



Simultaneous Elections (Law Commission of India - Draft Report 2018)

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Chapter - 1: Simultaneous Election - Meaning And Its Scope

Simultaneous elections means **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 synchronized manner**. It means that a voter casts his or her vote for electing members to all the tiers of the Government on the same day.

- Historically elections in India during the first two decades after independence for the House of the People and the State Legislative Assemblies were held simultaneously, i.e., during 1951-52, 1957, 1962 and 1967.
- 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, disturbed the cycle of simultaneous elections.
- The elections to the third tier institutions are directed and controlled by their respective State Election Commissions. It would be extremely challenging to synchronize election schedules of third tier with that of the House of the People and State Legislative Assemblies due to large number of Local Body Institution and there election is a State subject.

Simultaneous election does not mean that voting across the country for the House of the People and all the State Assemblies takes place on a single day. General elections can take place only in phases it means that 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 term 'Simultaneous Elections' in present Report, only mean elections to the House of the People and the State Assemblies.

Chapter - 2: Feasibility of Simultaneous Elections

- The cycle of simultaneous elections got disrupted after 1967. Synchronized elections could take place due to the dominance and rule by one national political party and the weakness of regional

parties.

- Indiscriminate use of **Article 356 (President's rule)** of the Constitution also contributed to disruptions of simultaneous elections.
- However in recent times, regional political parties have not only increased in number, but have also marked their presence in the elections to the concerned State Assemblies.

The country witnesses an election throughout any given year. In a span of three years (2014-2016) the country witnessed one general election and 15 State Assembly elections.

These facts clearly states that the country is continuously in an election mode and there is a need for simultaneous elections as against the fragmented and staggered election cycle prevalent currently.

Therefore, it is necessary to look into the feasibility of holding simultaneous elections in the country.

For this purpose, several factors need to be examined:

A. Financial Implications

Frequent election leads to massive expenditure by the Government and by Candidates contesting elections.

- The expenditure 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, the expenditure is distributed between the Government of India and the State Governments in the ratio of 50:50 (equally), whenever the elections are held simultaneously.

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

- Setting up of the polling stations, Making transport arrangements, telephone facilities and electrical fittings, purchase of election material like indelible ink, ammonia paper, etc.,

Analysis with the help of the data provided by the ECI clearly shows significant expense on public exchequer.

- Average expenditure per Assembly Constituency for elections to House of the People held in 2014 and to the State Assemblies held thereafter is almost same, thus, proving the drainage of public money.
- If the elections are held simultaneously except for an additional EVM for each Polling Station, and additional election material, no extra expenditure will be involved. Besides, larger polling stations could require some additional polling staff, in view of the additional EVM.

B. Logistical Issues

- Simultaneous elections **require more EVMs** giving rise to another problem regarding their storage leading to demand for more number of secured and conveniently located warehouses.
- Increased number of EVMs will require more handling staff, however, the Law Commission feels that the rise would only be marginally higher.
- The ECI, to ensure smooth, peaceful and impartial polls, **needs services of a significant number of polling officials** from Government organizations which is a mammoth, complex and time consuming activity.
- ECI also seek assistance of CAPFs for **security arrangements**. Due to demand far exceeding supply, home guards and state police complement the security arrangement.
- Deployment of security forces is normally throughout the elections and they remain mobile from one place to another. As one or the other State Assembly goes to polls every six months, this situation leads to a **lock-in of security forces for prolonged period of time**.
- Polling booths are most often located in schools, engaging the school's staff results in compromise to their primary duty of imparting education, **schools remain closed** prior to the day of elections, for preparatory measures.

- **Central and State Government employees who are assigned election 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

- Model Code of Conduct (MCC) is a set of guidelines applicable to political parties, candidates, the election machinery, Government agencies, to ensure free and fair elections.
- Imposition of the MCC refrains the Government from:
 - Announcing any financial grants;
 - Laying foundation stones etc., of projects or schemes of any kind except by civil servants;
 - Promises of construction of roads, provision of drinking water facilities, etc.
 - Making any ad hoc appointments in Government, Public Undertakings, etc.

However MCC does not leave the state or the nation in complete state of paralysis as ECI allows the ongoing projects for which beneficiaries have been identified before the MCC becomes operative.

- The ECI does not refuse approval for schemes undertaken for dealing with emergencies, calamities, welfare measures for the aged, etc.
- Moreover MCC is restricted only to the constituency or the state going to polls therefore In view of this MCC cannot be blamed for a complete administrative paralysis.
- Many a time vital schemes get delayed by ongoing elections even though the MCC is not in operation in the entire State/Country. The schemes are delayed till the completion of the election process, resulting in deficit of Governance.

D. Simultaneous Elections - Boon or Bane?

- Many parties have argued that ruling party will become autocratic without any checks and balances, and it will dramatically shrink the choice of the electorate. National parties too will have edge over regional parties as national issues might eclipse the local ones.
- Argument of state parties getting marginalized is unfound as they need to concentrate only on the State Assembly seats and seats of the House of the People of their own State only. National Parties on the other hand will contest all the seats to the House of the People as well as on all the seats to State Assemblies. Therefore disadvantage, if any will be to the national parties.
- Continuous cycle of elections results in ruling parties investing their time and energy more on the elections, to ensure the win of their respective parties than on the governance.
- If the elections take place in five years, the ruling parties can better dedicate their time to developmental activities. There would be substantial reduction in hate speeches, violence and other law and order problems.
- Frequent elections lead the political parties in power to take up populist measures instead of nationalist ones as our political tradition is directed more at the individual voter than interest groups as observed in **The SC, in S. Subramaniam Balaji vs. Govt. of Tamil Nadu & Ors.**
- It will reduce incidence of black money will come down as constant movement of money required in elections keeps gap for misuse of money wide open.
- As simultaneous election will increase the voter turnout, it will demonstrate the vibrancy of political citizenship and civic spirit. The rise is evident in voter turnout in election in states like Andhra, Karnataka, Maharashtra, Kerala, Arunachal and Manipur when their election coincided with national elections.

To Sum Up

Any change from previous mode and method is bound to create some uneasiness but that is not always bad as also reiterated by SC in Tamil Nadu Education Department Ministerial and General Subordinate Services Association & Ors. v. State of Tamil Nadu & Ors. – **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.**

Simultaneous elections can prevent the country from being in constant election mode. Thus reducing

government expenditure, 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

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, holds merit.

Constitutional Provisions

Articles 83 and 172

Deals with the maximum duration of the House of the People and the State Legislative Assemblies. These articles provide that **unless sooner dissolved, assemblies shall continue for five years from the date of their first meeting**. The House can extend for a limited period only if a proclamation of emergency is in operation.

Articles 85(1) and 174(1)

Deal with sessions, prorogation and dissolution of Parliament and State Assemblies which says that there should not be a gap of more than 6 months in the last session of the house and the first session of the subsequent house.

Articles 113 and 203

Prescribe the procedure with respect to estimate expenditure. 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.

Article 75(3) and 164(2)

Council of ministers is collectively responsible to their house i.e. house of people or legislative assemblies. They can continue as long as they have confidence of the house, provided under Article 75 (3) and 164 (2) of the constitution.

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

Article 243U deals with election in Municipalities

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.
- Article 327 details the power of the Parliament to make provisions with respect to elections to Legislatures.
- 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.

Representation of the People Act, 1951

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

Chapter - 4: Reports and Discussions Available on Simultaneous Elections

The idea of simultaneous elections has been discussed by the ECI since 1983. It has been supported by many reports such as **170th Report of Law Commission of India "Reform of Electoral Laws"** (1999), and 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. No report by govt. agencies against the holding of simultaneous election could be found by law commission.

First Annual Report of the Election Commission of India, 1983

- Report supported holding simultaneous election due to reduced expenditure, effective use of manpower and Human Resource, continuous elections also affects the day to day functioning of the govt. both at state and the centre creating hardships for common people as the entire administrative machinery freezes.
- Separate election also result in duplication of expenditure.
- The Elections Commission in the report suggested that a stage has come for evolving a system by convention, if it was not possible or feasible to bring about a legislation for holding election simultaneously.

170th Report of the Law Commission of India, Reform of Electoral Laws (1999)

- The report highlighted that elections after 1967 got disturbed due to frequent use of Article 356 of the Constitution, the dissolution of the State Assembly by the Governor on recommendation of the Chief Minister of the State which was a case of exception instead became a norm.

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

- A NCRWC was appointed to examine, 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 without tinkering with the basic structure of the constitution.

255th Report of the Law Commission of India "Electoral Reforms", (2015)

- The report dealt with the anti defection law recommending the power to decide on questions of disqualification on the ground of defection be vested to the President or the Governor, who shall act on the advice of the ECI, instead of Speaker or the Chairman.

79th Report of Parliamentary Standing Committee, 2015

- 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, such as **expenditure, policy paralysis during MCC, burden on manpower etc.**
- Impact on delivery of essential services: Holding of political rallies disrupts road traffic and also leads to noise pollution. Simultaneous election will bring it down significantly.

Working paper by NITI Aayog

- Working paper titled "**Analysis of Simultaneous elections: the What, Why and How**" by Niti Ayog highlighted the importance of simultaneous election which focused on heterogeneous needs of the nation as the national parties will focus on regional issues and regional parties will fight for national issues.

Chapter - 5: International Perspective

South Africa

- In South Africa elections are held for National Assembly, Provincial Legislature and Municipal Councils in a five-year cycle. The electoral system is based on party-list "**proportional representation**", which means that parties are represented in the proportion of electoral support to them.
- Municipal Councils, elections are not held along with National and Provincial elections, there is a '**mixed-member system**' in which, wards elect individual councilors alongside those named from party-lists.

Sweden

- They employ PR system. Elections to Sweden's County Councils and Municipal Councils occur simultaneously with the general election whereas, elections to the Municipal Assemblies occur on the second Sunday of September after every five years.

Belgium

In Belgium one can vote in five different types of elections:

- 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
- Provincial elections
- Municipal elections

Indonesia

- Indonesia will hold the presidential elections and legislative elections concurrently starting 2019.

Germany

- Bundestag (i.e. Lower House) cannot simply remove the Chancellor with a vote of no-confidence, as the opponents must not only disagree with his or her governance but also agree on a replacement (constructive vote of no-confidence).
- This **Basic law of the Federal Republic of Germany**, 1949 set up has provisions with regard to elections and stability of the Government, which are definitely imitable.

United Kingdom (Fixed Term Parliament)

- 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 2011 specifies that early elections can be held only if a motion for it is agreed either by at least 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.

Chapter - 6: Simultaneous Elections Vis-À-Vis Democracy, Basic Structure and Federalism

One of the arguments raised against simultaneous elections has been that it goes against the Principles of **Democracy** and **Federalism** enshrined in the Constitution. It is necessary to examine all the principles analytically.

Democracy

- The Constitution declares in the preamble amongst other things, India to be a democratic republic and has always been recognized as a basic feature of the constitution along with the supremacy of the constitution, rule of the law, separation of power, judicial review under Article 32, 226, 227.
- In a democratic polity, will of the people reign supreme which is expressed time to time through periodic elections. Free and fair elections alone guarantee the growth of healthy democracy in the country.
- Democracy provides equal political rights to every citizen by ensuring political participation of people in running the govt.

SC in Kihoto Hollohan v/s Zachichu 1993 and **In Kuldip Nayar v/s Union Of India 2006** calls 'Democracy as a part of the basic structure of our Constitution; and rule of law and free and fair elections are basic features of democracy' and observed that **"Parliamentary democracy and multi-party system are an inherent part of the basic structure of Indian Constitution"**.

Doctrine of Basic Structure

'Basic Structure' is a judicial innovation which was used for the first time in the case of Kesavananda Bharati & Ors. V/s State of Kerala 1973.

It includes:

- The supremacy of the Constitution.
- Republican and Democratic form of Government and sovereignty of the country.
- Secular and federal character of the Constitution.
- Demarcation of power between the legislature, the executive and the judiciary.
- 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.
- The unity and the integrity of the nation.

Doctrine of basic structure has evolved over the years. Features were added over time through various SC verdicts which gave progressive judgment and innovated to preserve the basic substance of the constitution.

- Supreme Court in **Sajjan Kumar vs State of Rajasthan 1965** observed that the Constitution **"formulated a solemn and dignified preamble which appears to be an epitome of the basic features of the Constitution"**.
- **Fundamental rights** were included in basic structure in **Minnerva mills v/s Union of India 1980** where SC calls them **"transcendental, inalienable and primordial"** and if the elements are 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. "One cannot legally use the Constitution to destroy itself", as the doctrine of constitutional identity requires. 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 form.
- **Free and fair elections** were seen as an essential postulate of democracy hence it was also called a basic feature by SC in **Indira Gandhi v/s Raj Narain case 1975**. The court also struck down the Clause (4) of Article 329A which provided for special provision as to elections to Parliament in the case of Prime Minister and Speaker, on the ground that it damaged the democratic structure of the Constitution. 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 and the Speaker.
- **In S.R. Bommai v. Union of India, 1994 SC held that secularism was an essential feature of the Constitution and part of its basic structure.**
- **In M Nagaraj & Ors. v. Union of India 2007** the Constitution Bench of the Supreme observed that **"axioms like secularism, democracy, reasonableness, social justice, etc. are overarching principles"** which links factor for principles of fundamental rights like Articles 14, 19 and 21. These principles are beyond the amending power of Parliament.

In I.R. Coelho V/s. State of T.N, 2007, a Nine Judge Bench of the Supreme Court laid down the concrete criteria for basic structure principle.

- Stated that the power to amend the constitution was not unlimited, any changes that destroy the identity of the constitution, 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 42nd Amendment, have been held to be incompatible with basic structure doctrine.

Thus, Basic means the base of a thing on which it stands and on the failure of which it falls. It 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.

The right to vote and the right to contest election are not fundamental rights. They germinate from the Constitution, and are, therefore, constitutional rights. They are also given statutory status by the Representation of People Act, 1951. Clearly keeping them **out from the "basic structure" of the Constitution.**

Federalism

- 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.
- In case of the United States which is a federal state, the separate and independent States first formed a Confederation (1781) and then transformed into a Federation (1789). The States have their own constitution; 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.

The Indian Constitution provides for a dual system of government consisting of the center and the State with clear division of powers between them. Constitution is the fundamental law of the land and is guarded and interpreted by the higher judiciary.

- Federal feature for the first time was laid down in the GOI 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 provides systematic and structural principles connecting various provisions of the Constitution.

Supreme Court on Indian Federalism

Though India not being Federal in the traditional sense of the term, Supreme Court has consistently held that federalism is one of the basic structures of the Indian Constitution. However 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 Judiciary.

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

- The constituent units of the federation deliberately had no organic roots in the past. Hence, in the Indian Constitution the emphasis on the preservation of the territorial integrity of the constituent States is absent.
- Indian constitution does not propound **absolute federalism** despite a decentralized authority which is largely due to the arduous task of governing the large territory.
- Residuary powers that were not given to anyone in GOI Act 1935 but under the Constitution, by virtue of Article 248, read with Entry 97 in List I of the Seventh Schedule, has been conferred on

the Union.

SC in state of Karnataka V/s union of India 1978

- Our constitution is not only pragmatic federal but it has also strong unitary bias which is 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 etc.

SC in SR Bommai V/s Union of India

- SC called Indian Constitution, '**quasi federal**' where 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.

Indian Constitution is not true to any traditional pattern of federalism where 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.

Unitary nature of the Constitution

- It is evident that the Indian Constitution is not federal in a strict legal sense. The term Federalism is used in liberal sense as the Constitution provides for division of legislative powers, labeling it as **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.
- 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.
- Constitution of India 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. It is solely for the Union Government itself to decide and no one else.

Chapter - 7: Allegation of Colourable Legislation in The Context of Simultaneous Elections

Many people and associations have contended the entire exercise as colorable alleging the mala fide intentions of the govt. of the day on changing the form of elections.

The report however does not find the issue substantial. It is established beyond doubt by many SC verdicts that **"malice or motive is beside the point and it is not permissible to suggest parliamentary incompetence on the score of mala fides"**.

Colourable exercise of power - It is explained as 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 as given by SC in State of Punjab vs. Gurdial Singh.

Doctrine of Colorable legislation does not involve the question of mala fide or bona fide on the part of legislature. The whole doctrine revolves itself into the question of the competency of a particular legislature to enact a particular law.

Ordinance making power of government again can't be challenged on the basis of mala fide as it too forms part of the legislative power as observed by SC in K. Nagaraj v/s State of Andhra Pradesh and reiterated again in GC Kanungo v/s State of Orissa.

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

observed:

The expression "**colourable legislation**" conveys that by enacting the legislation in question the Legislature is seeking to do indirectly what it cannot do directly. But if the questioned Legislation falls within the competence of the Legislature the question of doing something indirectly which cannot be done directly does not arise.

In B.P. Singhal v. Union of India: The Constitution Bench of the SC 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".

The validity of a statute therefore can only be examined 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. If the legislature is competent to enact a particular law, the motives which impelled it towards such an enactment are irrelevant. Therefore, any argument calling it colourable legislation lacks merit.

Chapter - 8: Issues in Implementing Simultaneous Elections

The practice of simultaneous election 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. The **synchronization requires amendment** in the relevant provisions of the Constitution and certain provisions of other Statutes. Once the election gets synchronized it is necessary for them to remain synchronized rising above the **disruptions**.

Requirements for Synchronization of Elections

Curtailment and Extension

Articles 83(2) and 172

Deals with the tenure of the House of the People and the State Assemblies, giving scope by providing an option for curtailment of the term '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 it requires amendment.

- The Commission points out that election to **at least 13 State Assemblies can be synchronized 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.
- The election can take place subject to their voluntarily agreeing to take recourse to Article 172(1) or by the operation of law.

In few states extension of the term of the House up to six months is required to attain synchronization with the elections to the House of the People. Such an **extension is permissible only under Art.356 (failure of constitutional machinery) which will entail constitutional amendment**.

In **rest of the states it would be impractical to curtail or extend their term due to recent elections**. This can be taken care of by holding elections to these State Legislative Assemblies in the end of 2021, approximately midway to the term of the House of the People.

To achieve complete synchronization, transitory provisions in the Constitution needs to be included so that the term of the Assemblies so constituted after the elections 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.

The commission also talks about **Second Option** as well where elections can be synchronized in such a way where they are held only twice in every five years.

However if every such arrangement fails Commission also talks about **Third Option** where elections

falling in one calendar year can be clubbed together but resorting to this alternative is not going to bring any material change and relieve the country from being continuously in election mode.

Effect on Council of States/State Legislative Councils

- Any tinkering in the election of legislative assemblies would also disturb the election of candidates to council of states and respective state legislative councils.

Whether Ratification by States is Required

Article 368 deals with the amendment part of the constitution. The proviso to Article 368 (2) enlists certain provisions of the Constitution which require ratification by not less than one half of the States. It basically deals with the principle giving effect to federal features of the constitution.

- There are two limitations to the amending power of a legislature
 - Substantive – prohibiting amendment dealing with basic structure.
 - Procedural – deals with the manner in which the amendment is to be carried out, if permissible in law.

The proviso to Article 368(2) deals with the following Articles:

- Articles 54, 55, 73, 162, 241.
- Chapter IV of Part V- The Union Judiciary, Chapter V of Part VI- High Courts in the States, or Chapter I of Part XI Distribution of Legislative Powers.
- Any of the Lists in the Seventh Schedule.
- The representation of States in Parliament.
- The provision of this Article.

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. As federalism is an essential feature of the basic structure of the Constitution, it might be contended that holding “simultaneous elections” affects the States.

However nothing in the report requires ratification by states unless for abundant caution.

Grounds for Disruption

1. No-Confidence Motion

- It is an important tool to oust the govt. as the council of ministers are collectively responsible to the house and remain there till they have confidence of the house. It can be moved on account of defection and in the case of a coalition government, when any of the supporting party withdraws the support.
- **Rule 198 of the Rules of Procedure and Conduct of Business in Lok Sabha**, specifies the procedure for a “motion of no-confidence”.
- The no confidence motion affects the stability of the Government and does not provide for any alternative arrangement.
- In **Germany’s Bundestag** Constitution provides for taking up both the motions of ‘no-confidence’ and ‘confidence’, simultaneously also known as **constructive vote of confidence**.

A similar system in India will bring better stability and govt. will be ousted only when the member or the group of members come forward with a proposal to form an alternative government.

- Various **Municipal Corporation Acts**, such as that of UP, MP, Rajasthan (**one year in case of Rajasthan**) states that “**no notice of a motion of non-confidence shall be received within two years of the assumption of office by the Mayor**”.
- Failure of motion will further bar from receiving the non-confidence motion for two years.

Rules on the suggested line if incorporated 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 '**constructive vote of no-confidence**', where a member or group of members moving no-confidence motion would have to simultaneously put forward a proposal for forming an alternative Government would ensure stability of the house.

Implementing the rule in both the Lok Sabha and state assemblies would not only stabilize the govt. but will also ensure synchronization of the elections in both state and the center.

2. 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.
- The **Sarkaria Commission** considered the issue and suggested guidelines for overcoming the difficulty posed by hung parliament/assembly to be followed in the order of preference by the Governor while selecting Chief Minister in case of hung assembly:
 - Pre-poll alliance.
 - The largest single party staking a claim to form the government with the support of others, including the "independents".
 - A post-electoral coalition of parties where the coalition forms the govt.
 - 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 these recommendations.**
- **NCRWC in its report (2002) suggested that defections should not be permitted**, either by individuals or groups. In case 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 in case a vote has been cast by a defector it should also be invalidated.
- **The Report also suggested adoption of constructive vote of no confidence.**

3. Budgetary defeat

- Controlling public finance is a very important function held by parliament/legislative assemblies and **passing of the Budget** is an important matter as there are Constitutional **implications of budgetary defeat which results in the resignation of the govt.** due to no-confidence.
- **Problem of budgetary defeat arises when the ruling party (the Government) loses the support of majority or in the case of a coalition Govt. the Alliance Partners withdraw their support at the time of passing of Budget.**
- Stability of government 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.

Budgetary defeat of a Government has never happened in the history of politics in India.

Commission recommends that whenever there is a threat of budgetary defeat, efforts must be made to arrive at a consensus, to avoid mid-term elections.

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

Term of the house is for 5 years 'unless dissolved sooner'. In case of premature dissolution, it becomes important to maintain the cycle of simultaneous election. Therefore there is a need to deal with the question of duration of such newly formed house.

- Article 243U deals with duration of Municipalities: newly constituted municipality upon dissolution of the Municipality before expiration of its term, shall continue only for the remainder of the period for which the dissolved Municipality would have continued.
- Also, in case of bye-elections 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 RPA 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.
- RPA 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 however it is implicit. In sections 147 to 151 of Act, where the term 'casual vacancies' imply that the vacancy is for the current House only. It is evident that the incumbent of the casual vacancy will hold office only till the expiry of the term of the current House.
- The commission recommends appropriate amendments to Articles 83 and 172 of the Constitution and Sections 14 and 15 of the Act, 1951 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.

To Sum Up

- "Remainder Term" therefore is not a foreign concept to the Constitution and other relevant statutes. The commission recommends that Concept of 'remainder term' which is applicable to the individual therefore be applicable for the whole House as well.
- 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 term of the House. However, it still recommends 'remainder term' based upon the favorable trend witnessed after the 90s (which saw a lot of instabilities) where electoral politics became more aware and responsible and has seen more stable govt.

Chapter - 9: Other Relevant Issues

Commission came across other important issues which if left unattended would have serious bearings on the exercise of holding simultaneous election.

Disqualification on the Ground of Defection to be decided expeditiously

- The issue is not directly related to simultaneous election however it deals with it since it ensures stability of the House.
- Chairman/Speaker who has the final authority to decide on the issue of disqualification of member on the grounds of defection.
- **The SC in case Kihoto Hollohan** equated the Chairman / Speaker with the position of a Tribunal and like in the case of any tribunal, the decisions are subject to judicial review.
- However issue of timeframe within which Chairman / Speaker has to render his/her decision is not dealt with.

SC in state of Gujarat v/s Patel Raghav Natha observed that if the legislature has not prescribed itself the period for exercising its adjudicatory it does not mean that such a matter can be delayed for an indefinite period.

- 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. Drawing an analogy, the issue of disqualification under the Tenth Schedule is also required to be decided at the earliest.

This power is however also coupled with 'duty'

- This power of the speaker is viewed as trust coupled with duty to act in larger public interest. Evasion or delaying the exercise may render the issue infructuous and hence not be in public

interest.

- Dereliction of duty on the part of speaker/ chairman give rise to allegation of partiality who may be alleged to be acting at the behest of ruling party.

The commission therefore feels that 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.

Bye-elections

- Parliamentary Standing Committee on Personnel, Public Grievances Law and Justice, in its 79th report stated that all seats falling vacant in a particular year be conducted together on a predetermined date/time frame.

Selection of Leader of House by Consensus

- 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. As 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 may also be selected to lead the House/Assembly.

Effective Exercise of Voting Rights by Non Resident Indians

- Large number of Indian people lives 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 then prevailing law on Elections where only a citizen ordinarily resident within the territorial limits of the country was eligible.

Demand from various sections of NRI's resulted in amendment of RPA Act 1950 by RPA Act 2010 (36 of 2010) w.e.f. 10.02.2011. A new section 20A was introduced which permits registration in electoral rolls of persons who are

- Citizens of India
- Not included in electoral rolls
- Have not taken up the citizenship of any other country
- Are absent from the ordinary place of residence

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.

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.

Chapter - 10: Conclusions

- As the idea of simultaneous elections was received from the government it can be ascertained that the govt. is considering it. Implementing agency for election ECI too supports the idea (ECI in 1983 in its first annual report discussed about it).
- Commission through its analysis of various provisions points out that simultaneous election would be feasible to restore.
- All existing provisions whether constitutional or legal backed by govt. data supports the restoration of simultaneous election.
- Commission through its study of various govt. and non govt. reports and considering international perspective has articulated in the favor of holding simultaneous elections.
- Intent of the Government of the day is very often questioned whenever it comes to a major change in the system which is also true with regard to the idea of simultaneous elections. However whenever a statute is enacted the legislature can't be questioned.

- Commission has carefully addressed all the issues like democracy, basic structure, federalism etc and has satisfied itself fully well that nothing in holding simultaneous election tinkers with these features. No rights of citizens have been compromised. Thus, even by stretch of imagination, it cannot be argued that holding simultaneous elections would adversely interfere with basic structure of the Constitution.
- The Commission has looked into aspects which could affect simultaneous election such as achieving synchronization, ensuring stability, continuing with the cycle of simultaneous elections. The Commission has, after detailed deliberations, modulated their recommendations in the Indian context, and recommended to adopt them either from the world over or from within Indian jurisprudence.
- Commission while engaging all the stakeholders and considering their apprehensions and support has considered the issue from constitutional, legal, political, and social perspectives in finalizing the Report.
- While analyzing all the relevant issues, commission has also looked into the issues which could have blocked the easier transition to simultaneous elections.
- **The Constitutional Bench of the SC, in Charan Lal Sahoo etc. etc. v. Union of India & Ors. (1990)** observed that, **"to do a great right" after all, it is permissible sometimes "to do a little wrong"**. A bleak perspective for holding simultaneous elections will put to forefront its disadvantages only. However, in a broader perspective, it will be seen that it is for the larger public good and welfare of the country.
- The Commission holds the view that any law that is not acceptable to the masses is not capable of being implemented. Hence, building political and public consensus towards holding simultaneous is much warranted. In a democracy, every decision needs to be for the benefit of the people, as also put by **Chanakya in Arthashastra, the happiness of the king vests in the happiness of his subjects, and he must see his interest in the interest of his subjects.**
- The Commission considering all Constitutional, legal and the prevailing political and social circumstances in the country, and suggestions and opinions received from various quarters is of the view that the time has come for India to revert to simultaneous elections in the greater national interest.

Chapter -11: Draft Suggestions/Recommendations

The commission has covered exhaustively social, political, legal and the constitutional set up of the country while formulating its recommendations. It has considered the opinion from various sections of the society as well as from the stakeholders and has come out with the best possible framework which is most viable in the Indian context.

The Commission has kept in mind the problems in existing framework of constitution in holding simultaneous election and has only suggested certain inevitable constitutional amendments. The changes are kept to the barest minimum.

The Commission **recommends holding of simultaneous elections to House of the People and the State Legislative Assemblies** (except Jammu & Kashmir). Such an exercise will:

- Save public money.
- Help reducing the burden on administrative set up and security forces.
- 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.

Framework for Synchronization of Elections

Holding simultaneous elections necessitates amendment to the Article 172 of the Constitution. The Commission recommends the following framework for synchronizing the elections in the country:

Option - I

As a first option, elections to twelve State Assemblies and one Union Territory (with legislature), could be synchronized with the elections to the House of the People in the year 2019.

- 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 synchronized.
- 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 to their voluntarily agreeing to take recourse to Article 172(1) or by the operation of law.
- 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 synchronization with the elections to the House of the People in 2019, which will require amendment to Article 172 of the Constitution.

Remaining legislative assemblies can go to election in end 2021 coinciding approximately midway of the 17th Lok Sabha. The term of the State Assemblies constituted in 2021 shall be only for thirty months or till June 2024, whichever is earlier. Thereafter, elections to Lok Sabha and all the Legislative Assemblies and UTs (with legislatures) can be held together from 2024, completely synchronizing the elections.

Option - II

Once the elections to twelve States and one Union Territory (with Legislature), are synchronized with Lok Sabha 2019 and the remaining sixteen States and One UT (with Legislature) by the end of 2021, the elections will stand synchronized in a way that they are held only twice in five years, repeating the cycle in mid-2024 and in the end of 2026. This will result in elections only twice in a period of five years.

Synchronization of elections as given in Option - I requires suitable amendment to Article 172 of the Constitution or insertion of a new clause to that Article,

- Extension/Curtailment of the terms of Legislative Assemblies of certain States.
- 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 synchronized with Lok Sabha to be held in mid-2024.

Synchronization of elections as given in Option - II requires -

- Amendment only as mentioned at (1) 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.

Option - III

- 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**. 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.

Ratification by States

- 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.

No Confidence Motion

- 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.

Hung Parliament/Hung Assembly

- 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.

Budgetary Defeat

- The Commission recommends that efforts to build a consensus must be made In order to address the issues arising out of budgetary defeat leading to the fall of the incumbent Government to avoid mid-term polls.

Remainder of the Term

- The Commission recommends that a House constituted upon the dissolution of the House should continue only for the remainder of the term to ensure cycle of simultaneous elections is not disrupted.

Other Relevant Suggestions/Recommendations

- Commission recommends that issue of defection under the Tenth Schedule must be decided by the Chairman/Speaker as expeditiously as possible, but not later than a period of six months.
- The commission also recommends amending relevant provisions of RPA act 1951 so that all the bye-elections falling in one calendar can be conducted together.

PDF Refernece URL: <https://www.drishtias.com/printpdf/simultaneous-elections-law-commission-of-india-draft-report-2018>