu Legislative Assembly is concerned with the fact that their session should be allowed to complete 5 years. If the tenure is cut short the parties will not be able to complete their promises from the Election Manifesto. The 2019 elections should continue the same way and the merger of all the elections may take place in 2024.
- In favor of simultaneous elections as the same will reduce expenditure, will focus on better governance, and democratically it will help people in making better and informed choices.
- CONCERNS- Lok sabha and State Assemblies should have fixed term (similar to Fixed Term Parliaments Act, FTPA, 2011, in UK), conditions under FTPA being- 2/3rd of the majority of house of Commons vote for fresh elections, or,

government falls due to vote of no-confidence and another government cannot pass confidence motion within 14 days.

- For Simultaneous elections in India, both the houses should be given a fixed term, along with fixed dates (Fixed date such as the Presidential elections in United States). This will help the political parties for an advanced and timely preparation. With this dates will also be fixed and not left to the whims and fancies of the Election Commission of India, and will help in timely imposition of MCC.
- There is another concern where the tenure of the state assemblies will have to either be extended or cut short in order to sync the same with the simultaneous elections' cycle.
- Dismissal of government and dissolution of the State Assembly, before completion of the tenure has become very difficult, primarily due to 'Bommai Case.
- No Confidence motion should be made more stringent by adding a provision where such a motion should be passed only if the house has a majority of 2/3rd of the total members of the House and 3/4th of the members present and voting. In such a situation as well, the ousted government should be given an opportunity to test the vote of confidence by a simple majority within a month, if it desires.
- In both the situations, i.e. dismissal or voted out in a confidence vote, the new government should only be for the remainder time period.

4. Shiromani Akali Dal

OPINION: In favor of simultaneous elections.

- They agree to the fact that simultaneous elections will help in saving the expenditure incurred by the government in managing the elections as well as the political parties, if held once in five years.
- For candidates contesting elections for Lok Sabha will save the excessive expenditure on campaigning as the same will get divided amongst other candidates from the same party who are contesting for legislative assemblies. In a nutshell since we'll have simultaneous elections for both center and the state, the campaigning cost will be reduced.
- The constant imposition of MCC disrupts the economic and developmental activities, and the same can be saved by having the MCC imposed just once in public interest.
- Simultaneous elections will help in forming a unanimous opinion about the political party of the voters' choice, on the basis of the party's manifesto. This will help in forming a strong State as well as the Central government.
- The current election system maintains a constant pressure on the ECI, security agencies and the election related government staff. Simultaneous elections will help in managing elections in a free and fair manner. Any allegation of favor to a particular party in the center by the ECI will also be eliminated.
- In case of dissolution of the state assembly or hung assembly, the newly elected house should only be for the remaining period.

5. Indian Union Muslim League

OPINION: In favor of simultaneous elections, with certain reservations, but now against.

VIEWPOINT IN 2015 SUBMITTED BEFORE PARLIAMENTARY STANDING COMMITTEE (As annexed with the written representation)-

- The Party in 2015, as represented by the then National General Secretary was in favor of simultaneous elections. They believed that the same will help in reducing the expenditure.
- Also the timeframe to submit the election expenditure account should be enlarged to at least 6 months of expenditure details, which should be collected from all the States.
- The cap of 20,000 on cash expenditure was suggested to be increased to 1 lakh.
- Annual audited report should be treated as the report of the status of the contributions as it will contain all details of income, expenditure and bank transactions.\
- They also proposed that Simultaneous elections will increase the polling percentage as for people who find it difficult to cast their vote as they are working away from their constituency, will be able take a leave and cast their vote in their constituency.
- Simultaneous elections will reduce number of public holidays.
- Also manpower deployment can be better managed.
- The change will also help in mainstreaming all the views of the national and regional parties for the voter, and also the electorate will understand their viewpoints better.
- It'll save time of political leaders and parties, as lesser time will be spent in campaigning.

Unfortunately the party's representative on the day of the meeting represented views which were completely opposite from the party's view in 2015. They now believe that the proposed system is completely unnecessary. Clubbing the Centre and the State elections will not solve the purpose. They claimed that even in the current situation, the minorities are not represented properly, and if simultaneous elections are introduced, minorities will not get better representation again, and an amendment should be made in order to secure their representation.

6. Dravida Munnetra Kazhagam (DMK)

OPINION: Against simultaneous elections, as it goes against basic tenets of the Constitution

- While referring to the Working paper (para 2, "local body elections") on the LCI's website, DMK has stated that State legislature also has a distinct identity, with their powers under Chapter 3 of the Constitution.

- Basic features of the Constitution cannot be amended, as held by the Hon'ble Supreme Court in *Golak Nath v. State of Punjab* and *Kesavananda Bharati v. State of Kerala*.
 - The examples of Sweden, Belgium and South Africa, as mentioned in the working paper, have a cumulative population of 7.6 crores which is less than that of Tamil Nadu, whereas the population of our country is 132 crores. Comparing India to these above mentioned countries is logically fallacious, and misleading.
 - The power to dissolve the legislature, as under Articles-174 and 356, are vested with Governor and President respectively. These powers have been circumscribed by Hon'ble Supreme Court in *State of Rajasthan v. UOI*. Any alteration of these powers may run the risk of altering the basic structure and impinging on the federal character.
 - The dilution of the Tenth Schedule, as suggested in the working paper, will directly aid horse-trading among legislatures. Casual treatment of Tenth schedule is alarming, and no justification can be advanced to abet defection.
 - In case if Lok Sabha is also dissolved before time, whether in the spirit of simultaneous elections all the assemblies will also be dissolved to continue the synchronized electoral process.
 - The BJP led government requested the Commission to report on the same subject (170th Report, 1999), and no action has been taken so far on the same. Also the Parliamentary Standing Committee in the 79th Report in 2015, has concluded that "gaining consensus of all the political parties may be difficult" and "holding simultaneous elections may not be feasible in 2016 or even in a decade".
 - They believe that the said exercise to produce a duplicative report, as no chances of being legislated, and is useless from legal and political standpoint.
 - Procurement of EVMs and VVPATs for simultaneous elections will cost around Rs. 10,000 crores which will be way more than the expenditure as incurred in 2014 general elections (Rs. 3870 crores). The said proposal will not be economically efficient.
7. **All India Majlis-E-Ittehadul Muslimeen Member**

OPINION: Against, as the proposal is against the constitutional mandate.

- The Party claims that a needs-base case has not been demonstrated which is required to check the feasibility of the proposal. NITI Aayog's report as well as the Parliamentary Standing Committee's Report focuses on the excessive cost and the policy paralysis in the current system, to which no other plausible solution was advised.
- The constitutional framework cannot be jeopardized for efficiency, stability, and cost-effectiveness. The guaranteed tenure of Lok Sabha and Vidhan Sabha cannot be amended. The powers of ECI, LS or VS are not subject to the cost involved in operating them. Any effort to amend them will endanger the federal system of government.
- The international precedents cited (South Africa, Sweden) don't follow FPTP system. The proportional system which they follow, election outcome corresponds to voting percentage, where the legislative composition rarely gives a decisive majority to a single formation. Therefore a system of fixed

and simultaneous elections is required to ensure that parties coordinate post-poll. Also neither of these countries have a framework similar to anti-defection law, which makes Indian case different from the examples.

- Also the MCC does not prevent any policymaking that is developmental or routine in nature. Moreover the party leaders only insist to participate and campaign at various levels that causes policy paralysis and not the MCC.
- Parliamentary democracy which includes free and fair elections held at prescribed periodic intervals, collectively form the basic structure. It is not possible to abridge these aspects without striking the basic structure. A key aspect of parliamentary democracy is that the executive is drawn from the elected legislature and is accountable to it.
- The collective responsibility requires that the executive cannot continue when the legislature loses confidence in the same, which implies that the executive's term is restricted by the tenure of the house. If the legislature and the executive do not have a coterminous tenure, the same will be against the basic structure.
- The tenure of LS and SA cannot be altered, apart from lawful dissolution, as the same is prescribed under the constitution.
- Unlike the Gubernatorial process or Article 356 which is available for State legislature, no safeguard is available for safeguarding the tenure of Lok Sabha. There is no constitutional obligation for the Parliament to elect the government. It is only the electorate which can make the choice. The constitutional framers chose a parliamentary system for the Union, unlike States, to ensure people's mandate is not distorted in favor of minority government. When the Legislature loses the Executive's confidence, only a fresh people's mandate can resolve the uncertainty. Any attempt to alter the same will encourage horse-trading and cross voting.
- Parliamentary control and tenured elections, form a part of the parliamentary democracy, which is a basic feature of the constitution. The recommendations, such as, alternate vote of confidence, non-dissolution of the House, and amendment to Articles 83 and 172, require skepticism. They harm the parliamentary control of the executive and tenured elections. In a multi-party democracy, the executive might not complete its term after losing the assent of the legislature. There is no data to support that the electorate sees the same as instability. Any attempt to curtail the first right of the electorate to vote is dilution of the constitutional values.
- Half-way legislatures for the remainder period will create more instability. Every election mandate has fixed obligations on the representatives. The electorate will not be able to assess the performance of a government in the remainder term. Elected government has the right to complete its term and demonstrate its performance.
- As stated in the S.R. Bommai case, federalism forms the basic structure of the constitution, and any attempt to alter the basic structure will be unconstitutional. The proposal will modify the tenure of the legislature and make it contingent on the tenure/dissolution of other states or union. The same will also increase the use of Article 356, where the government loses majority.
- States are constitutional political units of the Union and not mere appendages of the centre. The proposal will result into the absence of a clear

legislative majority, and governments will continue to operate merely for simultaneity.

- As recognised in the Bommai case, the limitations placed on the SL, including invocation of Article 356 are to be invoked in extraordinary situations. Subjects listed in Schedule VII complete independence. Any limitation on the routine and ordinary exercise is ultra-vires the Constitution.
- Two aspects mentioned in the Bommai case, social pluralism and pluralist democracy, will be affected by SE. Any proposal that insists no a SE timetable would be disadvantageous to the residents of a state.
- The state has the same paraphernalia as the Union is to recognize that the residents if the states have right to a representative responsible government and to hold the government and legislature accountable. This cannot be clubbed with LS elections.
- The State institutions are as important as Union's. electorate choices and outcomes are highly contingent on local issues. Most state issues don't impact Union or other States. Political parties and citizen should discuss the same without subsuming them under national issue.
- Sufficient evidence to show that there's a 77% chance that voters would pick the national party in election are held simultaneously, which would favor the national parties. The proposal seeks to privilege the issues of the national parties and provide solutions meant for them.

8. **All India Forward Bloc**

OPINION: Against simultaneous elections, as the proposal is against the Constitution.

- Forceful synchronization of Lok Sabha and State Legislatures is against the federal system. It is against the Constitution and the Parliamentary system which ensures the right of the state to elect and form its own government, as and when required.
- Application of President's rule in case of failure of legislators to form a government will be negation of people's right. It will also dilute the spirit of ROPA 1951, and will lead to political and administrative corruption.
- There is no guarantee, in situations of coalition government, that the same will remain in power for 5 years and the government might get defeated in the confidence/non-confidence motion. But that does not allow the opposition to unite to form a new government.
- Multi-party electoral system is our strength and we should learn from the experience of the countries which attained independence along with us.
- Fixed term government will hamper the voice the opposition which will be detrimental to democracy.
- Also it will not be feasible to dissolve all the state governments in case of dissolution of the central government and inability of the opposition to form one.
- Maintenance of democratic traditions should not be valued against economic costs. Elections should not be considered as cost effective.
- Issues for the State and Centre's election are different. Local issues will get importance during the Assembly election and Lok Sabha elections will focus

on national issues. Anti-incumbency factors will be different in the state and the country as a whole.

- In favor of comprehensive electoral reforms including proportionate representation system.

9. **Zoram Nationalist Party, Mizoram**

OPINION: In favor of simultaneous elections.

- Through a written representation the party has expressed that they are in favor of simultaneous elections to Lok Sabha and State Legislatures. Taking into account the time and expenditures incurred, and taking into consideration the savings the Indian economy would partake, the Party feels that holding a simultaneous elections would benefit the country as a whole.

10. **Goa Forward Party**

OPINION: Against simultaneous elections, as the proposal is against the Constitution.

- Regional Issues will be affected.
- Impractical with respect to the Constitution. If the terms of the Legislative assembly is dissolved before completion then what will be the recourse.
- Support the idea but implementation is not practical

11. **All India N.R. Congress Party**

OPINION: In favor of simultaneous elections.

- The expenditure will be halved by holding elections simultaneously.
- The disturbance caused by noisy campaigning and hectic electioneering, disturbance is caused to the public, which will be curtailed by simultaneous elections.
- Money and manpower can be saved by the political parties due to elaborate election related activities.

12. **All India United Democratic Front**

OPINION: Against simultaneous elections.

- The party expressed reservations with respect to the regional interests. They believe that the instructions will be received by the Legislative Assemblies from Delhi, i.e. Lok Sabha.
- Also believe that the proposal is a sponsored design so as to exclude minorities (main focus on the Muslim population).
- Another concern was around the natural resources which are available in abundance in the Assam area will become vulnerable to exploitation.
- No Confidence motion is another concern.
- National parties will continue to dominate the elections.

13. **Communist Party of India (Marxist)**

OPINION: Against simultaneous elections, as the proposal is against the Constitution.

- The Party suggests that the proposal is impractical, fundamentally anti-democratic, and strikes at the root of the parliamentary democratic system as ordained in the Constitution.
- The proposal will require amendment to the accountability of the government to the legislature under the Constitution. Articles 75(3) and 164(1) mention that the collective responsibility of the Council of Ministers is to the House of the People and State Assembly respectively.
- If a government is voted out on no-confidence motion or loses a vote on Money Bill, it is bound to resign. If no alternative government is formed, house is dissolved and mid-term elections are held.
- No fixity of the tenure, either for the State or the Center, is enshrined in the constitution. Both Articles 83(2) and 172(1) mention that both State and the Centre will be for 5 years “unless dissolved sooner”. Any attempt to prolong the tenure will be unconstitutional and anti-democratic. Will of the people must prevail through the elected representatives.
- As per NITI Aayog’s proposal, where it is suggested that in case if the Lok Sabha is dissolved and the remaining period is not long, the President can carry out the administration of the country, on the aid of Council of Ministers. This is an outrageous proposal which will make the President Head of the Executive, bringing Executive Presidency through back door.
- The other proposal is that if in case of dissolution, the remaining period is long, then the fresh elections will be held only for the remainder period. In this case, there will be more frequent Lok Sabha elections, which will defeat the purpose for which simultaneous elections are proposed.
- As per the proposal in the NITI Aayog’s as well as the 79th Parliamentary Standing Committee’s Report, the suggestion is to extend and also shorten the life of some of the Assemblies in a phased manner. This will be an assault on the rights of the states and the rights of the citizens to elect.
- Also if the State legislator is dissolved after the major part of the term is over, the Governor could run the State for the rest of the term. This again would mean that the Centre will rule.
- One of the proposal to circumvent the accountability of the legislature and to ensure the fixity of the tenure of the House, it is suggested that a motion to elect a new government will be moved with a no-confidence motion. This will circumscribe the right of the legislator to vote out a government and will be conditional to their electing a new government. The right of legislators and members LS to vote out any government cannot be circumscribed, nor can the right of the ruling party having a stable majority to dissolve the House and hold early elections.
- Simultaneous elections will be in disregard for the federal principle and the rights of the States. Initially, many elections got detached from general elections due to arbitrary misuse of Article 356 by central government. The process began with the dismissal of the Communist Ministry in Kerala in 1959.

14. **Communist Party of India**

OPINION: Against simultaneous elections.

- Party claims that it is merely a wish of the Prime Minister which they intend to impose on the entire nation. Simultaneous elections will be unconstitutional.
- Also mentioned that discussing Simultaneous elections is not within the jurisdiction of Law Commission of India.
- The same is also not within the jurisdiction of the Supreme Court entirely to discuss the proposal.
- The proposal should be discussed only within the Parliament.

15. **Bodoland People's Front (BPF)**

OPINION: Support simultaneous elections, with certain apprehensions due to practical difficulties.

- PRACTICAL DIFFICULTIES: If a collusion government falls, election will have to be held within 6 months. In that case objective of SE will be defeated.
- Any citizen in India can participate in elections, at any level, independently. In that case the provisions available under the 10th Schedule are not applicable to them. In such a case they will be capable of toppling the government by switching sides in the midst of their term. In such a situation elections will be held again within 6 months from the date of President's rule. In such a situation where there will be a threat to the government or the legislature, due to the multiple party system and independent candidates, an amendment will have to be introduced in the 10th schedule to cover independent candidates as well.
- In a situation where the ruling party loses absolute majority, in that case the Government in consultation with the opposition, as an alternative, can divide the remaining period into 2 halves. A government can be formed where the ruling party will rule for the first half and opposition will rule for the second half. After required amendment to implement the suggested proposal, the provision of the 10th schedule will not come into play.

16. **People's Party of Arunachal (PPA)**

- APPREHENSIONS: If the state government falls within a year of coming into power, will the State continue under President's rule for the next 4 years? Also if 2 contradictory parties are at the Centre and the State, then in case of President's rule, the Centre's ideology could prevail.
- Ruling party, having the upper hand, can influence the elections, and once the mandate is fulfilled, can also alter the mandate for both centre and state, for a longer and stable duration.
- There will be administrative difficulty as SA will have to adjust the tenure with the Centre. Development projects may get affected due to preponing of Legislative Assembly elections for Centre.
- Parties are held accountable by the public through frequent elections, which will not be possible through simultaneous elections.
- Simultaneous elections goes against the rule by majority principle, as the LS or the LA will not be dissolved before the 5 year tenure, even if the ruling party is reduced to a minority, which will be against the federal principle.
- Polity at the state level has coalition, which will lead to re-alignment and changes in the Legislative Assembly, also causing early dissolution. Under

simultaneous elections states will no longer be able to decide their own path and will have to be in existence for 5 years, even with a minority.

- SE might bring dictatorial tendencies in the government by reducing their accountability to the Lok Sabha or State Assembly, since they cannot be removed from office even after losing majority.

17. **Telugu Desam Party (TDP)**

OPINION: Against due to certain apprehensions.

- Party dominant in 2 states- Andhra Pradesh and Telangana.
- The proposal of simultaneous elections may be good but requires detailed study and investigation, and planning besides poll consensus.
- Primary constraint is constitutional aspect.
- Even if elections were to be conducted simultaneously, every state assembly will go through its political course. It will be very difficult to conduct different electoral cycles of the states. Also if the MLAs shift to other parties when there is no majority, the continuity of the government becomes uncertain.
- Also if the Lok Sabha is dissolved prematurely, will all the state assemblies will also be dissolved for simultaneous elections. The idea sounds against the ethos of democracy as it undermines the people's mandate. The same will also dilute the spirit of 10th Schedule. This proposal may also require massive changes in Election Commission.
- The proposed amendments to the Constitution and the ROPA cannot ensure the future of the State and the Central government that they will not collapse. People cannot be denied the right to have their representative government. If the elected state assembly will not serve of 5 years, what will be the fate of the same.
- The move will hurt the basic structure of the Constitution, as there is no guarantee to the Indian politics and the multi-party system.

18. **Telangana Rashtra Samithi (TRS)**

OPINION: In favor of simultaneous elections

- Each time 4-6 months of time is spent in conducting elections each time to Lok Sabha and State Assembly. Entire state and district level administration and security machinery is engaged with the elections twice in 5 years.
- Imposition of MCC for such a long duration disrupts developmental and welfare activities undertaken by the State government. Also huge amounts of public money as well as the party/candidates money are spent twice in 5 years.

19. **Indian National Lokdal**

OPINION: In favor of simultaneous elections

- Huge expenses can be saved.
- Logistics and the hours of administrative and developmental work lost due to separate elections and implementation of MCC makes the proposition attractive.
- The party has proposed that instead of using EVMs, which are prone to tampering and break-down, ballot papers should be used, as used by many other advanced countries for greater credibility.

20. **Jharkhand Mukti Morcha**

OPINION: Against SE, as considered unconstitutional and impractical.

- The party states that the idea of one nation one election is opposed to the mandated parliamentary democratic mechanism as laid down by the Constitution. The nonperformance of national parties in the recent decades has angered the dalits, scheduled tribes, OBCs and minorities all over India. This has led them to support regional parties. As they claim, 70 % states of India have strong presence of regional parties who have won over people's confidence and ruled subsequently.
- As per their claim, one election is the conspiracy of BJP who wants to suppress the regional parties. If all the elections are concluded at one time, it would lead the national issues to gain importance nullifying the regional issues thus harming the interests of backward regions and weak classes.
- The JMM strongly disapproves this concept, as this will require Constitutional Amendment, not analysis of law. So, law commission is not warranted to look into this matter and this issue must be solely left to the Parliament. This issue is of such grave importance that the thoughts of all classes of people must be heard. In their opinion, BJP who for its own interests wants to impose this on the nation. JMM feels that this issue should have been discussed first inside the Parliament and through a Parliamentary Committee where all the representatives would have been the flag bearers of the society. The present working raises doubts on the intention of the government and BJP.
- The proposed plan will be very difficult to realize. There have been many States in recent decades with coalition governments who couldn't even complete their term. So accordingly if these governments fall before their term then will all the functioning governments of the other states will be deemed invalid for conducting elections? And if this is done will it not be opposed to the basic features of the Constitution?
- The proposed system is being supported because supposedly it would reduce expenditure. Well this argument is worth a laugh because national parties have become economic giants who have almost 1000 crores worth of annual income and their budgets for the national election surpasses the GDP of several small nations. Hence the purported system can't be cited as a reform just because it is reducing expenditure but must be branded as a conspiracy instead.

The proposed system is a conspiracy to harm the national structure, weaken the state governments and suppress the newfound political feeling among the lacking classes. Demonetization and GST were a fatal blow on the national economy but this concept of one nation, one election would be fatal for the nation itself. Already questions have been raised over the demonetization and GST and the motive behind this proposed system also seems to be dangerous. Motive of a political party or a person for achieving his earnest political desires should not be allowed to corrode the nation's structure. They suggest that the proposed plan must be brought to the citizens through a suitable medium where they can reach a decision by weighing it's pros and cons.

21. **Biju Janata Dal (BJD)**

OPINION: In favour of simultaneous elections.

- The idea of Simultaneous elections was first mooted by BJD and also implemented by them in 2004, when they shortened the assembly tenure by 1 year. The then Chief Minister Mr. Naveen Patnaik took the unprecedented step of dissolving the Assembly, which helped in saving money, and also helped in implementation of MCC for once only in 2004. Since then the elections to the Odisha Assembly have been held with the Centre.
- The Party is strongly against the dilution of anti-defection provision for a prolonged life of the Lok Sabha or Assembly, which is cut short due to a State or Central Government losing majority prematurely. Instead the German model should be adopted where no vote of no confidence can be entertained unless it is accompanied by a vote of confidence proposal.

22. Yuvajana Sramika Rythu Congress Party (YSR)

OPINION: In favour of simultaneous elections

- PROPOSAL: The current voting system of FPTP has defects which are to be rectified by adopting a better system.
- Under the present election system huge costs are incurred by the Election Commission and the Political parties as well as the candidates. Also a large number of government employees and public buildings are diverted from their regular responsibilities for elections. Along with these issues, government servants and security forces are also diverted from their core mandate to ensure internal and external security of the country. Simultaneous elections will reduce the expenditure and will also prevent diversion of human resources.
- The proposed system will limit the application of MCC, pan India, only to once when elections are conducted simultaneously, which will save the delay otherwise cause in the delivery of government schemes and other developmental programs.
- If Simultaneous elections are implemented, the same will help in keeping a check over the activities of political parties, where they try to lure voters which has a negative impact on the public interest.
- States will continue to survive for 5 years, as they will not be dismissed easily. But if such a situation arises due to coalition or otherwise, then a solution will have to be devised for the same. It will have to be analyzed if multiple elections can be held in 5 years. Simultaneous elections also provide stability to governments so that they can take difficult or unpopular decisions in larger public interest.
- As some or the other elections are held every year, key political leaders are and parties get tied up in campaigning, leaving the government in the hands of bureaucracy, which might not be able to take decisions in public interest. This will not happen if all the elections are held together.
- Also MCC should not be stretched for too long. It has to be minimized to the lowest possible extent in view of the development being hampered. Also the same should indicate clearly all the 'Dos' and 'Don'ts' for the ruling dispensation.
- Regular and frequent elections are the root cause of corruption. A cap should be put on the expenditure incurred by the political parties. Also Simultaneous elections will help in curbing the nefarious designs of dividing

the society, stopping communal riots and caste disturbances and polarization of communities.

- **DISADVANTAGES:** A caveat on the expenditure of the political parties will be there, as there will be no guarantee for the same. It is also possible that the state elections might lose importance and regional parties might get adversely affected, which will not be good for the federal structure. An amendment will be required in the Article 83(2) and 172(1) in order to sync the elections.

23. Indian National Congress (All India Congress Committee)

OPINION: Against simultaneous elections

- Drawing attention to Art.75(3) and Art.164(2), the Party stated that the Council of Ministers is collectively responsible to the House of the People. If the Council loses the confidence of the House, it is bound to resign.
- If no other Party is able to command the confidence of the House, only option left is to have fresh elections. Such an election cannot be held after long durations, for the sake of holding it simultaneously.
- Under Articles 83(2) and 172(1), the term of the House(s) is stipulated as 5 years, unless sooner dissolved. Extension of the term of the House even by one day is not permissible under the Constitution.
- The exercise undertaken by the Law Commission of India is unconstitutional, undemocratic and forbidden by law. Therefore, the proposal must be dropped.

24. Asom Gana Parishad

OPINION: Against simultaneous elections

- The Party drew attention to Part XV of the Constitution dealing with Elections in the Union of India.
- Part VI of the Constitution on duration of State Legislatures was also referred to.
- Reference was also made to the provisions of Representation of the People Act, 1951.
- Raised question about the constitutional validity of resorting to holding simultaneous elections, as it would require dissolution of State Legislative Assemblies, in spite of not falling within the purview of Art. 356 of the Constitution.
- It will require amendment to the 'pristine' Articles of the Constitution and provisions of the Act, 1951 and therefore, it is impossible for them to give their opinion in support.
- Refused to express their opinion in support of the proposal as they were not informed about the jurisdiction of Law Commission of India in election matters.

25. Bharatiya Janata Party (BJP)

OPINION: In favour of simultaneous elections.

- The party submitted its opinion on holding elections to all three tiers of Governments together.

- The country is in continuous election mode owing to elections of some kind is taking place in least 5-7 States in a given calendar year. The government officials and paramilitary forces are diverted to perform election duties rather than the duties for which they are meant for.
- Frequent elections prove to be a burden on government exchequer.
- Criticised repeated elections on the ground that it leads to *ad hocism* as no firm policy decisions can be taken. Further parties in power tend to take populist measures rather than nationalist ones.
- Model Code of Conduct slows down the ambitious measures of Government. Cited the example of Maharashtra, where in the year 2016-17, on 307 days out of 365 days, Model Code of Conduct (MCC) was in operation and similar is the case with State like Rajasthan, as well.
- Simultaneous elections would mean a voter voting to elections held for all three tiers of the Government on the same day. Quoted the judgement of the Constitutional Court of Indonesia, in this regard.
- Simultaneous elections is not a principle. Election is not the object; instead election is only the means to achieve the object / end i.e., good governance. Continuous election cycle has given an impression that election is governance. Proportion between campaign time and governance time is very less.
- Initially India has witnessed simultaneous elections till 1967. The practice got disrupted thereafter.
- Referred to various reports which dealt with simultaneous elections i.e. Report of ECI (1983), Report of Law Commission (1999), Standing Committee Report (2015), NITI Aayog Report (2017), Reports given by Government of Chhattisgarh and Government of Uttar Pradesh. Copies of the reports by the State Governments were handed over to the Commission.
- The party pointed out the following advantages of simultaneous elections:
 - It will save public money and reduce administrative burden.
 - Delay in policy-making owing to Model Code of Conduct being in force for prolonged period.
 - Ruled out the possibility of regional parties getting marginalised.
- The party pointed out the following challenges of simultaneous elections that needs attention:
 - Certain Articles of the Constitution will require amendments.
 - Similarly, some sections of the Representation of the People Act, 1951 will need to be amended.
- Under Art.326 secures adult suffrage to the citizens who are above 18 years of age. The voters are aware enough to distinguish between the regional and national issues and the allegations that the regional issues will get sidelined are baseless.
- It will in no way come in the way of the federal structure of the Constitution. Rather, it will lead to better stability of the Government.
- There must be uniform electoral rolls for elections to all three tiers and uniform procedure must be followed for the elections
- The term of a House, a result of elections after premature dissolution, must be made for the remainder of the term of the House so dissolved.

26. **Shiv Sena**

OPINION: In favour of simultaneous elections.

- Election expenditure will be curtailed and country will come out of the cycle of being in the continuous election mode.
- EVMs supported by VVPAT proved to be a failed mechanism in recent elections in the country.
- Laid emphasis on the use of Paper ballot instead of the EVMs as a medium of election.
- Prime Minister and Chief Minister shall restrain themselves from campaigning for their respective political parties.

ANNEXURE – VI
PROCEEDINGS OF THE CONSULTATION WITH POLITICAL
PARTIES

1. All India Trinamool Congress (National Party)

Delegate Shri Kalyan Bandopadhyay (MP, Lok Sabha)

07 July 2018, 11.00 am – 11.45 am

- Opposed simultaneous elections
- The idea of simultaneous elections tinkers with the concept of federalism which is the basic feature of the Constitution, which cannot be subjected to amendment. Therefore, it is not possible in law to amend the Constitution for this purpose.
- So far as the concept of federalism is concerned, the Central Government has no superior rights than any State Government and the Constitution cannot be amended in such a manner that it may adversely affect the States.
- The voters of a particular constituency vote for their representative to take care of their interests for full five years, which should not be curtailed.
- Once the House is dissolved, the new House is to be constituted for a period of five years and the concept of constituting a House for the 'remainder period' is against the Constitution. If the State Assembly is dissolved in one of the States, then Legislatures of all the States must go for elections together, in order to have the concept of simultaneous elections successful.

2. Goa Forward Party

Delegate: Shri Vijay Sardesai (Minister, Government of Goa), President

07 July 2018, 12.30 pm – 01.15 pm

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- Opposed simultaneous elections
 - The concept of simultaneous elections will push regional issues and sentiments to the backseat and national parties may not be able to espouse regional causes or issues.
 - Holding of simultaneous elections will disturb federalism, which is a basic structure of the Constitution.
-
- Staggered elections ensure greater accountability, even though a central government or a State Government is elected for a period of 5 years, the performance of the government comes under the scrutiny of the electorate in other States, where elections are held.

3. CPI Communist Party of India (National Party)

Delegate: Shri Atul Kumar Anjaan, Secretary, National Council of the Communist Party of India

07 July 2018, 02.00 pm – 02.45 pm

- Opposed simultaneous elections
- Issue of simultaneous elections not within Law Commissions competence. The issue should have been taken up by the Parliament of India. Moreover the Law Commission of India is only an advisory body.
- It should have been discussed in the Parliament by the Ministry of Law & Justice if at all it was so required.

4. All India United Democratic Front

Delegate: Shri Amin-ul-Islam, General Secretary & Shri A.S Tapadar

07 July 2018, 02.00 pm – 02.45 pm

- Opposed simultaneous elections
- The delegates put forward that they are against the simultaneous elections. They were apprehensive about it. They are a regional party which has not been in power for long.
- They apprehended not being in a bargaining position and will merely be reduced to a receiving end.
- According to them only National Parties would survive and Regional Parties would perish. Regional issues will not be taken care of for instance in Assam citizenship, identity, and immigration have long been sensitive and flammable issues, They believe simultaneous elections will affect the Election machinery and dictation will come from the centre.
- In a nutshell, they agreed if simultaneous elections take place overall cost would be reduced, all forces would be deployed one time, but it will be detrimental to the State Parties and regional issues.

5. Shiromani Akali Dal

Delegate: Shri Naresh Gujral (MP, Rajya Sabha)

07 July 2018, 02.45 pm – 03.30 pm

- Favoured simultaneous elections.
- It will save expenditure of the Govt, reduce the expenditure of Political Parties, Frequent imposition of Model code of Conduct creates problem in governance.
- It will result in forming a strong Union as well as State Government. Holding of Simultaneous elections together will reduce the pressure on the Election Commission of India, security agencies and the election related Govt staff.
- In cases where State Legislative Assembly gets dissolved prematurely, the term of newly elected Assembly on re-election shall be for the remainder period only.

6. All India Anna Dravida Munnetra Kazhagam (AIADMK)

Delegate: Dr. M. Thambidurai (MP, Lok Sabha) Propaganda Secretary; Shri C. Ve. Shankugam, Organizational Secretary; Dr. P Venugopal (MP, Lok Sabha), Medical Wing Secretary; Shri A Navaneethkrishnan (MP, Rajya Sabha), Advocates Wing Secretary; Dr. V Maitreyan (MP, Rajya Sabha), Organisational Secretary

07 July 2018, 03.30 pm – 04.15 pm

- Favours simultaneous elections
- Idea of simultaneous election to Lok Sabha and State Legislative Assembly is desirable, however there are some practical issues which needs to be resolved to make the concept of Simultaneous elections a reality.
- Lok Sabha and State Legislative Assemblies should have a fixed term which should be on lines of Fixed Term Parliament Act in UK where elections have been fixed at an interval of every 5 years.

7. Indian Union Muslim League

Delegate: Shri Khorrur Anis Omer, National Secretary

07 July 2018, 04.15 pm – 05.00 pm

- Opposed simultaneous elections
- Holding of simultaneous elections to Parliament and Legislative Assemblies will not make any significant improvement in the electoral process.
- A nation-wide major discussion should be held for electoral reforms at large.
- There are Apprehensions as to how many phases will be required to carry out such elections, how much resources will be required, will local bodies be included, etc.

8. Jarkhand Vikas Morcha (Democratic)

Delegate: Dr Ashok Singh

07 July 2018, 04.15 pm – 05.00 pm

- Favoured simultaneous elections
- It is desirable but there are doubts about its feasibility.

9. Samajwadi Party

Delegate: Prof. Ram Gopal Yadav (MP, Rajya Sabha)

Principal General Secretary

08 July 2018, 11.00 am – 11.45 am

- Favoured Simultaneous elections
- It should start from 2019 itself along with the Lok Sabha Elections
- In case of a coalition government, President/Governor (as the case may be) should take an affidavit from parties in coalition that they will work together for the entire term of the House/Assembly.

- If a party in a coalition government leaves such coalition, there should be a provision in law allowing the Speaker to end the membership of all the members of such party.
- Excessive Delay in decision in Anti-defection cases by the speaker; law needs to state that the Speaker will decide the matter – to disqualify the defecting members within a week.
- If in spite of all precautionary measures the Lok Sabha or the Assembly falls prematurely before completion of its full term the tenure of newly constituted Assembly constituted shall be for the remainder of term only.

10. Telangana Rashtra Samithi

Delegate: Shri B. Vinod Kumar (MP, Lok Sabha)

08 July 2018, 11.00 am – 11.45 am

- Favours simultaneous elections
- Imposition of Model Code of Conduct hampers the development and welfare activities being taken by the State Government.
- Huge amount of money Public money as well as the money of Political Parties is being spent twice in a period of 5 years for the conduct of elections to Lok Sabha and State Legislative Assemblies.

11. Dravida Munnetra Kazhagam (DMK)

Delegate: Shri Tiruchi N Siva (MP, Rajya Sabha), Propaganda Secretary

08 July 2018, 11.45 am – 12.30 pm

- Opposed simultaneous elections
- They criticised the working paper of simultaneous elections dated 17.04.2018 published on the website of the Law Commission on following points
 - a. Basic feature of the Constitution cannot be amended
 - b. Countries where simultaneous elections are held their population combined is lesser than population of Tamil Nadu State.
 - c. The tenure of Lok Sabha and the State Legislature are vested with the Governor and the President (Articles 174 and 356 of the Constitution). Any alteration of these powers by may affect the federal character which is a basic structure of our Constitution.
 - d. The dilution of X Schedule for the formation of the stable government would aid the horse trading among the political parties and will destroy the root of democracy.
 - e. Also there are apprehensions as to what will happen if the Lok Sabha is dissolved before completion of its five year tenure. In such a situation it is not clear whether all legislative Assemblies will be dissolved to synchronise the elections.

12. All India Forward Bloc

Delegate: Shri G Devarajan, Secretary, Central Committee

08 July 2018, 12.30 pm – 01.15 pm

- Opposed forceful synchronisation of elections to Lok Sabha and State Legislature
- It is against real spirit of the time tested federalism

- The said proposal is against the Constitution and the spirit of the Constitution.
- The concept is against the spirit of Representation of the People's Act, 1951 and will lead to political and administrative corruption.
- Maintaining and protecting our democratic traditions and values is important and the same should not be reviewed on the ground of expenditure.
- There is a need for comprehensive electoral reforms including Proportional representation system.
- The Party is against any curtailment of the term of Lok Sabha or State legislative Assembly as the party which comes into power comes for a full term of five years and we do not have any provision of right to recall.

13. Telugu Desam Party (TDP)

Delegate: Thota Narasimham (MP Lok Sabha), Kanakamedala Ravindra Kumar (MP Rajya Sabha)

08 July 2018, 02.00 pm – 05.00 pm

- Favours simultaneous elections but apprehensive about its implementation
- Requires detailed study, investigation and in depth planning
- It is not feasible as it is against the Constitution and is also impractical.
- If simultaneous elections are to be held they must be accompanied with Voter Verifiable Papers Trails for votes cast through (EVM) electronic voting machines.
- 7.5 million VVPAT will be required for conducting simultaneous elections and at present election commission has only 1.9 million EVMs.
- To implement simultaneous elections instead of EVM's it is suggested to go for Ballot paper.
- As far as the Andhra Pradesh is concerned Its anyways having synchronised elections with Lok Sabha.

14. Bodoland Peoples Front

Delegate: Shri Biswajit Daimary (MP Rajya Sabha), Spokesperson

08 July 2018, 02.00 pm – 05.00 pm

- Favoured simultaneous elections
- Apart from Lok Sabha and State Legislative Assembly elections to local bodies, Panchayats should also be held simultaneously.
- The Premature Dissolution of House needs to be taken care of as fall of government before completion of its full term will defeat the Objective of Simultaneous Elections.
- Anti-defection Law should also be made applicable to independent candidate.
- Where a party loses absolute majority at centre a National Government can be formed wherein half of the tenure which is yet to be completed by a ruling party will be divided into 2 portions wherein, for half of the time being the Ruling Party and for the other half of the remaining period opposition will rule (to be done by Constitutional Amendment)

15. Nirbal Indian Shoshit Hamara Aam Dal (NISHAD) Party
Delegate: Dr. Sanjay Kumar Nishad (MP, Lok Sabha), President
08 July 2018, 02.00 pm – 05.00 pm

- Favoured simultaneous elections
- Suggested two reforms to this effect:
 - Separate rooms / sections may be provided for the two EVMs to help the electorate distinguish between the two elections.
 - The restriction on candidates with regard to campaign expenditure, but not on political parties. Amendment be brought to address the issue.

16. Janata Dal (Secular)
Delegate: Shri Danish Ali
08 July 2018, 02.00 pm – 05.00 pm

- Opposed simultaneous elections
- Earlier also the Law Commission of India headed by Hon'ble Justice B.P. Jeevan Reddy in its 170th Report on Reform of Electoral Laws (1999) suggested simultaneous elections to Lok Sabha and State Legislative Assemblies. However the same could not be implemented
- Regional issues will be put on backseat.

17. Aam Admi Party (AAP)
Delegate: Shri Ashish Khaitan
08 July 2018, 02.00 pm – 05.00 pm

- Opposed simultaneous elections
- Regional Parties will have disadvantage as they will have less financial resources and it will be difficult for them to compete with National Parties.
- An illustration was given of the Party performance in 2014 General Elections and 2015 State Legislative Elections in Delhi while the Party lost on all 7 seats which they had contested for Lok Sabha Elections, in 2015 State Legislative Assembly Elections they won 67 out of 70 seats.

18. Yuvajana Sramika Rythu Congress Party (YSRCP)
Delegate: Shri Vijayasai Reddy (MP Rajya Sabha), Shri Uma Reddy Venkateshwara YSRCP, Shri Nagendra Reddy
10 July 2018, 02.15 pm – 03.00 pm

- Favours simultaneous elections
- It will reduce Government expenditure and diversion of security forces from their core mandate which is ensuring internal and external security of the country.
- Enforcement of Model code of conduct brings administration to a standstill and it will stop polarization of community for electoral gains.
- Simultaneous elections will require Constitutional Amendment which will be challenging to implement.
- Andhra Pradesh in anyways having simultaneous elections with Lok Sabha.

19. Biju Janata Dal (BJD)

Delegate: Shri Pinaki Mishra (MP, Lok Sabha)

10 July 2018, 03.00 pm – 03.45 pm

- Favours simultaneous elections
- Biju Janta Dal was the first Party to support the idea of simultaneous elections and implemented it in 2004 when the then CM Naveen Patnaik of Orissa dissolved the Assembly and preponed the elections to coincide with the Parliamentary elections. Since then the Orissa Assembly Elections have been coinciding with Parliamentary elections in 2009, 2014.
- They are against any dilution of the anti-defection provision to prolong the life of any assembly or Lok Sabha which is cut short due to premature dissolution of Lok Sabha or Assembly.
- The delegate was of the opinion that simultaneous election gives an incalculable advantage to the Regional Parties since a National Party has to contest approximately 1500 seats in Assembly and 542 seats of Lok Sabha while Regional Party has to concentrate only on limited number of seats and thus have a better opportunity to put the regional issues on forefront.
- The Party believes that simultaneous elections is an exercise which is in Public Interest as it will reduce the Public expenditure and will get the country out of the constant election mode. Focus will shift from populist measures to Nationalist measures. Also National Parties shall be taken on board for it and the initiative must come from the Prime Minister himself.

20. Indian National Congress (INC)

Delegates: Shri Mallikarjun Kharge, MP; Shri Anand Sharma, MP; Shri P Chidambaram, MP; Shri Kapil Sibal, MP; Shri Abhishek Manu Singhvi, MP; and Shri J D Salem

03 August 2018, 03.00 pm – 03.45 pm

- Opposed simultaneous elections
- The existing Constitutional framework does not support holding of simultaneous elections.
- The Language of the Constitution is imperative, the Constitution provides for term of the House to be 5 years the curtailment of the term of House is possible because of the term 'unless sooner dissolved' but extending life of the house is not permissible.
- It is inconsistent to contemplate simultaneous elections as it is incompatible with existing provisions of Constitution.
- On remainder term on the lines of Art.243U – Parliament cannot be compared to local bodies and it was not the intention of the lawmakers to introduce the concept of remainder term with regard to the Lok Sabha. Further if the House is dissolved prematurely more than once during the five years holding repeated elections to the Lok Sabha for the remainder term is not a good idea.
- Passing of no-confidence motion will vitiate the synchronization of elections.
- Indian National Congress strongly believes that contemplating the idea of simultaneous elections is inconsistent with the Constitution.

- They implacably and firmly believe that it is unconstitutional, undemocratic, illegal and there is no practical way of going ahead with the idea.
- Ruled out any possibility of political consensus either, for amending the Constitution for this purpose.
- Suggested that the Commission must halt its study in this regard.

21. Bhartiya Janata Party (BJP)

Delegates: Shri Muktar Abbas Naqvi, MP, Minister for Minority Affairs; Shri Bhupendra Yadav, MP; Shri Vinay Sahasrabudhe, MP; Shri Anil Baluni, MP
13 August 2018, 12.15 pm – 01.00 pm

- Favoured simultaneous election
- Simultaneous elections include elections to all three tiers of Governments together.
- It is not merely a principle. It is necessary for democracy and the need of the hour.
- Election is not the object; instead election is only the means to achieve the object / end i.e., good governance. Continuous election cycle has given an impression that election is governance. Proportion between campaign time and governance time is very less.
- Elections have to be free and fair, without emotional outbursts, without casteism, etc. Simultaneous elections are the only way through which these could be achieved.
- Repeated elections lead to *ad hocism* as no firm policy decisions can be taken.
- Cited the example of Maharashtra, where in the year 2016-17, on 307 days out of 365 days, Model Code of Conduct (MCC) was in operation and similar is the case with State like Rajasthan, as well.
- Lower level officers of the Government are not aware about the applicability of MCC, thereby referring all matters to Election Commission for clearance.
- Referred to Report of ECI (1983), Report of Law Commission (1999), Standing Committee Report (2015), NITI Aayog Report (2017), Reports given by Government of Chhattisgarh and Government of Uttar Pradesh.
- By resorting to simultaneous elections, expenditure would be substantially reduced.
- In 2009, the expenditure involved in the general elections was Rs.1195 crores, whereas in 2014 it rose to about Rs.3800 crores.
- Deployment of employees and CAPF affects administrative efficiency.
- Cited examples from earlier times to deny that the party at Centre will be benefited, in case of simultaneous elections.
- Constitution allows dissolving the House(s) sooner, and extension to a limited period in case emergency is promulgated. Therefore, there are constitutional provisions to move towards simultaneous elections.
- Even, elections can be held to eleven States along with the general elections of 2019 without any constitutional amendments.

- As in the case of bye-elections, explore the concept of remainder of the term for the House formed as a result of mid term polls. It will not be impossible in view of Article 368.
- There must be uniform voter list for elections to all three tiers.
- In case of elections to local bodies, uniform procedure must be followed.
- Art.326 of the Constitution will not be affected.
- Simultaneous elections will lead to lesser corruption and involvement of black money.
- Simultaneous elections will lead to more decisions in public interest than populist decisions.
- Handed over written submission on behalf of the National President of the party. Also handed over a report of the Chhattisgarh and Uttar Pradesh Governments, on the issue.

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