

**SHRI DHARMASTHALA MANJUNATHESHWARA
LAW COLLEGE & CENTRE FOR
POST GRADUATE STUDIES & RESEARCH IN LAW**
MANGALURU - 575 003.

(NAAC Re-accredited B++ CGPA 2.9)

Sponsored by:
Shri Dharmasthala Manjunatheshwara Educational Society (R.), Ujire, D.K.

Legal Opus

Issue No. 12
July 2019



ONE NATION ONE ELECTION; LEGAL AND CONSTITUTIONAL ISSUES

Dr. Tharanatha¹

Abstract

Democratic system of governance creates legitimacy for the governed through popular mandate of election. It is a fascinating experience in the largest democracy to see elections are observed as national festival involving lots of stake be it expenditure, operating process, code of conduct, ethical and political dimensions which testifies that democratic system as the best ever representative process invented by the political system. However, deployment of huge men and materials invading precious resources of developing nation in the selection of representatives often marred by unstable governments suffering their death knell due to political disability such as defection, coalition failure, imposition of president's rule; ponder one to think that stability of government with fixed term and stable periodical elections would herald new dimensions to welfare republic with the abundance precaution that resource saved is resource earned which could be channelized for productive purposes. In this quest in recent times a theory called One Nation One Election (ONOE) has assumed center stage of political discussion.

Introduction

"Power will go into the hands of rascals, rogues and free booters. These are men of straw of whom no race will be found after few years. There will be fight amongst themselves and India will be lost in political squabbles"². These are the political predictions of Winston Churchill about the future of our country at the time of independence. True to what he said nearly seventy years ago our political system failed in living upto true spirit of democracy. Elections are considered as means and mechanism to acquire power, amass wealth and create mass with inertia. Elections after elections have created disillusion in the mindset of the people and there is a section of the people who have completely withdrawn form electoral process through non participation in elections. The pessimism of elections arise due to its unpredictability, frequency and enormous expenditure involved in the battle for power.

¹ Principal/Chairman, SDM Law College, Mangaluru - 575003.

² P. P. Rao, Reclaiming the Vision; Challenges of Indian Constitutional Law and Governance, Lexis Nexis, 2013 p311



However recently efforts are afoot to make elections as the heart of democratic process through sustained efforts of Election Commission and the political set up. In this quest recently the country has opened up with new mantra; One Nation and One election(ONOE).

The debate on One Nation One Election regained its momentum with Prime Minister Narendra Modi initiating the deliberations in 2016. The idea of simultaneous elections which was in practice till 1967 was regained its momentum 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 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. The Law Commission Report of August 30, 2018 emphasized the fact that state and central elections shall synchronize. *Neeti Ayog* Working Paper of January 2017 lays emphasis on the same Elections to the state and central legislature used to be simultaneous.

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. The main reason behind the synchronized 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.

'Simultaneous elections for layman appears to be elections to all the three levels of the Constitutional institutions i.e. House of the People (*Lok Sabha*), State Assemblies (*Vidhan Sabha*) and Local bodies, However for local institutions are too large and conduct of election to the same is primarily a State subject. Therefore, it may not be possible, to align election schedules of local governance with elections to central and state legislatures.

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, follow a system of simultaneous elections. However, these countries follow Presidential form of Government and the election of President and the elections to the Legislatives are held together. In South Africa elections are held for National Assembly, Provincial Legislature and Municipal Councils in five-years. Electors cast their vote for the National and Provincial Legislatures on separate ballot papers. Elections to Sweden's County Councils and Municipal Councils occur simultaneously with the general elections to *Riksdag* every four years). The Constitutional Court held that Indonesia will hold the presidential elections and

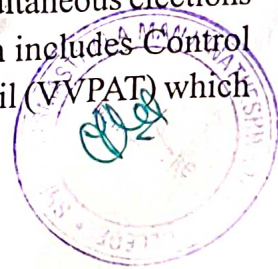
legislative elections concurrently starting 2019, on the ground that Law No.42 of 2008 was contrary to the constitutional provision.

Arguments in favor of ONOE

1. It will reduce enormous cost involved in holding elections. It is estimated that the poll expenditure for 2019 *Lok Sabha* expenditure is estimated at 100000 crores and non-election commission estimates pegged it more than 600000 crores. This is only fiscal cost involved in conducting elections and this would not take into consideration the deployment and diversion of huge state machinery for the multifarious tasks associated with electoral process, The effect on administration vis a vis daily woes suffered by the citizens on account of diversion of administrative machinery for election duties cannot be converted into monetary values, All these agonies tolerated in the name of democratic duties. 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). Elections expenses includes setting up of the polling stations and making necessary arrangements at polling booths / counting centers; 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 centers and for the movement of election material and ballot boxes; iv) making temporary telephone facilities and electrical fittings, etc., to the polling booths / counting centers; v) purchase of election material like indelible ink, ammonia paper, etc., which are exclusively utilized for that particular election; and vi) miscellaneous expenditure
2. The ONOE helps the ruling party to focus on governance delivering best of services. If tension at cloud election threatening as Democal's sword, policies and implementation takes top priority.
3. The ONOE may boost electoral turn out in elections. Thanks to the sustained efforts by the Election Commission, the electoral turnout in 2019 is around 65%. Even NOTA did not encourage voters turn out to booth to resist the unwanted contestants in the electoral foray. Since in ONOE, elections are held every five years without interruption, the rotational movement may attract unwilling voters to the democratic process.

Arguments against ONOE

1. Today's election is completely technology oriented. Electronic Voting Machine (EVM) has life span of 15 years and in case of ONOE it is already noted that as of now there is a shortfall of about 12.9 lakh Ballot Units, 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



together costs about Rs.33,200. An expenditure of about Rs.4555 crores will be incurred for procurement of EVMs, for an imminent simultaneous election.

2. It is against the federal structure. One of the arguments raised against simultaneous elections is that it goes against the principles of Democracy and Federalism enshrined in the Constitution. Articles 83 and 172³ of the Constitution prescribe the maximum duration of five years for the House of the People and the State Legislative Assemblies. These articles use expression 'unless sooner dissolved, they shall continue for five years from the date of their first meeting. This article needs to be revisited in case of simultaneous elections. Fixation of definite tenure except for exceptions requires amendment of the Constitution. These articles further provide for extension of term of the House for a limited period only if a proclamation of emergency is in operation. Even this provision requires amendment.

Articles 85(1) and 174(1)⁴ deal with sessions, prorogation and dissolution of Parliament and State Assemblies. They say 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. Given the nature and unpredictability of governments falling before their tenure, defections, loss of majority in the assemblies in unexpected times, implementing periodical elections appears to be a big task.

Articles 113 and 203⁵ 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 and voted 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. What should be the option in such intervening circumstances where a gap in the government continuation is created?

³ Article 83(2) The House of the People, unless sooner dissolved, shall continue for [five years] from the date appointed for its first meeting and no longer and the expiration of the said period of [five years] shall operate as a dissolution of the House:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

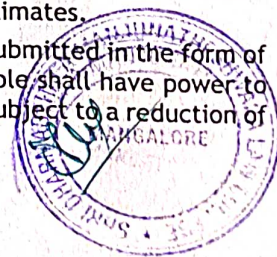
² Article 85(1)

The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

⁵ Article 113

(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.



Articles 75(3) and 164(2)⁶ 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).

The Tenth Schedule to the Constitution deals with disqualification of a member of the House/Assembly on the ground of defection. Disqualification often unsettles the governments. Dilution of 10th schedule encourages horse trading

The biggest issue is article 356 which is more abused under the Constitution for political retaliations. When duly elected state governments dismissed under article 356, the holding of simultaneous elections looks a distant reality.

3. Experiments at Sweden, Belgium and South Africa cannot be compared in view of level of maturity in democratic process in those countries, territorial size as well as absence of multiple political parties.

4. Simultaneous elections may result in reduction of government accountability. Since fixed term is assured to the government they may be lethargic in administration.

However, the merits of simultaneous elections shall certainly outweigh merit than demerits. Considering economic implications, political instability arising out of numerous factors, governments with apprehension of unstable tenure which incapacitates from focusing on development. Simultaneous elections will help to overcome most of the problems. The issues such as simultaneous elections will marginalize local parties holds no water as today's voter is prudent to draw differences between issues affecting the nation vis a vis local issues. Simultaneous elections may channelize local parties to be more organized, sustained in their approach as they have to categorically assert themselves to be there in a competitive spirit with the national parties.

If we consider that holding of simultaneous election shall be brought only with the amendment of the Constitution and there are constitutional impediments, it is said that the Indian Constitution is not a traditional Federal Constitution as it was envisaged to be. 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 vests residuary power the Provincial Legislatures; 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. Besides, the Constitution can be altered by the Union Parliament alone and the constituent States have no power to alter it. The Indian Union is federal, but the extent of federalism in it is largely has undergone tremendous changes over the years The States cannot stand in the way of legitimately and comprehensively planned development of the country in the manner directed by the Central Government.

⁶ Article 75(3) The Council of Ministers shall be collectively responsible to the House of the People.



A progressive democracy shall always strive for electoral reforms. Election Commission and Parliament have been responsible for bringing out significant changes in the election system of our country. However, the concept of simultaneous elections can be considered as radical change in the election scenario of our country and the time has come for implementation of the same through consensual process.

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