Himachal Pradesh National Law University, Shimla

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Response Submitted by HPNLU, Shimla to the Points Listed for the University on the Subject: *"Examination of the Constitution (On Hundred and Twenty-Ninth Amendment) Bill, 2024 and the Union Territories Laws (Amendment) Bill, 2024", before the Hon'ble Joint Committee of the Parliament, on 18th June, 2025 for informal interaction/discussion at Shimla.*

LIST OF POINTS FOR NLU SHIMLA

I. BASIC STRUCTURE

1. Constitutionalism means limitations on powers of the various organs of State. By defining the mid-term elections, is the Constitution putting a limit to the plenary powers of the electorate?

RESPONSE: -

Constitutionalism involves restraint on the authority of different State institutions to provide checks and balances and safeguard basic rights. The Indian Constitution entrenches sovereignty in the hands of people, who exercise it through representative politics. Mid-term elections are the result of provisions regarding the dissolution of the Lok Sabha or State Assemblies prior to the completion of their term, which requires the elections before their due five-year term.

Defining the mid-term elections does not necessarily curtail the electorate's plenary powers. Rather, it is a procedural basis under the constitutional framework. The power of the electorate is exercised through regular elections, which, for sure, can include mid-term polls because of certain reasons such as no-confidence motions, dissolution, or failure of the government to demonstrate majority support. Simultaneous elections, if adopted, would align the electoral cycle, possibly decreasing the frequency of mid-term elections. But this does not limit the power of the electorate instead it enables the exercise of that power through a predetermined pattern. Thus, the definition of mid-term elections is less about curtailing the powers of the electorate and more about forming the democratic process. It is a constitutional device for facilitating the smooth running of democracy, accountability, and representation, not a limitation of the people's sovereignty. However, the frequent organization of mid-term elections may defeat the purpose of simultaneous election, which is meant to eliminate frequent elections to enhance efficiency in governance and administration.

2. **The Constitution gives a right to a voter to elect her government for five years. In this context, please state whether (i) the Parliament can curtail this right?; and (ii) curtailment of the term of a Government is against the basic structure of the Constitution.**

RESPONSE:-

The Indian Constitution entitles the people to elect their government for a five-year term. But then comes the query whether the right granted by the Constitution can be curtailed by Parliament and, if so, whether such curtailment goes against the basic structure of the Constitution.

(i) Can Parliament Cut Short the Right to Elect a Government for Five Years?

The amending power of Parliament is not untrammeled. The basic structure doctrine has been laid down by the Supreme Court, limiting Parliament's amending power over basic features of the Constitution. Reducing the tenure of a people-elected government could be regarded as a change in the basic structure, as Indian federalism enables sufficient autonomy to the States. In Indian perspective, the free and autonomous States, though, have not joined together to create a union rather States are created by the Parliament. Once states are created and their political boundary is determined, the people of that state are empowered to choose government of their choice for the full tenure of five years. The curtailment of its tenure to follow the electoral cycle will affect the people's choice to choose the representatives for a full tenure of five years. Such curtailment will jeopardize the democratic principle of responsible and accountable government. Therefore, the basic structure of Indian Constitution may be violated if the tenures of the legislatures of states are made dependent on the tenure of Lok Sabha.

(ii) Is Curtailment of the Term of a Government Against the Basic Structure?

Critics argue that reduction of assembly tenures, as also that of Parliament, would be in contravention to the basic structure of the Constitution. This would mean that any move to reduce the duration of a government would be of constitutional doubt. The doctrine of basic structure safeguards crucial features like democracy, federalism, and the rule of law, which could be undermined, as critics contend, if the term of the government is shortened in the States to align the elections.

The Supreme Court has held in many cases that the Parliament cannot violate the basic structure while amending the Constitution. Therefore, the power of Parliament to amend the Constitution is not absolute. In *Kesavananda Bharati case* (1973), the Apex Court held that Parliament has the power to amend the Constitution, but not its basic structure. This

doctrine has been reaffirmed in later cases, such as *Indira Nehru Gandhi*

v. *Raj Narain* (1975) and *Minerva Mills* case (1980). In the context of the 129th Amendment Bill, such criticisms have some merits as the Bill in contemporary form may contravene the principles of rule of law, democracy, and federalism. Indian federalism has a centralizing tendency which was designed to suit the conditions of India. This bill is compatible with the doctrine of the basic structure. The reduction of tenures of the State Assemblies, keeping in mind the national interest of reducing the inefficiency in governance and channelizing the manpower and resources for the development of India, may be a desirable goal. But State Assemblies cannot be merely a dependent unit to the Lok Sabha. The people of state must have freedom to choose their representatives of the full term of five years. If its tenure is curtailed to synchronize the election with the Centre frequently. Such policy may compromise the principles of rule of law, democracy, and federalism. These principles are the fundamental to the Indian Constitution and held by the Supreme Court of Indian as integral parts of the basic structure of Indian Constitution.

3. **Critics argued that the proposed Bill violates the Basic structure of the Constitution as mentioned in the Hon'ble Supreme Court's judgment in *Kesavananda Bharati* v. *State of Kerala*. Do you agree with this view? If so, please elaborate and if not, state the reasons therefore.**

RESPONSE:-

The 129th Amendment Bill proposes holding of simultaneous elections for Lok Sabha and Legislative Assemblies. Opposition is on the basis that this Bill contravenes the Basic Structure of the Constitution, according to the landmark judgment in *Kesavananda Bharati* v. *State of Kerala*. Basic

Structure doctrine safeguards the fundamental features of the Constitution, among them democracy, federalism, and the rule of law, are some of the important features held by the Supreme Court of India. The argument of the critics is based on the notion that the simultaneous election would change the inherent character of India's democratic system. Yet, supporters of the Bill contest that it only harmonizes electoral periods, making the process efficient and minimizing interference.

To decide if the bill interferes with the Basic Structure, one has to examine:

(A) Does the Bill undermine the democratic process or the right of the people to representation?
(B) Does the Bill encroach upon state autonomy or on the distribution of powers between the Centre and States?

With respect to a question of basic structure doctrine the following points need to be considered: -

1. Whether a principle or rule is a constitutional rule or principle which may be contained in one article or can be determined on synoptic reading of several articles and scheme of the Constitution?
2. What is the role, place or location of the said principle or rule so determined in the scheme of the Constitution?
3. Whether the rule or principle is so located in the scheme of the Constitution and has such crucial role that gives a unique identity and integrity to the Constitution?
4. Whether altering, amending, or deleting such rule or principle would amount to changing the identity of the Constitution? This usually refers to as the extent and width of the change or amendment (*B.R. Kapur Case 2001*).

On the above questions, the principles of democracy and federalism, though not mentioned in any provision of the Constitution, are essential features of the Constitution. It is these principles that impart a unique identity to the Constitution of India. These principles, particularly, representative democracy is found replete throughout the scheme of the Constitution, and in particular under the provisions of Parts V and VI of the Constitution. Moreover, the very existence of Part V and Part VI, and prescription of democratic Government for both the Union and States, signify the essence of federalism. Thus, federalism is a part of the basic structure and it signifies the autonomous political and democratic status of the States.

In respect of the basic structure doctrine, it is a well settled that it is not the case that whatever rule or principle which forms a part of basic structure are immune from any amount of alteration by way of constitutional amendment. For example: If a rule or principle is part of the basic structure of the Constitution, the same may be touched/amended in a transient manner to achieve the larger objective of the same principle. For example: 77th, 81st and 85th Amendments to Article 16 of the Constitution were held to be constitutional as width of these amendments did not amount to destroy the identity of the Constitution.

In the proposed 129th Amendment Bill, the declaration of the first appointed date by way of proposed Article 82 A (1) may not, accordingly, be violative of the principles of democracy and federalism. However, the repeated exercise of bringing tenures of the assemblies to an end, by way of extension and curtailment so as to coincide their elections with the Lok Sabha, shall amount to altering the identity of the Constitution, and therefore it shall be violative of the basic structure of Indian Constitution. This is so because such extension or curtailment of the tenures by way of bringing mid-term elections for an unexpired term shall violate the principle of democracy.

As far as federalism is concerned, it minimally refers to "federal situation", which is a pre-condition for the adoption of a federal Constitution. Federal situation as recognized in S.*R. Bommai Case*, refers to the socio-cultural order and political conditions found in the different communities, that may be based on economy, region, religion, culture, language, ethnic identities, and developmental, and other requirements, etc. The federal situation for each region/state creates and requires an autochthonous way of making and exercising the electoral choices. The proposal on simultaneous elections, by way of proposed Article 82 A and Article 83 (3), cannot be sustained in a constitutional scrutiny before the Court of Law. For example, in many states, where the Lok Sabha election and assembly elections are held in different years or months produce drastically different results than holding the election simultaneously for the Lok Sabha and the Legislative Assembly. Especially, the electoral discourses at the time of election may be centralized and the local aspirations and necessities may be undermined under the cacophonies of the centralized narratives of the political parties. Further, the reduction of the tenures of the legislative assemblies, making their tenures coterminous with the Lok

Sabha, may undermine the democracy, which asks for the complete accountability of the elected legislatures for the full term of five years.

On the critical examination, it can be said that the 129th Amendment Bill may violate the Basic Structure. The purpose of the Bill is to rationalize the electoral process, and this can be viewed as a permissible exercise of the legislative power. Yet, the possible democratic and federalism concerns should be answered through proper drafting and enforcement. The solution is to find a balance between efficiency in a democratic set-up and safeguarding the Constitution's basic features. However, the Bill is required to be scrutinized carefully, especially in the context of democratic process and the federal structure of the Indian Constitution. The democratic process must enable people to freely exercise the political choice, i.e., to exercise the right to vote based on informed choices. As per the provisions of the Bill, they may violate the informed choices of the voters. They can choose two representatives for the Centre and State at the same time based on the choices as per the centralized narratives of the electoral discourses, which may undermine the free and fair election in India.

II FEDERALISM

4. Please state whether the proposed Bill for conducting simultaneous elections to state assemblies and Lok Sabha violates the federal character of the Indian polity? Please comment in detail.

RESPONSE: -

The Bill to hold simultaneous polls in the State Assemblies and the Lok Sabha have raised questions regarding their effects on India's federal character. Federalism is a fundamental pillar of the Indian Constitution to the extent that the devolution of powers between the Centre and the States is ensured. Indian federalism, though, is a federation that does not enable complete autonomy to the states. All units of the federation are regulated according to the provisions of the Indian Constitution. In India, States have not individually come together to constitute a union rather the State boundaries and their creation are subject to the authority of the Indian Parliament, which can, with ease, modify and establish a new State. Thus, the introduction of a new electoral cycle for the States and the Centre is Constitutionally valid.

The critics contend that simultaneous election could result in a centralized script, dominating the state-specific issues. This would compromise the autonomy of the States and the plurality of regional political affairs. Thus, the national concerns would dominate the electoral agenda, marginalizing the state-specific issues and lowering the priority on local government. It is contended that the simultaneous elections may result in state governments being dissolved or reconstituted in the middle of their term based on the national requirement, upsetting state-level governance and stability. The Indian Constitution envisages independent electoral cycles for the Lok Sabha and State Assemblies. Article 83 and Article 172 regulate the lifespan of the Lok Sabha and the State Assemblies, respectively. Although simultaneous elections may encourage electoral efficiency and minimize disruptions, it is important to note that the federal character of the Indian polity should not be sacrificed.

To meet the States' concerns, re-thinking is required vis-à-vis balancing electoral efficiency and upholding the states' limited autonomy. The changes made in the Constitution must be done with care, so that India's federal structure remains preserved and strengthened. By perusal of the provisions in the Bill, especially Article 82A (2) and Article 82A (5), (6), and (7), it is clear that the State assemblies have to artificially adhere to the political contingencies of the Centre and to follow its course of action vis-a-vis election. Indian Constitution treats both the units of State as sufficiently autonomous and also inter-related. Therefore, the dependence of tenures on the political contingencies of the Centre may affect the federal character of India. Hence, it is suggested to make a balance between the political contingencies of the Centre and the necessity of States. States must not always be made dependent on the electoral cycle emanating from the political necessity of the Centre.

5. What are the legal implications of curtailing or extending the tenure of the state legislatures to synchronize elections?

RESPONSE: -

The basic characteristics of the federal structure under the Indian Constitution are premised on the harmony between the powers of Centre and States with respect to Governance. The States under Indian polity are not mere appendages of the Centre. As per the Bill, the tenure of the legislative assemblies of the various States may be reduced to follow the

next electoral cycle as per the Lok Sabha. The tenures of the legislative assemblies of the various States would be, therefore, dependent on the electoral cycle of the Lok Sabha from the very inception. Therefore, it is suggested that a balance is required to be maintained vis-a-vis political contingencies of the Centre and the States. As per Article 82(A)(2):

> "Notwithstanding anything in Article 83 and Article 172, the term of all Legislative Assemblies constituted in any general election held after the appointed date and before the expiry of the full term of the House of the People shall come to an end on the expiry of the full term of the House of the People".

This Article mandates that the States Assemblies would function only for a period till the expiry of the full term of the House of the People. Such provisions may not pass the Constitutional scrutiny as established by the Supreme Court of India in its various judgments.

6. **Federalism is intrinsic to distribution of legislative and administrative powers amongst Union and State legislatures under Part XI and Seventh Schedule of the Constitution. As such, Union as well as State legislatures are creations of the Constitution. In view of the aforementioned, please state how the terms of state assemblies can be curtailed and made coterminous with Lok Sabha, by a constitutional amendment as it goes against the fundamental design of the Constitution?**

RESPONSE: -

Indian Federalism is premised on the balance between the governmental powers of Centre and States and also it enables sufficient autonomy to the States. The Indian Constitution has established a unique kind of federalism whereas Centre predominates in various matters, especially legislative, administrative and financial relationships. The dominant position of Centre has emerged due to historical and political circumstances of India. Many critics argue that India does not have federalism or is a quasi or a weak kind of federalism. However, the Supreme Court of India in many of its judgments established this fact that Indian federation is a union of plurality, whereas, States have sufficient autonomy to govern or to develop policies. As per 129th Amendment Bill to the Constitution, the tenure of legislative assembly can be

curtailed and its

tenure may be made coterminous with Lok Sabha. Any attempt to treat States merely as dependent units of governance on the Centre would jeopardize the federal structure. Therefore, curtailment of the tenure of the State assembly shall be violative of the basic structure doctrine.
The established jurisprudence of federation in India regards states not as subordinate and dependent on the Centre (*S. R. Bommai Case 1993*). The states are independent, and coordinate to that of Centre, in the sphere assigned to them by the Constitution.

The parliamentary representative democracy has been prescribed by the Constitution for the Union and the States both. Therefore, any curtailment of tenures of legislative assemblies must satisfy and comply the above-mentioned features to pass the Constitutional muster vis-à-vis federalism which is one of the features of the basic structure of Indian Constitution.

II. GOVERNMENT ACCOUNTABILITY

7. **The proposed Bill introduces the concept of full term - five 5 years and if the Govt loses the confidence of the House, elections are to be held for the remainder of the full term. Please state whether elections to remainder periods only reduces the Govt accountability?**

RESPONSE:

The 129th Bill on simultaneous elections as proposed prescribes where elections would be conducted for the remainder of the full term in case a government loses confidence in the House. This is a potential area of concerns regarding the accountability of the government. The mid-term elections for the Lok Sabha or State Assemblies could lead to diminished accountability of the government, as the government would not be entirely accountable to the people for the entire term. There might be a possibility that such a government may not be able to complete its mandate in the first place, and mid-term elections may not give a clear mandate for a new government. Moreover, that government may not be able to see through its projects or policies, and elections for the remainder of the terms may unwind the continuity of the administration.
Under the current system, when the government loses confidence, new

elections take place, and the citizens are able to re-elect or reject the

government according to how it performs. This makes the government to remain accountable to the people for the full term of its existence. Thus, elections to complete the term may diminish government accountability, since the government would not be completely responsible to the people for its full-term. This would result in a lack of accountability in the governing process. It is very important to think carefully about the potential effects of this provision on the government and the democratic process.

The proposed Article 83(3) in the Amendment Bill defines "mid-term" and "unexpired term" including "full term" and "general elections". The problem raised by this question herein refers to possible situations which raises question to the very rationale of the proposal of the simultaneous elections. The problem has not been answered even by the report of the high-level Committee, headed by Hon'ble former President of India, reports of Law Commission of India, and NITI AYOG, etc.

Looking at the scheme of the Constitution and also rationale and spirit of the 129th Amendment Bill, it is clear that situations raised in the question cannot be answered by incorporating provisions in the Part XV of the Constitution.

The remedy and solution to the problem may have to be found as part of the electoral laws, including Anti-Defection Laws. The legislations related to conduct of elections and legislations relating to the conduct of members of legislature need to be developed with a view to ensuring continuance of democratic governance for 5 years prescribed in the Constitution and reducing and eliminating the occasions for the mid- term elections.

III. Elections to the unexpired/ remainder of the full term

8. **The Constituent Assembly, after much deliberations, has arrived at a 5-year term for both State Assemblies and Lok Sabha. Accordingly, the voter whenever votes has a legitimate expectation that her representative would serve for 5 years. In view of the above, how can the elections for the remainder/ unexpired terms of the full term only be held, as proposed in the Bill, subsequent to the fall of the Govt. due to no confidence motion/ dissolving of the assembly/ Lok Sabha be justified?**

RESPONSE:

As already explained in question number 7 the concept of mid-term election under the proposed bill has the effects on the accountability of the government. Since the government for an elevated period may not be interested in bringing transformative policy changes and such a government may suffer from the parochial interest to remain in power through short term populist measures. The purpose of giving five years tenure to Lok Sabha and State Assemblies was to provide sufficient time to the governments for bringing long-lasting impacts, through various policies, on the lives of the people. The short-term periods shall not only burden the nation with respect to resources to conduct mid-term elections, but also the benefits of simultaneous election would be diluted, if the mid-term elections are conducted due to political exigencies and the Nation will continue its political life in the mode of election throughout the year.

9. **The vicissitudes of politics may not always be agreeable to the schedule of simultaneous elections and thus might require some amendments**

regarding the tenure of the houses. Articles 83(2) and 173(1) provide for curtailment as well as extension of tenure of Lok Sabha and State Assemblies, respectively. Judgment of Hon'ble Supreme Court in *S.R. Bommai* case effectively regulates the dissolution and proviso to said Articles stipulate explicit ground of 'proclamation of emergency' for limited extensions thereof. In view of the above, please clarify whether:

a) **Such dissolution or extension be in congruence with basic features of Constitution such as democracy and rule of law?; and,**
b) **How could such a mechanism strike a balance between the essence of procedure established by law and due process of law?**

RESPONSE:

Termination or prolongation of tenures of Houses could impact the democratic process and hence weaken the mandate and representation of the people. Termination or prolongation must follow the Constitutional provisions and judicial precedents in their spirit, not weakening the rule of law and democracy. The Constitution has outlined a framework of curtailment or prolongation of tenures, which must be followed in the spirit of the Constitution. The mechanisms must guarantee that any extension or dissolution of the Houses is reasonable, just, and fair and in accordance with the due process. Unlimited discretion to shorten or prolong tenures of the Houses could endanger democracy and the rule of law through arbitrary decisions. The judiciary has an important role to play in safeguarding that any extension or dissolution is constitutional and reasonable. In order to balance the procedure laid down by law and due process of law, the mechanism ought to follow the specific Constitutional provisions. It should also be ensured that any dissolution or extension of the tenures of Lok Sabha or State Assemblies as the case may be must be pursued in terms of Articles 83(2) and 172(1) of the Constitution.

It is further opined that the Constitution prescribes the same system of constitutional governance, that is, Westminster form of parliamentary democracy for the Union and State government, both. This form is a part of basic structure doctrine. Further, the government must respect the judgments of the Supreme Court of India, including *S.R. Bommai* v. *Union of India* and

other applicable judicial rulings. There should also be transparency regarding grounds for dissolution or prolongation of the tenures of the Houses to ensure transparency and accountability in decision-making. By following these due processes, the fundamental features of the Constitution such as democracy and rule of law could be maintained in letter and spirit.

III. ANTI- DEFECTION LAWS

10. Do you foresee the need for any amendments to anti defection laws in view of the simultaneous elections proposed in the Bills to impart stability to the Govts? If so, please furnish the reply in detail; and, if not, state the reasons therefore?

RESPONSE: Anti Defection Laws contained in Schedule X to the Constitution, inserted by 52nd Constitution Amendment Act 1985, form a set of constitutional provisions intended to safeguard the parliamentary form of government from the vicissitude of party politics. On the other hand, it is alleged that the laws contained in Schedule X may also be used to discourage internal democracy within a political party.

Political parties are the vehicle for representative form of governance under a parliamentary democracy. India has a multi-party system. Many states have presence of regional parties, in addition to the national parties. The competing interests, ideologies, and identities etc., championed by different political parties, regional as well as national, results in disruption of democratic governance system. In many cases, such disruptions are caused by individual interests of legislators or members of legislatures. Anti-Defection Laws serve the purpose to discourage disruptions in continuity of democratic governance. It ensures creation of collective opinion within a political party and interest articulation by the party.

Accordingly, paragraph 3 of Schedule X was deleted by the 91st Constitution Amendment Act, 2003. Paragraph 3 provided for exemption from disqualification in cases of defection on the basis of split of the party. It clearly shows that Paragraph 2 of the Schedule provides for disqualification on the ground of defection and Paragraphs 4 and 5 provide for exemption from disqualification, however, if Paragraph 2 is read carefully, there are exemptions in-built under Sub-Clause (b) of Paragraph 2 that exempts from disqualification on the basis of condonation and prior permission.

To strengthen the stability and continuity of democratic governance through the political representation of people/electorate the following amendments may be incorporated in the X Schedule:

a. Exemptions contained in Sub-Clause (b) of Paragraph 2, namely, "exempts from disqualification on the basis of condonation and prior permission", needs to be done away with through amending the paragraph.
b. Paragraph 2 may further be amended or a new paragraph may be added by way of insertion providing to the effect that a member is disqualified under paragraph 2, for being a member of the House, shall also stand disqualified for contesting any election for next five years from the date of the disqualification.

The above suggested points will help ensure that the number of occasions for 'mid-Term' elections are reduced to its minimum and will ensure the benefit of simultaneous elections in general.

11. **Schedule X of the Constitution has eroded the freedom available to an individual MP. In order to balance the sanctity of the Political Party system and the necessity of stable Governments, should there be at least certain motion-specific exceptions there? Or would it be undesirable? Please comment.**

    RESPONSE: Freedom of members of a House and the sanctity of the political party system are necessary pre-conditions of the democratic governance. However, these two concerns can better be addressed outside the House and its procedure. The freedom of members of a house and the sanctity of the political party system may be ensured in an institutionalized party system by way of ensuring the internal democracy of the party and freedom of members of the party prior to the election through which the party member becomes a member of the House. Thus, if a member of the House goes against the decision of the party in the house, but his such conduct/stand in the House in accordance with the stand/opinion/conduct he had consistently taken in the party to which he belongs. Such representatives should get exemption from disqualification under the Schedule. Thus, motion specific exemptions may be granted to members of House only in the above cases by incorporating appropriate provisions in the X Schedule.

12. **Notwithstanding the differences between the manners of investiture of *de-facto* Head of State between Germany and India, would a modification effectively providing for constructive vote of no-confidence, thereby mandatorily providing for vote of confidence for alternative Prime Minister along with vote of no-confidence against the incumbent, be in congruence with our democratic ethos?**

RESPONSE: The "constructive vote of no-confidence", thereby mandatorily providing for vote of confidence for alternative Prime Minister or Chief Minister along with vote of no-confidence against the incumbent" may be a good method to curtail the mid-term election. However, in certain cases, the failure to provide an alternative may enable a government to continue in office even if it has, in fact, lost the confidence.

VI. Clarifications on various clauses of the proposed Bills

13. Clause 1(2) of the Constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024 and proposed Article 82A (1), both provide for notification. While the former provides for "notification in the Official Gazette", the latter provides for "public notification". In this context, please explain the following: -

(i) What is Gazette notification and public notification? They are governed by which statutes?

RESPONSE: The expression 'public notification' is defined under Article 366(19) of the Indian Constitution. Which means "a notification in the Gazette of India, or, as the case may be, the Official Gazette of a State''.

Section 3, Clause 39 of the General Clauses Act, 1897, defines "official Gazette" or "Gazette" shall mean the Gazette of India or the Official Gazette of a State;

Article 82A of the proposed Amendment Bill, provides "**public notification** issued on the date of the first sitting of the House of the People after a general election". Section 2 of the Amendment Bill provides for "**notification in the Official Gazette**'.
It is noteworthy that Articles 83 and 172, both, provides for "the date appointed for its first meeting and no longer".
It is submitted that the difference in the terminologies are contextual

and can have asymmetrical connotations in respect of Constitutional Laws (as submitted below in response to sub-points).

Additionally, it is noteworthy that these expressions are part of administrative procedure. The United States of America has a general legislation on the Administrative Procedure namely, Federal Register Act, 1935. Similarly, the United Kingdom has a general legislation on the subject called the Statutory Instruments Act, 1946.

Gazette notification refers to bringing documents, etc. on record of the concerned government institution as well as informing the general public. Further, a document required to be notified through Gazette does not come into existence, legally, until it is so published in the Gazette. Public Notification refers to the act of informing decisions, orders, rules or any existing document/thing to the general public. The purpose of public notification relates to a rational form of governance/administration which ensures transparency and accountability. However, there is a common justification for Gazette Notification as well as Public Notification that every person is presumed to be knowing the law. *Ignorantia Juris Non Excusat* is the fundamental maxim of our legal system. Accordingly, the ways and manner of making people know the rules, orders, decisions, regulations etc. is of highest importance. However, the Indian Legal System does not have a proper institutionalized and authorized system of "notifications".

It is opined that the Parliament may think in its propriety to bring a new general legislation, on the lines of FRA 1935 and SIA 1946, to regulate the issuance of Gazette Notification and Public Notification including other kinds of notifications. However, such a general legislation, it is

desirable, that must be a comprehensive one to systematize, authorize, authenticate and records all notifications whether issued under the provisions of the Constitution or under the any other statutory

enactment including regulating notifications of rules and regulations framed under different statutes central and states. It is, further, desirable that the general legislation may define the categories of notifications that are to be issued as Gazette Notification and those that of public notifications.

Looking at the higher status of constitutional law the general legislation suggested may also divide notifications issued under the authority of Constitution directly and other notifications.

(ii) *What are the differences in terms of legal implications of the aforementioned two types of notifications?*

RESPONSE: Opinion has already been given in the previous sub-point regarding this question.

(iii) *Why has the "public notification" mechanism/route been considered appropriate for the purpose of proposed Article 82A (1)?*

RESPONSE: Public Notification has larger coverage as it is published not only in the official gazette but also in different electronic, digital and print media such as newspapers, televisions, etc.

The notification of the 'appointed date' under proposed Article 82A (1) has reference to the date of first sitting of the House of People after a general election. However, the determination of the expression "a general election" has been left to be decided by the President. This determination according to which the Article 82A that is the 129th Amendment Bill shall come into effect.

It is opined that in view of the larger consequences that the Amendment Bill entails for the systems of federation as well as democratic governance, it would be proper in line with the spirit of Article 368 of the Constitution that the "appointed date" is declared by the Constitution itself. It is further, submitted that proposed Article 82A(1) is in contravention of the law declared on the point by Supreme Court in Rameshwar *Prasad* v. *Union of India AIR 2006 SC 980*.

14. The public notification issued on the date of first sitting of the House of People under Article 82A (1) will determine the appointed date and will bring provisions of Art. 82A in force.

It may be seen that proposed Article 83(3) states that '*the five-year period from the date of first meeting of the House of the People'* shall be referred to as the full term of the House of the people'. The extant article 83 (2) provides for a term of five years for Lok Sabha from the "date appointed" for its first meeting'. In view of the afore mentioned, please clarify the following:

i. What is the difference between 'date of first sitting of the House of the people' under the proposed Article 82A (1) and "date appointed for its first meeting" under clauses (2) and (3) of Article 83?

RESPONSE: The proposed Article 82A is loosely drafted. Different clauses of the Article refer to "appointed date".

Clause 1 defines "appointed date", while Clauses 2 and 3 refer to "appointed date". The definition of appointed date under Clause 1 does not coincide with the said 'general election' referred to in the said clause. That is, the general elections of the House of People and the

appointed date shall be different. There may be a difference of many

days or months between the date of "a general election" referred under Article 82 (1) and 'appointed date' referred under Clauses 2 and 3 of the Article. This would raise serious constitutional problems as to what would happen to the state assemblies whose terms are expiring/competing in between the two dates, i.e., the date of "general election" and 'appointed date'? It is humbly opined that Clause 1 of the proposed Article 82A needs appropriate modification.

ii. *distinction between "appointed date" under Article 82A (1) and "date appointed" under the extant Article 83(2) of the Constitution?*

RESPONSE: If you look at the scheme and spirit of the Amendment Bill the distinction between the two, i.e., *"appointed date" under Article 82A (1) and "date appointed" under the extant Article 83(2) of the Constitution, the two expressions must mean the same thing*. However, this meaning would result in problems that have been highlighted in the previous point, i.e., there may be state assemblies whose terms expires after the day of general election for the Lok Sabha, referred under Article 82A (1) and the day of first sitting of the Lok Sabha so constituted. This would result in difficulty in the way of implementation of simultaneous elections. Accordingly, it is opined that Article 82A (1) may be split into two parts. The first part may refer to the transient situation pointed out hereinabove and the second part may appropriately define the 'appointed date' uniformly for Clauses 2 and 3 of Article 82A as well as Article 83 of the Constitution. It is further submitted that there may be situations where the existing term of legislature of state is being completed or expires some days or some months before the date of "general election" referred to under Article 82A (1). This period cannot easily be covered by provisions

dealing with ‘unexpired period’ referred to in the proposed Article 83 (3).

Accordingly, the proposed Amendment Bill shall have to address the democratic vacuum that may occur. Thus, the proposed Amendment Bill by way of Article 82A and Article 83(3) needs to be appropriately modified to cover these kinds of transitory situations.

iii. *Whether or not after enactment of this Bill, clauses (2) and (3) of Article 83 will effectively determine the tenure of each subsequent Lok Sabha after every General Elections, collectively? If yes, would that mean that public notification under Article 82A (1) will have to be issued after every General Elections? If not, the reasons thereof?*

RESPONSE: The answer to this question is negative as the existing provisions of the Constitution do not define ‘appointed date’. On the other hand, the proposed Article 82A defines the expression “appointed date” which shall equally be applicable to the existing Article 83.

Article 82A is a composite provision and provides for a comprehensive scheme of regulating elections to Parliament and State Legislative Assemblies in a manner called simultaneous elections, as provided in Clauses 2, 3 and 4 of the Article. Thus, there shall be no requirement for issuing public notification under Article 82 A (1) after every general election.

iv. *A view has been expressed that determination of 'appointed date' should not be left with the Executive as delegated legislation will be more prone to legal challenge than a law mandated by Parliament. Please comment.*

RESPONSE: The determination of the appointed date for all general elections in future cannot be specified in the Constitution itself. There are several existing provisions in the Constitution which leave this discretion to the appropriate Constitutional Authorities.

However, as opined above, the first instance of 'appointed date' as part of proposed 82A (1) needs to be specified in the Constitution itself and subsequent delegation to the executive may be constitutionally valid.

15. The proposed Art. 82A (3) seeks to empower the Election Commission of India essentially of 'removal of difficulties' in nature, by providing for ECI to specify those modifications to Part XV by order. In view of the above, please clarify the following: -

i) Should not any modifications to provisions of Part XV be effective in the nature of Constitutional amendments?

RESPONSE: As per as the latter part of 82A (3) is concerned, it delegates excessive power to the election commission of India to modify provisions of Part XV of the Constitution. The said part of the clause amounts to excessive delegation. The scheme of the Part XV is very clear. It is well established in Constitutional Jurisprudence that parliament has general power under Article 327 to make law with respect to all matters relating to, or in connection with elections to parliament and legislatures. The said power cannot be delegated to the Election Commission. Accordingly, it is opined that the proposed Article 82A (3) needs to be modified and provisions to that effect need to be incorporated in the Amendment Bill itself, and legislative enactment pursuant to that Constitutional provision may be passed by the Parliament under Article 327 read

with appropriate modified provisions of the proposed Article 82A, and the power of implementation may be given to the Election Commission of India.

ii) *If yes, does not Art. 82A (3) suffers from excessive delegation? If not, reasons therefor.*

RESPONSE: This question has already been answered in the previous sub-question.

iii) *Would it be appropriate to provide for delegated legislation through ordinary legislation rather through Constitutional amendment?*

RESPONSE: This question has already been answered in the previous sub-question.

iv) *In this context and section 169 of the Representation of People Act, 1951 empowering the Central Government to make rules, what measures would you suggest to ameliorate the situation?*

RESPONSE: This question has already been answered in the previous sub-question.

16. Article 82A (5) provides as follows: -

"If the Election Commission is of the opinion that the elections to any Legislative Assembly cannot be conducted along with the general election to the House of the People, it may make a recommendation to the President, to declare by an order, that the election to that Legislative Assembly may be conducted at a later date".

In this context, kindly elaborate the following: -

i. *It may be seen that the proposed clause 82A (5) does not specify any grounds/reasons on the basis of which the Election Commission comes to conclusion that general elections to any state legislative assemblies*

cannot be conducted along with general elections to Lok Sabha and make a recommendation to the President to conduct elections to the State Legislative Assembly at a later date. Do you think that the Election Commission should specify the reasons for making such a recommendation? If so, please furnish the reply in detail; and, if not, does this provision not lead to arbitrariness in making said recommendations to the President?

RESPONSE:

The powers given to the Election Commission to recommend to the President of India that the election in a particular state may be deferred are very wide and undefined, therefore, the specific grounds must be provided in the Constitution itself that on which conditions such powers may be exercised. Further, such recommendations of the Commission must be justiciable before the Constitutional Courts in India to check the powers of Commission as per the Constitutional values.

ii. *Would there be any legal consequences for the Election Commission if it chooses not to make any recommendation for deferring the elections in any State even though reasonable grounds for the same are present?*

RESPONSE: The provisions proposed under Clause 5 of Article 82A would be vulnerable to challenges as to its constitutionality before the Supreme Court of India. The proposed Clause gives unguided and un-canalized power to the Election Commission for recommending, in its opinion, to the President that elections to any legislative assembly cannot be conducted with the Lok Sabha and said election to the assembly be conducted at a later date.

There is no such delegation by the Constitution of powers to any authority or body in the existing provisions. There is one example of Clause 5 of Article 356 which gives similar power to the Election Commission for recommending to the President. However, the exercise of the said power is circumscribed by requirement of continuance of proclamation of emergency (Article 352), and the state is under a proclamation under Clause 3 of Article 356. Further, it is suggested that the opinion of the Election Commission may be sought by the Union Executive but before placing it to the office of President the same should have been approved by two thirds of the majority of members present in the Lok Sabha. The rationale for this suggestion is that Clause 5 of 82 dangerously lurks upon democratic character and feature of the governance of state which is also a primary responsibility of the Central Government under Article 355 which prescribes duty for the Union to ensure Constitutional Governance in states.

iii. *Would this opinion/recommendation or lack thereof be justiciable?*

RESPONSE: Though opinion of Election Commission of India supplied to the President as well as action taken by the President, on the basis of such opinion, that is, deferment of election of state assembly by the President are/shall be justiciable in accordance with the Constitutional jurisprudence developed by the Indian Supreme Court including in the judgments of *S.R. Bommai* 1994, *Kihoto Hollohan* 1993, *Nabam Rebia* Case 2016, and *Speaker Maharashtra Assembly* case 2023, etc.

iv. *Unlike the language of Article 103(2) which makes the Election Commission of India opinion binding for the President, the proposed Bill is silent on the course of action that the President would be required to take. Would the President's order, or the lack of it, be justiciable?*

RESPONSE: Opinion as in accordance with the suggestions given in the previous point.

v. *What would be the nature of the President's Order? Should it need to be placed before Houses of Parliament like the emergency provisions proclamations by the President?*

RESPONSE: This question has already been answered in the previous sub-question.

(vi) *Proposed Article 82A (5) provides that "…elections to any Legislative Assembly cannot be conducted along with the general election to the House of the People…". The Bill nowhere provides for deferment of elections of the House of People. It therefore implies that even when elections to the Legislative Assembly of any State would be deferred*

under Article 82A (5); elections to the House of People would still have to be conducted there. What impediments could hinder one but not another? Please clarify.

RESPONSE: The problem raised by the question is based on interpretation of Clause 5. However, a correct interpretation, in our opinion of the proposed Clause 5 does not entail that the Lok Sabha election in the state shall have to be deferred when election to the legislative assembly is deferred on the basis of opinion of the Election Commission by the President. Same political contingencies may be applicable to the Lok Sabha as well. Therefore, the provisions related to deferring the election of State Assembly is not coherent. Such powers should not be selectively exercised only for state assemblies.

(vii) Please furnish your view on inherent checks and balances present in our legal framework to regulate the powers conferred upon the Election Commission vide clause 82A (5) to postpone the conduct of elections? Please comment in detail.

RESPONSE: This question has already been answered in the previous sub-question.

17. Proposed Clause (5) of Article 83 provides that the House of People is dissolved sooner than the expiry of its full term, the new House of the People constituted pursuant to elections occasioned by such dissolution, unless sooner dissolved, shall continue for such period equal to the unexpired term of the immediately preceding House of the People and expiration of this period shall operate as a dissolution of the House.

However, *vide* proposed Article 83 (4) "unexpired term" has been defined only for a House with full term as a "period between date of its dissolution and five years from date of the first meeting. Thus, according to the

provisions of the Bill, what would be the consequences if there is a second dissolution?

RESPONSE: The unexpired term will be counted from the first date of the meeting of the Lok Sabha. In between, if the House is dissolved for the first time or second time, that will not affect the total tenure of the Lok Sabha which will be counted after the first date of meeting convened after the simultaneous election for the Lok Sabha and state assemblies.

18. **Please state whether the Bill in its present form requires state ratification?**

    RESPONSE: As per Article 368 of the Indian Constitution no ratification is required as the proposed 129 Constitution Amendment Bill does not seek to alter or amend any of the provisions called 'entrenched provisions' mentioned in proviso to Article 368 (2).

19. **Attention is drawn to formulation of Articles 81 and 331 of the Constitution. Both Articles pertained to composition of Lok Sabha. Consequently, both have cross references in form of "Subject to the provisions of Art. 331" and "Notwithstanding anything in Article 81".**

    Hence, as Art 82A (2) proposes exceptions to Arts. 83 and 172 by invoking a non-obstante clause, won't it be in the fitness of things that the words "Subject to the provisions of Art. 82A (2)" may be inserted in Arts. 83 and 172? Please clarify.

    RESPONSE: To complete the effect of non-obstante clause, in the proposed Article 82A (2) it is in line with the drafting convention/rules that the subjection clause may be inserted in Arts. 83 and 172. The insertion of subjection clause would reduce possibility of unnecessary litigations and

make the provisions of Amendment Bill complete in accordance with the object and purpose of the Bill.

VII. INCIDENTAL ISSUES

20. "Election" has been defined under Section 2(d) of the Representation of People Act, 1951. As RPA, 1951 uses General Elections in Section 14 for Lok Sabha elections and in Section 33(7) (a) and (b) for both Lok Sabha and State Assemblies elections. Further Mid-term elections have been used only for Lok Sabha elections in the proposed Art. 83(7).

Hence, for sake of clarity, shouldn't the terms General Election and Mid-term elections define *vide* Art. 83(7) also found a place in the RPA, 1951?

RESPONSE: It is desirable that the representation of the People Act 1951, which is the general legislation made under Article 327, the terms or expressions such as "general elections", "mid-term elections", "unexpired term" which is defined in the proposed Article 83 (3) should also find place in the said Act.

21. Would giving Model Code of Conduct a statutory recognition augment the legal framework for Simultaneous Elections? Kindly elaborate.

RESPONSE: Model Code of Conduct represents rules and norms of political morality for the ethical way of functioning of representative party system ensuring democratic governance. Therefore, giving statutory recognition to the MCC would result in a cumbersome process of litigation and may hamper the electoral democratic process. Accordingly, it is opined that MCC should not be given statutory recognition.

22. Any other suggestions that you wish to submit on Simultaneous Elections and the proposed Bills before the Joint Committee.

RESPONSE: It is humbly submitted that in the interest of Constitutional governance of the nation, and a comprehensive investigation should be undertaken and specific conclusions should be drawn for formulations of the provisions of amendment that will inspire confidence in public and experts. The task should be assigned to those constitutional jurists whose disinterestedness to other causes and commitment of scientific scholarship would strengthen the constitutional scheme and intent. To be scientific, such an investigation of electoral provisions of the Constitution must be based on mature deliberations with people and experts on the subject matter of democracy, plurality, federalism, free and fair election, constitutionalism, rule of law, efficiency in governance and administration, responsible and transparent governance, and people's choice to choose freely the representatives for the full term for a responsible-democratic representation of people's aspirations and challenges. This Bill is a move with good intent but a thorough investigation is required to re-draft it so as to balance the conflicting principles and to uphold the spirit of Constitutional governance of India based on the fundamental principles envisioned by the Constituent Assembly.

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