Himachal Pradesh National Law University, Shimla (India)

A UGC CARE Indexed Law Journal

Journal Articles | *ISSN:2582-1903* | *Shimla Law Review*

Volume: VII (2024)

LAW AS THE ONTOLOGY OF 'ONE' AND 'CONSTITUTIONAL REASON': India's 'One Nation One Election' Plan, Democracy, Federalism, and Electoral Justice

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Recommended Citation:
Chanchal Kumar Singh & Mritunjay Kumar, *Law as the Ontology of 'One' and 'Constitutional Reason': India's 'One Nation One Election' Plan, Democracy, Federalism, and Electoral Justice* VII SML. L. REV. 128 (2024).
DoI: https://doi.org/10.70556/hpnlu-slr-v7-I1-2024-05

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Contents

Volume VII | *ISSN: 2582-1903* | April 2024 - March 2025

Special Article *Page*

1. AI GENERATED EVIDENCE BROUGHT BEFORE EUROPEAN COURTS: Further Activation of Evidence Law, Defence Rights, and Human Oversight Needed
   Paul De Hert & Georgios Bouchagiar 1

Articles

2. 'ONE NATION ONE ELECTION': A Juridical Critique of the Constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024 41
   Virendra Kumar
3. ELECTORAL HARMONY AND CONSTITUTIONAL BALANCE: A Constitutional and Theoretical Analyses of India's Quest for One Nation One Election 65
   Tamesh Kumar Pandey & Priti Saxena
4. THE ELECTION COMMISSIONERS' APPOINTMENT ACT, 2023: Fulfilment of a Constitutional Expectation or a Device to Maintain the Status Quo? 92
   Monica Chaudhary
5. LAW AS THE ONTOLOGY OF 'ONE' AND 'CONSTITUTIONAL REASON': India's 'One Nation One Election' Plan, Democracy, Federalism, and Electoral Justice 128
   Chanchal Kumar Singh & Mritunjay Kumar
6. EFFICACY OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013: A Critical Analysis 213
   Aayush Raj
7. POSTHUMANISM: Challenges for Contemporary Legal and Social Theories 244
   Chanchal Sharma
8. BEYOND THE UNIFORM CIVIL CODE DEBATE: Critiquing Goa's Succession Law 262
   Shukr Usgaokar

9. INDIA'S DECRIMINALISATION POLICY: The Past, Present, and Future of Governance, Risk Management, and Compliance under the Companies Act, 2013
Harpreet Kaur 293

Notes and Comments

10. ARTIFICIAL INTELLIGENCE INVENTIONS AND THEIR PATENTABILITY
Anita Yadav & Rabikant Pandey 312

11. 75 YEARS OF THE PRACTICE OF EXTRADITION LAWS IN INDIA: Evolution, Expectations, and Realities
Namita Vashishtha & Shourie Anand Singh 338

12. *IN RE:* SECTION 6A OF THE CITIZENSHIP AMENDMENT ACT, 1955: A Comment
Muskan & Prachi 370

13. RIGHTS AND ENTITLEMENTS: A Commentary on Chapter II of the RPwD Act, 2016
Ashpinder kaur & Rimjim Kheda 380

14. FISCAL FEDERALISM FROM PYRAMID TO MATRIX: An Analysis of the Supreme Court Judgment in *Mineral Area Development Authority* v. *Steel Authority of India* (2024 S.C.C. OnLine S.C. 1796)
Arya Kumari 394

LAW AS THE ONTOLOGY OF 'ONE' AND 'CONSTITUTIONAL REASON': India's '*One Nation One Election' Plan*, Democracy, Federalism, and Electoral Justice

Chanchal Kumar Singh [*] ***& Mritunjay Kumar*** [**]

[Abstract: *The prevailing approaches and theories in legal philosophy, claiming potential to explain the liberal law, have fundamental limitations in terms of their constitutive structure. These end up in rationalizing and glorifying their subject of study resulting in a kind of regressive determinism. The paper, therefore, undertakes a critical inquiry into the nature and essence of 'law' and the 'legal order', as these were produced in the West, in specific philosophical historicity.*

We argue that the present law was a specific result of the unique ways in which medieval authority, social philosophy, and religion interacted, causing emergence of the idea of politically rationalised power as 'one' (Section III), whose identity and existence in the modern legal-political systems is essentialised by singularity of law. The requirement of the study to develop a deeper understanding of the operation of power, as one, necessitates investigating, in antiquity, the normalisation of reason and rationalisation, the present versions of which have successfully reconstituted the being of human beings, meanings of life, and natural world. Accordingly, the paper develops the distinct concept of 'Constitutional Reason'(Section IV). These two ideas have determined the essence of contemporary government, law, politics, democracy, forms of governance: state as the means of politics of economic strategies and objectives, akin to theological positions. We argue that 'One' is ontological necessity to establish the deontology of Constitutional Reason, the reason, in which human beings, as uniformalised self, are produced and perpetually reinvested.

In the Indian context, certain legal-constitutional policies, such as ONOE, are manifestations of, and have been used here, as the investigative tools, for operationalizing the main theses of the paper (Section II) and for studying its consequences for federalism, democracy (Section V), and electoral justice (Section VI), in India. The last section (Section VII) concludes the analysis with prescriptions for the need of deeper and larger debates and reforms for electoral mechanisms and institutionalising, regulating, ensuring internal democracy, accountability etc., of the political parties who represent people's will.]

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Acknowledgements: The authors acknowledge, with gratitude, the constant support provided by Mr. Arun Kumar, Assistant Librarian, and Ms. Renuka, Ph.D. Research Scholar, HPNLU Shimla.

I

Introduction

Law, Constitution, and idea of nation are in the process of systemic, yet tumultuous, transformations.[1] Constituent elements of these categories are subject to the 'arche of renovation'[2] and replacement inherent in the charisma of policies of the government, its agencies, and governmentality.[3] One Nation One Election (ONOE) plan is amongst the prominent ones the legal system and the Indian polity are witnessing. '*Oneness*' is a catchword and a slogan used in the political culture of the contemporary world, it is the essence of globalization itself, and of economy, law, and the constitutions around the world.[4] The sentiments of one is glorious, so is the status of the liberal law and economy.[5]

The idea of 'One' has been a philosophical, religious, and epistemological category when adopted and applied to the conditions of a territory and people, and its innovation in political life requires political justifications and juridical veridictions. Because the transmutation of 'one' into the realms of politics engenders the 'mystery

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1 There are numerous initiatives of transformation originating from the executive, legislature and the judiciary under the banner of 'One Nation Policies'. *E.g.,* One Nation One Tax-GST, One Nation One Ration Card, One Nation One Student/Faculty Card (Automated Permanent Academic Account Registry), One Nation One Subscription, One Nation One Civil/Personal Law (UCC), One Nation One Electoral Roll, The Constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024 (Bill No. 275 of 2024); The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025 etc. The other set of issues includes New criminal laws and legacy of colonialism, Debates and proposals for custodianship of the Constitution *vis-a-vis* amending power of parliament and basic structure theory; Appointment of judges the 99th Constitutional Amendment Act, 2014 and the Supreme Court decision in Supreme *Court Advocates-on-Record-Association* v. *Union of India*, (2016) 1 SCR 857; Automated Permanent Academic Account Registry-One Nation, One Student ID; A common electoral roll *etc.*

2 In philosophy of architecture, the terms, 'arche', refers to the artform, design, properties and Social and moral features etc., of an architecture. *See,* Saul Fisher, *Philosophy of Architecture,* The Stanford Encyclopaedia of Philosophy (Winter 2016 Edition), Edward N. Zalta (ed.), *available at:* <https://plato.stanford.edu/archives/win2016/entries/architecture/>. (last visited 5 March, 2025). The expression 'arche of renovation' is an analogical connotation employed, here, to signify the changes that are being made, by way of renewal and reconstruction, in the ideas and meanings of foundational conceptions under the Constitution.

3 *See generally,* Michel Foucault, *SECURITY, TERRITORY, POPULATION* LECTURES AT THE COLL GE DE FRANCE, 1977–78 (Michel Senellart *ed.,* Graham Burchell *trans.,* 2009).

4 It is the essence of liberal law, that is, it knows no law above itself. This claimed rationality of the liberal law invites other features such as universality and uniformity, by excluding the alternatives rooted in socio-cultural history of the subjects it controls and regulates.

5 *See generally,* THE KINGDOM AND THE GLORY: FOR A THEOLOGICAL GENEALOGY OF ECONOMY AND GOVERNMENT, *HOMO SACER*-2 (2011).

and unity of power' which causes and also establishes in-operativity of politics by eliminating possibilities of pure political action, the highest human action.[6]

Therefore, justifications and veridictions for the unity of one need to be renovated constantly. Reason and rationalisation are variegated conceptions as problematic as the problem of 'one'. The idea of reason in the political sphere exists in the sense of relationality, which may be conceptualised as public reason or common reason in the political sphere. It is not an intuitive reason or reason of some holy authority. Claims and contentions of its juridical manifestations can be found in developing a conception of 'Constitutional Reason' manifesting as the highest standard of truth and values in the modern societies. The dynamics of constitutional reason and public reason raise fundamental issues in resolving the various contentious moral issues. The idea of constitutional reason as a standard of rationalisation subjugates public reason as parochial sentiments, therefore, impoverishes the idea of politics and political action.

The Indian social and historical time testifies in favour of the continuity of political arrangements, for millennia represented in 'disunity of political power' arrangements;[7] divergence and disorganization of discourses, and of deliberations and contestations, imparting it the character called the idea of social. The Sanskrit term *Samaja* (for social) comes from *sama* (सम), meaning 'coming together' or 'equal', and '*aja'* (अज) means 'going' or '*moving*'. That is the root of the Sanskrit word *samaja* (समाज). Two of the dominant social religions, Hinduism and Buddhism, do not accede to the idea of one: the one supreme authority or one God. The pessimism of the former and nihilism of latter's socio-religious philosophy germinated into the idea of people and informed their unique intellectual character and constitutions. *The Constituent Assembly which drafted the Indian Constitution did deliberate the idea of power as one and politics as reason to their legitimate demise.* It retained and constitutionalised historical federative features coalesced in the political pluralism, legalised republican democracy and romanticised the latter in representative form for governments that required politics as the most proper dimensions of all works, human and divine.

Accordingly, the Indian Constitution is claimed to be an essay in plurality.[8] The reports contained in the Constituent Assembly Debates (CAD) are the greatest

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[6] "In opposition to the ingenuous emphasis on productivity and labor that has long prevented modernity from accessing politics as man's most proper dimension, politics is here returned to its central in-operativity, that is, to that operation that amounts to rendering inoperative all human and divine works". *See,* GEORGIO Agamben, THE KINGDOM AND THE GLORY: FOR A THEOLOGICAL GENEALOGY OF ECONOMY AND GOVERNMENT, *HOMO SACER*-2 XIII (2011).

[7] Katharine Adeney, FEDERALISM AND ETHNIC CONFLICT REGULATION IN INDIA AND PAKISTAN 31. (2007).

[8] Justice D. Y. Chandrachud, *The Hues That Make India: From Plurality to Pluralism*," (15th Justice PD Desai Memorial Lecture, delivered on 14 Feb., 2020). *See also,* Radhika Roy, *We Have To Accept*

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catalogue of contentions and conversations[9] in the literary history of the world. Bharat, then in that sense, epitomizes a unique sphere of people and genus of politics.[10] It sans or may not support the acclaimed policy objectives of economic efficiency and bureaucratic convenience. The problems of establishing and managing democracy and federalism require an approach which must be *sui-generis* to India.[11] Federalism, as a political choice, is an inevitable necessity in view of the vast size of the country and its diverse regional ethnic, linguistic, cultural, patterns.

Indian plurality is a genus as well as a species. The plurality as the genus of broader social systems is guided by its numerous religions, cultures, languages, dialects, etc. Democracy as debates and disagreements, therefore, is a part of the Indian genre since antiquity. Federalism as a political setup has historically been grounded in those social traditions. India, therefore, had never witnessed a uniform political system at imperial seats and at the regional *Subas* (kingdoms). The genus, therefore, is ancient, perhaps eternal.

In many ways, the Constitution, therefore, prioritises principles and values over administrative and economic objectives mandated under it. This debate has rightly been called the 'debate of the ideals and the objectives', respectively. The value principles, let us call them as such, may not have been named and framed in the texts of the Constitution. Some of the issues at hand in ONOE, such as pluralism, federalism, Constitutional reason (CR), governmentality, antinomies of uniformity and pluralities are of utmost importance to be considered to accept or to reject the proposed Constitution Amendment Bill.

Silences of a text are as vital as the words, signs, and symbols. The basic structure doctrine crafted by the judiciary is the book of silences, the chapters of which were written by the lawyers, academicians, and judges in Hegelian process and Schmittian substance. Counter majoritarianism, as the problem of judicial review, is said to be the genesis of the doctrine of basic structure.[12] Review power of the

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That India Is A Nation Of Plural Views, Multitude Of Cultures: Justice Chandrachud, available at: https://www.livelaw.in/news-updates/we-have-to-accept-that-india-is-a-nation-of-plural-views-multitude-of-cultures-justice-chandrachud-152302?fromIpLogin=48833.46796958511 (last visited 5 Nov., 2025).

9 The Constituent Assembly Debates comprises 12 Vols, 05 bounds. In addition, there are numerous reports, drafts, documents that precedes in time and supplements the records of diverse views and communications on making of the Indian Constitution.

10 Chanchal Kumar Singh *et.al.*, *Idea of Bharat: Exploring its remnants in contemporary India*, DNA, 03 Oct., 2023, *available at*: https://www.dnaindia.com/analysis/report-idea-of-bharat-exploring-its-remnants-in-contemporary-india-3062783 (last visited 5 Nov., 2025).

11 THE REPORT OF THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION, Vol-I, 37 (2002). The pattern was indeed sui-generis. Federalism as a form of governance became an attractive and indeed an obvious choice where wide political, cultural, linguistic diversity exists (ed) in a vast country. *Id.,* at 35.

12 *See*, Raju Ramachandran, *Supreme Court and Basic Structure Doctrine* in SUPREME BUT NOT INFALLIBLE: ESSAYS IN HONOUR OF THE SUPREME COURT OF INDIA 107 (B.N. Kirpal, *et al.,* eds., 2000).

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constitutional courts balances the (mis)deeds of a fleeting majority by the core principles of the Constitution. The idea of basic structure in the legal topography appears as higher principles to counter majoritarianism as well as the review power itself. The problem, then, boils down to the issues of interpretation in its three-fold formulations: originalism, intentionalism, and purposivism.

In the contexts of popular representation and electoral justice, however, the constitutional commitment of the Parliament and lawyers' concerns are limited ones. Parliaments has all powers under the Constitution to carryout legislative and authorise executive functions for policy objectives, except an objective which may be legitimate but requires alterations in the character of democracy,[13] federalism,[14] and pluralistic ethos of the Indian Constitution. The ONOE plan, as it exists, presents the efficiency and convenience arguments of the government as goals and justification for the goals,[15] both, which are characteristics of the economic and bureaucratic strategies![16]

It is intuitive, however, to note that none of the known federal polities in the world, like the U.S., Canada, and Australia, has something like constitutional or statutory requirement of ONOE for forming the national and state (regional) popular governments. Neither do they regard the necessity of something like ONOE to be

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See also, Apurva Vishwanath, '*50 years of basic structure doctrine | Only safeguard against majoritarian govt: Sr Advocate Ramachandran'*((THE INDIAN EXPRESS, 28 Apr., 2023, NEW DELHI), *available at* : https://indianexpress.com/article/explained/explained-law/basic-structure-only-safeguard-against-majoritarian-govt-ramachandran-8577983/# (last visited 5 Nov., 2025). *See, also,* Mate, Manoj, Two Paths to Judicial Power: The Basic Structure Doctrine and Public Interest Litigation in Comparative Perspective (May 18, 2010). 12 San Diego International Law Journal 175 (2010), *available at*: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2312057; Upendra Baxi, *Datar and Dieter: The origins of basic structure* (BAR & BENCH, 24 Feb., 2023), *available at*: https://www.barandbench.com/columns/datar-and-dieter-the-origins-of-basic-structure (last visited 5 Nov., 2025).

[13] *Indira Nehru Gandhi* v. *Raj Narain* 1975 Supp SCC 1; *Jyoti Basu* v. *Debi Ghosal*, (1982) 1 SCC 691.

[14] *S.R. Bommai* v. *Union of India*, AIR 1994 SC 1918; *Kihoto Hollohan* v. Zachillhu (1992) supp 2 SCC 651; *Shamsher Singh* v. *State of Punjab*, [1975] 1 SCR 814; *Waman Rao* v. *Union of India* 1981 2 SCC 362; Minerva Mills v. Union of India AIR 1980 SC1789; *Gujarat Pradesh Panchayat Prishad* v. *State of Gujrat* (2007) 7 SCC 718; *Kuldip Naiyar* v. *Union of India* (2006) 7 SCC 1; *K. Lakshiminarayanan* v. *Union Of India*, (2018) 15 SCALE 644; *NCT of Delhi* v. *Union of India* 2023 INSC 517; *See also,* Academic literature, Douglas V Verney, *Federalism, Federative Systems, and Federations: The United States, Canada and India* Publius: The Journal of Federalism 81 (1995). 'Rekha Saxena and others argue that Constitutional courts in Federal constitutions are weakest safeguards of federalism' *See,* Wilfried Swenden & Rekha Saxena, *Policing the federation: the Supreme Court and judicial federalism in India.*, 10(1), 12–31 TERRITORY, POLITICS, GOVERNANCE (2021).

[15] There are two prominent countries, Sweden and South Africa, whose legal system provides for simultaneous elections. However, in Sweden, the voting system is proportional representation with a fixed minimum threshold. *See, Election Act, 2005* (Sweden). The South African Election System Comprises the 'closed-list proportional representation system', *See,* Electoral Commission Act 51 of 1996 (SA).

[16] This is a unique method of 'efficient new governmentality' and a technique of making and unmaking laws and the Constitution which Roscoe Pound has described as 'the rise of executive justice'. *See,* Roscoe Pound, THE SPIRIT OF THE COMMON LAW 6-7 (1906).

desirable in the interest of democratic traditions. South Africa and Sweden do provide and follow simultaneous elections who have entirely a different system (proportional representation) of elections with threshold limits and legal institutionalization of political parties. Australia tried twice to institute simultaneous elections but failed. Professor Ian Hall says that the Australian people rejected the idea in two referendums conducted in the 1970s due the fear that national issues will dominate state/local one.[17]

The primary constitutional concern is procedural one: how to strengthen parliamentary democracy envisioned by the constitutional provisions. The core issues that involve here are procedural and not substantive. The procedural questions should not find their answers in the substantive realms of the law. The real issues that surround and shroud the ONOE plan and the Bill are the processual crisis and democracy deficit, the virtues and vices of representation systems, electoral justice, political party culture, (mis)use of funds and other institutional reforms. Under Indian constitutionalism, the electoral reforms are an old agenda and include varied and more vital points than the mere ONOE plan. For example, possible change from the First Past the Post system (FPTP), to List System, Proportional Representation (PR) or mixed system, the financing of political parties and their accountability to people they represent, legal-constitutional regulation of the parties, and the citizens' fundamental right to know (application of RTI Act, 2005 to the political parties); right to recall; criminalization of politics, internal democracy in parties, electoral offences and speedy remedy thereof, and legitimate basis of electoral mobilizations etc.

The Constitution leaves to the parliament and the state legislatures under Articles 327 and 328, the responsibility of institutionalising and fortifying the political democracy by developing and strengthening the representative system. The modern representative governance as a species for the nation and its regions is the mandate of the Constitution and does not have a history going beyond a century. However, the species is positively legalised, enshrining the modern universal values. *The evolution of the species is, however, not complete in the Constitution and for the reasons that it might result in institutionalisation of power in a specific manner mystifying the same at the inception of the Constitution. It was, therefore, left to evolve into maturity in due course. From this point of view, Indian democracy has yet to mature through procedural democratic, including, electoral justice.*[18] The concern of a constitutional

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[17] Hannah Jose, *The Indian government wants one election for a billion people. Here's why there's resistance* (Australian Broadcasting corporation, 25 Jan., 2025), *available at*: https://www.abc.net.au/news/2025-01-25/modi-india-one-nation-one-election-reform-democracy/104853806 (last visited 5 Nov., 2025).

[18] An interesting observation, on the point, is made by the Law Commission of India that, '*Whether by design or by omission, our Constitution does not provide for the constitution and working of the political parties, though they are at the heart of a parliamentary democracy*. A parliamentary democracy without political parties is inconceivable. Yet the Constitution (except the Tenth Schedule which

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lawyer, therefore, needs to be directed accordingly and not confined to review powers of the courts, which often, is mystified into larger and multiple substantive issues of constituent power, political and legal identity of the Constitution, fundamental rights of citizens, custodianship of the Constitution, separation of power, and rule of law etc., making the national sentiments hyperactive.

The task entrusted by the Constitution, therefore, is a gigantic one. It embraces pursuits of Constitutional imaginations of democracy and accountability-culpability of (democratic) political power. Therefore, the ways and means, that can be legitimate and the most appropriate, require collaborations between parliamentarians and lawyers which must transcend and share the national sentiments of the freedom struggle that resulted into the fundamental document called the Constitution. The collaboration, however, must respect the procreative background of the Constitution itself manifested in historical realities of the country.

In this paper, we, therefore, make an attempt to assess and evaluate the ONOE plan. There are subtle potentialities in the plan to redetermine the power arrangements made by the Constitution and reconstruct the subjective agencies of citizenships into a new kind of object. The 'modern nature of power' needs to be studied in the light of the fact that it is the chief substance of public law as it was developed under Eurocentric political culture and Christian theology. Accordingly, section *one* introduces the theme of the study foregrounding the subject amidst the main sub-themes developed here. Section *two* discusses and exemplifies the ONOE plan, its evolution and clarifies the 129th Constitution (Amendment) Bill, 2024. The next section (section III) is slightly different in its approach to the idea of power. There are many emerging 'ones' in policies and law in contemporary India. The Supreme Court has had many occasions to decide on the problem of one, for example, *Aadhhar* case. However, for developing a deeper insight into the issues involved, one needs to see the genealogy of the concept of power as 'one'.

The paper tries to develop the concept of Constitutional Reason (CR) to evaluate the problem of governmentality under section *four.* The requirement of the study to develop a deeper understanding of the operation of power as one necessitates investigating and determining, in antiquity, the development of reason and rationalisation, the present version of which is successfully reconstituting the beingness of human beings, meanings of life and natural world. Accordingly, the paper theorises the idea of 'Constitutional Reason' to explore the uniformalisation

was inserted only in the year 1985) does not even speak of political parties whereas article 21 of the German Constitution (Basic Law for the Federal Republic of Germany, 1949), which Constitution was also enacted almost simultaneously with our Constitution, provides for the establishment and working of the political parties'. See, THE LAW COMMISSION OF INDIA, PART-IV, 170TH REPORT ON REFORM OF THE ELECTORAL LAWS (MAY, 1999. (Emphasis added).

of social and political life. In this context, we argue that CR is different from public reason, common reason, juridical reason, and constitutional morality.

Section *five* makes an attempt to synoptically capture the intent of Constitution makers, through Constituent Assembly Debates, about the form and substance of the three of the essential characteristics of the Constitution, namely, representative democracy, pluralism, and federalism. Section *six* takes on the issues of electoral justice and reforms in the 21st century, the sub-theme, we have claimed here that *it was and is the unconsummated project of the original Constitution of 1950. The under developed theory of people's will and the freedom/right to vote*[19] *are contingently bound in a representative democracy. The substance of the right is essentially dependent on the system of and maturity of the representation system that effectuate 'will' into law and constitution*. The constitutional jurisprudence, as limited as it is, on the right to vote can fully be understood in this context only. The subsequent logic of parliamentary party politics and juridical techniques have failed to realise the project of the Constitution. The last section concludes the analysis with prescriptions for the need of deeper and larger debates and reforms for electoral mechanisms and institutionalising, regulating, ensuring internal democracy, and accountability etc., of the political parties in India who represent people's will.

II

The ONOE Plan & The Constitution 129th Amendment Bill, 2024

The One Nation One Election (ONOE) plan is also known by the expression 'Simultaneous Elections' or electoral synchronicity.[20] However, the two expressions can hardly express the same idea(s)! 'Simultaneity' conveys that more than one event/action exists or occurs at the same time. Thus, it is essentially related to time, instead of signifying something more about the events or actions themselves. Simultaneous elections, therefore, do not have other referential, except the time. Time is a nonspatial continuum, but has in it, the past, the present, and the future. Kant believed that time is a synthetic a priori, a framework of experience. For him, space and time were mere forms of intuition, as distinct from sensation, that depends upon the subjective constitution of the mind. Time is not objects or

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[19] *Union of India* v. *Association for Democratic Reforms* (2002) 5 SCC 294; *People's Union of Civil Liberties* v. *Union of India* AIR 2003 SC 2363.

[20] Various committees and Commission, (both, statutory and extra-legal) have invariably used the expression 'simultaneous elections', the union government advertises and popularizes the proposal by the title, 'One Nation One Election'. *See,* the Government website dedicated for the purpose at: https://onoe.gov.in by the name *'One Nation One Election'*. The High-Level Committee headed by former president Shri Ram Nath Kovind defines the term to mean general elections held to constitute the Lok Sabha, State Legislative assemblies and local bodies together.

empirical concepts derived from our outer experience.[21] Plotinus talks of 'one' as God that refers to the one or good. God refers to intellect. The one is above/beyond οὐσία (ousia), substance or essence, that describes the underlying being or the reality of things.[22]

The expression 'One Nation One Election' is fraught with subtle significations to three ideas of *power*, *people*, and a *process.* The expression ONOE, therefore, has constitutive and re-constitutive potentials and promises. Reading in the reverse order of the words, the expression ONOE sanctifies a particular process, *i.e*., form and type of elections, by excluding desirability and possibilities of its upgradations and transformations, or downplaying challenges to and legitimate claims about deficiencies in the present process, *i.e*., elections prescribed under the existing laws. We will take up the theme for further discussion under subsequent sections. Here, a preliminary remark is required on other two categories, i.e., people and power.

The expression 'one' qualifies both the 'nation' and the 'election'. The European sociological concept of ethnicity is not very legible for Indian social history. 'Nation'[23] has a reference immediately and ultimately to a collective of people. Between the immediate and the ultimate, there are numerous properties, qualities and kinds which go to complete the idea of a nation. It is a qualifier of the (individual) identity where the latter is placed into an 'imagined community.'[24] Nation, which truly belongs to subjective sentiments,[25] is by an intellectual process objectified in the consciousness, belongingness and loyalty (patriotism) of what is called nationalism. Thus, the modern category of nation actively involves *selective re-constitution of human personalities* which makes the idea of a nation-state reality.

On the other hand, the expression *one* is an articulation of power and authority, the ontology of which has been subject matter of study for more than 3000 years in several religions and philosophy. Though, its ontological status is historically linked to the ideas of truth, reality and transcendence, its political usages always tend to be deontic by creating a social and political deontology manifest in specific versions of patriotism, nationalism, and refinement of authoritarianism, also known under

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[21] *See,* Immanuel Kant, PROLEGOMENA TO ANY FUTURE METAPHYSICS 36 (Paul Carus *trans.,* Introduction by Bhaskarjit Neyog, 1912).

[22] *See generally,* Plotinus, THE ENNEADS 48-49 (Lloyd P. Gerson *ed.,* George Boys-Stones *et.al., trans.,* 2018).

[23] Cf. Analysis of ethnonationalism by Walker Connor, ETHNONATIONALISM: THE QUEST FOR UNDERSTANDING (1994); *See also,* Anthony D. Smith, THE ETHNIC ORIGINS OF NATIONS (1986);

[24] *See generally,* Benedict Anderson, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM (1982).

[25] Max Weber, called/observes that nation is a *'prestige community'* which derives from the both, the material interests of the state and a sense of irreplaceable cultural values propounded by the intellectuals. *See generally,* Max Weber, THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION, (Max Weber *ed.,* with an introduction by Talcott Parsons, 1964).

liberal literature as authoritarian constitutionalism,[26] constitutional dictatorships,[27] and populism.[28] The idea of *one* assumes significance in view of the fact that successive governments have realised the potential of *one* as the technology reflected in multiplicity of policies and conceived after the notion of singularity.[29] These three concepts shall be subject of our detailed investigation under different sections below. What follows under the present section is the details of the ONOE project in its origin, current shape, and status.

The simultaneity of elections to the Parliament and State Assemblies continued till 1967 which was fostered by the absence of alternative national or regional political parties. The Indian National Congress, which spearheaded the India's freedom struggle and the constitution making, was so structured[30] and was generally believed to be representing popular aspirations of all sections, regions and political factions in the Country. The Party, in the initial decade of independence and working of electoral democracy, represented immanent sentiments that inspired the

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[26] Frankenberg imagines four ways in which such reconstruction of authoritarian constitutionalism is carried out: executive techniques of governing, political power as property, participation as complicity, and cult of immediacy and projection of an imaginary communality. *See generally*, Gunter Frankenberg, AUTHORITARIANISM: CONSTITUTIONAL PERSPECTIVES (2020). "Unlike earlier dictatorships that suspended existing constitutional protections or imposed martial law, current authoritarian regimes maintain a semblance of legality and constitutionalism while in practice attempting to remake the judiciary in their own image. This phenomenon has been variously termed 'autocratic legalism', 'abusive constitutionalism', and 'populist constitutionalism". *See,* Nandani Sunder, *The Supreme Court in Modi's India* JOURNAL OF RIGHT-WING STUDIES, Vol. 1 (1) (2023), *available at:* https://jrws.berkeley.edu (last visited 5 Nov., 2025).

[27] Clinton L. Rossiter, CONSTITUTIONAL DICTATORSHIP: CRISIS GOVERNMENT IN THE MODERN DEMOCRACIES, (1948); Sanford Levinson, *Constitutional Dictatorship: Its Dangers and Its Design* 94(6) MINNESOTA LAW REVIEW (2010). 'A constitutional dictatorship is a system (or subsystem) of constitutional government that bestows on a certain individual or institution the right to make binding rules, directives, and decisions and apply them to concrete circumstances unhindered by timely legal checks to their authority'. *Id.*

[28] *See generally*, Jan-Warner Muller, WHAT IS POPULISM (2017).

[29] *See,* Chanchal Kumar Singh & Mritunjay Kumar, *Genealogical and Analytical Critique of the National Education Policy*, 2020: *The Rich Heritage of Indian Knowledge, Social Traditions, and the Problem of Social Order* IV SML. L. REV. 1 (2021). 'The modern form of singularity may be understood as the disappearance of social goods (assets) from the public imagination and transforming a social being, and her relations with all other fellow beings, merely as an abstract individual entity annihilated of all social relations, positivized by the law on the basis of utility. These practices are treated as acts of autonomy and rational choices. The singularity is also achieved by epistemic-politics through which all categories of rationality are reduced to the focal point of instrumental rationality, to use Weberian paradigm, and from there only the one-dimensionality of subject is established as the transcendental necessity, whose ramifications could be perceived in the loss of social imagination and public concern'. *Id*., at 11.

[30] *See generally*, Granville Austin, THE INDIAN CONSTITUTION: THE CORNERSTONE OF A NATION Ch. 1 (1966); Bipin Chandra *et. al.,* INDIA SINCE INDEPENDENCE (2008); Ramachandra Guha, INDIA AFTER GANDHI: A History Ch. 2-4 (3rd edn. 2023).

Indian freedom struggle.[31] It is important to note that the simultaneity of elections was neither a constitutional mandate nor a legal requirement. Perhaps, the Constitution makers believed that the mixing of law and electoral politics always leads to conquest of politics over the '*raison d'être of* the Constitution'! However, the very logic of parliamentary democracy was artfully crafted to manage the political powers so as not to annihilate the foundational aspirations.[32] An electoral system adopted by the Constitution consequently became a subject matter of political crafts for the successive Congress ministries at the Centre.

ONOE has been in vogue since late 1960s when the Congress-led Union Government got premature dissolution of certain state legislative assemblies for ensuring simultaneous elections in 1968 and 1969.[33] However, the elections were de-linked in 1971 when Mrs. Indira Gandhi got premature dissolution of the Lok Sabha in 1970. The concrete proposal for holding simultaneous elections for the Parliament and States was first mooted by the Election Commission of India (ECI) in 1982[34] in its Special Report on the General Elections, usually submitted to the Lok Sabha and Rajya Sabha after every general election. The ECI reiterated the proposal in 1983 in its First Annual Report on the basis of economic, administrative, and developmental rationale.[35] The Commission on the same basis also proposed for simultaneous revision of the two electoral rolls[36] for the Lok Sabha and the Legislative Assemblies.[37]

The Law Commission of India (LCI) examined the larger series of issues relating to the 'reforms of electoral laws' in 1999: electoral system, simultaneous votes of no-

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[31] *See*, Granville Austin, THE INDIAN CONSTITUTION: THE CORNERSTONE OF A NATION Ch. 2-3 (1966).

[32] Upendra Baxi, *Little Done Vast Undone: Some Reflections on Reading Granville Austin's The Indian Constitution* 9 The JILI 330 (1967).

[33] Mrs. Indira Gandhi, the Prime minister of India, dissolved several legislative Assemblies in 1968 and 1969 for holding simultaneous election of legislative assemblies and the Lok Sabha. *See,* Rajya Sabha, Parliament of India, DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE, "SEVENTY-NINTH REPORT on "*Feasibility of Holding Simultaneous Elections to the House of People (Lok Sabha) and State Legislative Assemblies*" 14 (Presented to the Rajya Sabha on 17 December, 2015).

[34] R. K. Trivedi (Chief Election Commissioner of India), FIRST ANNUAL REPORT ELECTION COMMISSION OF INDIA 1983 81(New Delhi, April, 1984).

[35] *Id.,* at 82.

[36] Article 325 prescribes that, 'There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them'. *See also*, the Parts: IIB, III and IV of the Representation of Peoples Act, 1950, provided for three electoral rolls, respectively, for Parliamentary Constituencies, State Legislative Assembly Constituencies, Council Constituencies. The Electoral rolls for Local-self Government: Village Panchayats, Sabha, Samiti, District Council etc., are governed by State legislations made under articles 243K and 243ZA of the Constitution.

[37] *Id.* The ECI believed that 'Substantial expenditure could be saved through revision of electoral rolls for the House of the People and the State Legislative Assemblies simultaneously instead of undertaking them on a countrywide basis twice over in two different operations'.

confidence, funding of election, legal institutionalization and internal democracy of political parties and their financial accountability, threshold limit for winning an election, negative voting, electoral offences, and 'one election once in five years for Lok Sabha and all the Legislative Assemblies' (one nation one election).[38] The National Commission to Review the Working of the Constitution, 2002, (NCRWC) examined[39] extensively and explored the agenda of reforms in 'electoral process and political parties'. The NCRWC, however, did not examine the old proposal of simultaneous elections as a means for ensuring stability of governments, though it had reviewed the reports of the LCI on Reform of the Electoral Laws (1999). The Election Commission's comments on LCI's recommendations also suggested a one nation one election.[40] It is important to note that the LCI Report in 1999 was prepared under the BJP government led by Atal Bihari Vajpayee as the Prime Minister.

The history of BJP and its relationship with the proposed policy of 'one nation and one poll' plan goes back to 1984.[41] The party made the proposal part of its manifesto for making elections fair by holding elections together, 'One Nation- One Poll', in 1984, when the party contested Lok Sabha election at an all-India level for the first time. The 1984 manifesto declared that 'BJP believes in the primacy of elections that must be fairly held through democratic and clean parties. The high priority of electoral reforms commitment of the party emphasised holding state and central elections simultaneously every five years.[42]

Though the party lost general elections in 2003, Atal Bihari Vajpayee succeeded in getting the Manmohan Singh Government to refer the matter to the Standing

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[38] *See,* Part-VII, Chapter-I (Stability of Governance), THE LAW COMMISSION OF INDIA, PART-IV, 170TH REPORT ON REFORM OF THE ELECTORAL LAWS (MAY, 1999).

[39] *E.g.*, Chapter 4 (Electoral Process and Political Parties), Volume I, of the Report of the Commission, (2002) under Sub-Chapter, 'Problem of Instability', takes up and recommends that, for ensuring stability of governments formed after elections, "for a motion of no-confidence to be brought out against a government at least twenty percent of the total number of members of the house should give notice. Also, the motion should be accompanied by a proposal of alternative leader to be voted simultaneously". *See,* Justice M. N. Venkatachaliah, REPORT OF THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSITUTION (2002), *available at:* https://legalaffairs.gov.in/sites/default/files/Letter%20from%20the%20Chairperson%20forwarding%20the%20Report%20%20%20%20%20_1.pdf (last visited 5 Oct., 2025).

[40] *Id.* The NCRWC examined the reports and suggestions of other two earlier Committees on electoral Reforms: The Dinesh Goswami Committee on Electoral Reforms (1990) and the Indrajit Gupta Committee on State Funding of Elections (1998).

[41] Harikishan Sharma, *BJP and the idea of simultaneous elections: A short history going back 40 years* (THE INDIAN EXPRESS, Feb., 28, 2024, NEW DELHI), *available at* : https://indianexpress.com/article/explained/explained-politics/bjp-simultaneous-elections-history-9184172/ (last visited 5 Oct., 2025).

[42] *See,* TOWARDS NEW POLITY: ELECTION MANIFESTO OF LOK SABHA ELECTIONS, 398 (1984), *available at*: https://library.bjp.org/jspui/bitstream/123456789/237/1/BJP%20ELECTION%20MANIFESTO%201984.pdf (last visited 5 Oct., 2025).

Committee on Personnel, Public Grievances, Law and Justice.[43] Vajpayee pursued it with the opposition till 2003 and then L.K. Advani followed it up till 2010.[44] Advani strongly pitched for the proposal in 2011.[45] In 2012, BJP leader L.K. Advani again strongly advocated for simultaneous elections stating that the country needs to be rescued from being in the perpetual election mode that affects decision making. He asserted that the Lok Sabha and state assemblies must have a fixed tenure.[46] The election manifesto of the BJP, in the 2014 elections, claimed 'civilizational consciousness' of the nation makers which produced the idea of *one* in respect of the country.[47] The manifesto declared that the BJP will seek, through consultation with other parties, to evolve a method of holding Assembly and Lok Sabha elections simultaneously for reducing election expenses for both political parties and Government, and ensuring stability for State Governments.[48]

The contemporary Prime Minister of India, Narendra Modi, picked up the issue of ONOE in 2015 within his party while addressing Party Meetings. Earlier, Principal Secretary to the Prime Minister had conveyed to the ECI, in January 28, 2015, that there is a strong feeling of having simultaneous elections for both Parliament and the State Assemblies, [49] instructing the ECI to 'prepare a note' in three weeks.[50] The

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[43] Nilanjan Mukhopadhyay, *Simultaneous election: Let's deliberate on pros and cons of the idea* (THE ECONOMIC TIMES, Jan., 31, 2028), *available at*: https://economictimes.indiatimes.com/news/politics-and-nation/simultaneous-election-lets-deliberate-on-pros-and-cons-of-the-idea/articleshow/62715955.cms?from=mdr (last visited 5 Oct., 2025).

[44] *See,* D. K. Singh, *'One Nation, One Election' is a bad idea—and not because of Opposition's 'Modi phobia'* (THE PRINT, Dec., 2024), *available at: https://theprint.in/opinion/politically-correct/one-nation-one-election-bad-idea-not-because-oppositions-modi-phobia/2405623/* (last visited 5 Oct., 2025).

[45] Smita Gupta, *One Nation-One Poll' and the Quest for Political Hegemony* (THE HINDU CENTRE FOR POLITICS AND PUBLIC POLICY, Mar., 05, 2018), *available at*: https://www.thehinducentre.com/the-arena/current-issues/one-nationone-poll-and-the-quest-for-political-hegemony/article64931423.ece#Three3 (last visited 5 Oct., 2025).

[46] *Advani seeks simultaneous polls for Lok Sabha* (PTI, THE NEW INDIAN EXPRESS Aug., 2012, New Delhi), *available at*: https://www.newindianexpress.com/nation/2012/Aug/12/advani-seeks-simultaneous-polls-for-lok-sabha-396384.html (last visited 5 Nov., 2025).

[47] *See,* EK BHARAT: SHRESHTHA BHARAT: ELECTION MANIFESTO 2014-SABKA SAATH, SABKA VIKAS (2014), *available at*: https://www.bjp.org/images/pdf_2014/full_manifesto_english_07.04.2014.pdf (last visited 5 Nov., 2025). 'Indian freedom struggle, which was inspired by Tilak, Gandhi, Aurobindo, Patel, Bose and others, had a clear vision of the civilizational consciousness of India. These leaders had directed the freedom movement, keeping the Indian ways and thoughts in the centre of their action. They had a vision to reconstruct the political and economic institutions of India as a continuum of civilizational consciousness, which made India one country, one people, and one Nation'. *Id.,* at 1.

[48] *Id*., at 14.

[49] Smita Gupta, '*One Nation-One Poll' and the Quest for Political Hegemony*, (The Hindu Centre for Politics and Public Policy, 05 March, 2018), *available at:* https://www.thehinducentre.com/the-arena/current-issues/one-nationone-poll-and-the-quest-for-political-hegemony/article64931423.ece (last visited, 05 November, 2025).

[50] Radhika Chopra, ." *PMO Dialled Election Commission, pushed for joint Lok Sabha, assembly polls:*

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incumbent Prime Minister reiterated the ONOE plan on 15th August, 2019 from Red Fort. On 15 April, 2024, the Prime Minister conveyed to the country through Television that the 'One Nation, One Election is our commitment'. In 2024, the Prime Minister Modi again hailed the 'one nation one election' as an important step for vibrant democracy.[51]

In 2015, the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice recommended simultaneous elections.[52] Looking at the difficulties of the implementation, the Committee recommended 'an alternative and practicable method of holding simultaneous elections which involves holding of elections in two phases. The Committee envisaged holding of elections of some Legislative Assemblies at midterm of Lok Sabha and remaining with the end of tenure of Lok Sabha'.[53] The President of India, in 2016, while addressing the joint session of Parliament emphasised ONOE, 'with some election or the other throughout the year, normal activities of the government come to a stand-still because of Code of Conduct (elections).[54] The President, while addressing a joint session of Parliament on January 29, 2018, reiterated and expected consensus in the country on simultaneous polls 'because the citizens, alive to the state of governance in the country, are concerned about the frequent elections in one part of the country or another, which adversely impact the economy and development'.[55]

The National Institute for Transforming India (NITI) Aayog brought out a 'discussion paper' in 2017 highlighting the need for simultaneous elections.[56] On 16th

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RTI" (*The Indian Express* , July 25), *available at:* https://indianexpress.com/article/india/india-news-india/pmo-called-up-election-commission-to-push-for-joint-lok-sabha-assembly-polls-2933705/ (last visited 5 Nov., 2025).

51 *See*, LIVEMINT (18 Sep., 2024), *PM Modi hails 'important step towards a vibrant democracy' after Cabinet nod for 'One Nation One Election'* , *available at: https://www.livemint.com/news/india/pm-modi-hails-important-step-towards-a-vibrant-democracy-after-cabinet-nod-for-one-nation-one-election-11726665241684.html* (last visited 5 Nov., 2025).

52 *See* Rajya Sabha, Parliament of India, DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE, "SEVENTY-NINTH REPORT on "Feasibility of Holding Simultaneous Elections to the House of People (Lok Sabha) and State Legislative Assemblies *(Presented to the Rajya Sabha on 17 December, 2015) at Page 14.*

53 *Id.*, at 18.

54 Bibek Debroy, Voting *Together: Time for a debate on simultaneous elections* (OPEN, June 21, 2018, NEW DELHI), *available at*: https://openthemagazine.com/columns/form-reform/voting-together/ (last visited 5 Nov., 2025).

55 *One Nation, One Election: A look at what former President Kovind said in 2018 on simultaneous polls* (THE ECONOMIC TIMES, 1 Sep., 2023), *available at*: https://economictimes.indiatimes.com/news/politics-and-nation/one-nation-one-election-a-look-at-what-former-president-kovind-said-in-2018-on-simultaneous-polls/articleshow/103276609.cms?from=mdr (last visited 5 Nov., 2025).

56 *See*, Bibek Debroy & Kishore Desai, *Analysis Of Simultaneous Elections : The What, Why, and How* (NITI Aayog, 2017), *available at*:

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April 2018, the Department of Legal Affairs asked the Law Commission of India to examine the issue of holding simultaneous elections. The Commission prepared, expeditiously and submitted its report (draft) in August, 2018.[57] 'The Commission, in its report, was convinced that there exists a viable environment necessitating the holding of simultaneous elections to the House of the People and the State Legislatures'.[58]

The Union Government constituted a High Level Committee (HLC), on ONOE, led by the former President of India, Shri Ram Nath Kovind.[59] The HLC submitted its final report on 14 March, 2024 to the president of India.[60] All older justifications were provided by the Committee for ONOE: 'economic development'; 'administrative logistical convenience and efficiency'; 'economic growth'; 'avoidance of deferment of investment and other economic decisions' as well as the 'disruption of social cohesion',[61] and optimum utilization of scarce resources, etc. The Union Cabinet unanimously accepted, on 18 September, 2024, the recommendations of the HLC on One Nation, One Election and decided to introduce the Amendment Bill in the Lok Sabha.

As per the Committee, at the first sitting of Lok Sabha post-general-election, the President of India may notify an 'appointment date' for the commencement of a new electoral cycle for *Lok Sabha* and *Vidhan Sabha* of various states.[62] Within 100 days of the simultaneous election of *Lok Sabha* and *Vidhan Sabha* of various states, the election for panchayat and municipality may be organized.

In case of hung Parliament or Assembly or a no confidence motion, a new election may be held to form the government for the remainder of the period till the new cycle of election is organized. For accomplishing these objectives, the Committee recommended suitable amendments to the Constitution, especially Articles 83, 172 and other existing provisions. These amendments, as per the HLC, would not require ratification of the proposed Constitution amendment Bill by the States. The successful implementation of the simultaneous elections at all the three tiers of

https://legalaffairs.gov.in/sites/default/files/simultaneous_elections/NITI_AYOG_REPORT_2017.pdf (last visited 5 Nov., 2025).

57 'LAW COMMISSION OF INDIA DRAFT REPORT ON SIMULTANEOUS ELECTIONS', (2018), *available at*: https://legalaffairs.gov.in/sites/default/files/simultaneous_elections/LCI_2018_DRAFT_REPORT.pdf (last visited 5 Nov., 2025).

58 *Id*., at 17-18.

59 The HLC was constituted through Gazette Notification dated 09 Sep., 2023. For the relevant notification of the Government constituting the as well as the 'Terms of Reference of the HLC, *See*, *https://onoe.gov.in/notification/Gazette%20One%20Nation%20One%20Election%20(1).pdf*

60 *See*, *HIGH LEVEL COMMITTEE REPORT ON SIMULTANEOUS ELECTIONS IN INDIA*, 14th March 2024, *available at*: https://onoe.gov.in/HLC-Report-en (last visited 14 Oct., 2025).

61 *Id*., at 3. 'The synchronised conduct of elections fosters a sense of civic cohesion and national unity, as citizens across the country participate in the festival of democracy collectively, reinforcing the bonds of citizenship and fraternity'. *Id*., at 145.

62 *Id*., at 249.

government, according to the HLC, would require creating 'one Electoral Roll' and 'Voter Identity Card' for the entire country. Accordingly, the HLC was of the view that Article 325 of the Constitution was required to be amended. The Committee also insinuated, in its report, a requirement of introducing a new provision, Article 324A, for simultaneous election for panchayat and municipality.[63] Chapter IX[64] of the Report devises a scheme for implementing simultaneous election proposal while chapter X[65] provides for the specific amendments to the constitution and other statutory enactments that should be made by way of a Constitutional Amendment Bill. As far as the simultaneity of elections to the Lok Sabha and the State Assemblies are concerned, the amendment bill would not be required to be approved by not less than half of the state legislatures under Article 368 of the Constitution.

Accordingly, the Constitution (One Hundred and Twenty–Ninth Amendment) Bill, 2024 (herein after referred as 'the Bill') was introduced on 17 December, 2024 in the Lok Sabha[66] and subsequently referred to the Joint Parliamentary Committee of the Parliament (JPC) (*for detailed analytical analysis of the Bill, refer to the articles, in this Volume, by Professor Virendra Kumar and Professor Priti Saxena & Mr. Tamesh Pandey*). Since then, the JPC has been touring the country to consult stakeholders on the Amendment Bill and the Prime Minister of India has been appealing and popularising the Plan amongst the young citizens at various forums.[67]

III

Ontology of *One* and the New Deontology

The mathematical idea of *one*, in the above backgrounds, presents a unique problem, for the law and Constitution, that needs fresh and deeper analysis in the context of plans, such as ONOE. For a proper investigation, the location of *one* needs to be traced in the history of philosophy including religion and the idea of positive law.

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63 *See*, HIGH LEVEL COMMITTEE REPORT ON SIMULTANEOUS ELECTIONS IN INDIA, (2024), *available at:* https://onoe.gov.in/hlc-report-en#flipbook-df_manual_book/1 (last visited 5 Nov., 2025).

64 *Id.*, at 237.

65 *Id.*, at 259.

66 On 20 December 2024, through separate Motions adopted by both the Houses of Parliament, the Constitution 129th Amendment Bill, 2024, was referred to a Joint Committee comprising of 27 Members from Lok Sabha and 12 Members from Rajya Sabha. *See,* Notification by Digital Sansad, *available at:* https://sansad.in/getFile/LSSCOMMITTEE/Joint%20Committee%20on%20the%20Constitution%20(One%20Hundred%20and%20Twenty–Ninth%20Amendment)%20Bill,%202024%20and%20the%20Union%20Territories%20Laws%20(Amendment)%20Bill,%202024/Introduction/introduction_JCCAB.pdf?source=loksabhadocs (last visited 5 Nov., 2025).

67 *"Focused Governance": PM Modi's 'One Nation, One Election' Appeal To NCC Cadets,* reported by NDTV (27 Jan., 2025), *available at:* https://www.ndtv.com/india-news/focused-governance-pm-modis-one-nation-one-election-appeal-to-ncc-cadets-7572076 (last visited 5 Nov., 2025).

This analysis may be called the *ontology* of the concept of *one*. This analysis explores the relationship between ontology of one with a new deontology of the citizens.

Philosophical Critique

The significance of 'one nation one election' is not related to the elections, democracy, or efficiency and convenience exclusively. In fact, the generated deontology by *one* may transform and reconstitute the idea of citizenship and political action. It takes the idea of law beyond all 'myths and superstitions of *history'* and establishes the law as 'transcendental as well as territorial' at the same time. The new deontology may transform the law into a closed system which takes the human being *in* and keeps *him* outside perpetually.[68]

In the previous section we have introduced the idea or expression ONOE, and have indicated that the expression has constitutive and re-constitutive potentials and promises. Elsewhere, one of us has elaborated that the modern public law concepts are theoretically uncertain and do not have even a fixed core.[69] The core is an ethical requirement for any concept. In the absence of the core, a concept functions, as per Ludwig Wittgenstein, merely as a tool,[70] or it is used in the form of a weapon in the battle of ideas as Fredrich Nietzsche viewed.[71]

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[68] *See,* Chanchal Kumar Singh & Mritunjay Kumar, *The Uniform Civil Code Debate in India: Conceptual Predicaments, Historical Legitimacy and Challenges to Pluralism* V SML. L. REV. 12-64 (2022). We have argued in this work that the law, as a primary product of European modernity, has the following general characteristics:

a. *The law has the primary function of conflict resolution.*
b. *It developed against all myths and superstitions of history.*
c. *The law has an autonomous being and is a unified entity.*
d. *It is transcendent and territorial, both, at the same time.*
e. *There is a certain kind of acknowledgement about the universality and know-ability of law.*
f. *It is an expression of the authority of reason as an advancement in its mode of being over the conscience.*
g. *Law is epistemic, and less ontological but not empirical and,*
h. *It is a closed system which takes the man in and keeps him outside perpetually.*

Id., at 31.

[69] There appears to be neither logical necessity nor theoretical requirements because the idea of core cannot be read into the modern concepts of law and sovereignty. *See,* Chanchal Kumar Singh, *Apocryphal State: Fragments on Theoretical Foundations, Constitution, law and their Mythical Unification* II SML L. REV. 44 (2019).

[70] "… the concept of number is defined for you as the logical sum of these individual interrelated concepts: cardinal numbers, rational numbers, real numbers, etc.; and in the same way the concept of a game as the logical sum of a corresponding set of sub-concepts." Yet, it need not be so. For I *can* give the concept 'number' rigid limits in this way, that is, use the word "number" for a rigidly limited concept, but I can also use it so that the extension of the concept is *not* closed by a frontier. And this is how we do use the word 'game'". *See,* Ludwig Wittgenstein, PHILOSOPHICAL INVESTIGATIONS SECTION 68, Part-I (G. E. M. Anscombe *trans.,* 1953, 1958).

[71] *See generally,* Fredrich Nietzsche, THE WILL TO POWER (Walter Kaufmann & R. J. Hollingdale *trans.,* 1968).

We have accordingly argued that the core constituent element of any concept consists in three parts: *the form, the functions,* and *the limitations* (मर्यादा). In the history of the Western Philosophy, the first is a Platonic category,[72] the second formed the substance of the Aristotelian system[73] and the third belongs to the Roman and stoic traditions of philosophy founded by Zeno.[74] In convergence, the Western knowledge system may also be identified corresponding to the above three constituent elements, respectively: philosophy; practice (art)-science; and metaphysics. Where philosophy is concerned with the justification and imaginative refinements of human ideas. Arts or natural sciences ask for knowing the given and using the known, and is not necessarily concerned with the love of wisdom or is not anxious about the ethical requirements. Metaphysics does relate to the limitations of human mind and knowledge and consequently creates a meta-structure of duties in its ahistorical methods.[75]

There are fantastic ideas, such as that of Galileo Galilei who believed, that 'mathematics is the language in which God has written the universe'.[76] About the numbers, a German mathematician, Leopold Kronecker, remarked that 'God made the integers, all else is work of man'.[77] The idea of number, in mathematics, is logically connected to the question of 'infinite'. However, law, legislation, or the Constitution, on the other hand, are premised on the limitations or finitude of existence. For Immanuel Kant, the limit consists in the form of ethics: formulated in the double division of legislation as *objective* (external) and *subjective* (ethical) legislations.[78] Kant also concerned his system of thought to the limits of human knowledge, the possibility of knowledge within human perception and understanding and beyond: the distinction of *noumena* and *phenomenon*.[79]

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[72] *See*, Plato's chief contribution to the philosophy is his 'theory of form'. *See generally*, Plato, The REPUBLIC (Desmond Lee *trans.*, 3rd edn., 2007).

[73] *See generally*, Aristotle, THE NICOMACHEAN ETHICS: (J. A. K. Thomson *trans.*, 2004); Aristotle, METAPHYSICS (Hugh Lawson-Tancred *trans.*, 1998).

[74] THE MEDITATIONS MARCUS AURELIUS ANTONINUS 5 (Meric Casaubon *trans.*, 1643).

[75] According to Kant, the 'certainty of the foundation of scientific knowledge comes from the recognition of our ability to impose certain basic scientific laws upon the world and our freedom to observe the world from a view point that is not predicated upon any deterministic laws and principles'. *See,* Immanuel Kant, PROLEGOMENA TO ANY FUTURE METAPHYSICS 38 (Paul Carus *trans.,* Introduction by Bhaskarjit Neyog, 1912).

[76] Stephens Hawkins believed about mathematics that if we want to 'read' God's mind, we must first understand God's language. *See,* Stephen Hawking, *GOD* CREATED THE INTEGERS: THE MATHEMATICAL BREAKTHROUGHS THAT CHANGED HISTORY *(2007). See also,* MATHEMATICS *available at: https://www.cs.cornell.edu/~kvikram/HTML5/READ/MATHS.HTM* (last visited 5 Nov., 2025).

[77] G. Donald Allen, *The Remarkable Number "1"* 23 SCIENCE & EDUCATION CONTRIBUTIONS FROM HISTORY, PHILOSOPHY AND SOCIOLOGY OF SCIENCE AND MATHEMATICS (2014).

[78] Chhatrapati Singh, *The Inadequacy of Hohfeld's Scheme: Towards A More Fundamental Analysis of Jural Relations*, 27(1) JILI 122 (1985).

[79] In the Kantian system, there are two kinds of worlds we are concerned with: phenomenal world

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In the history of philosophy, accordingly, there are two dominant views about knowledge.[80] First, that empirical knowledge is dependent upon, or derived from, *perception*. The other is the platonic doctrine that there is nothing worthy to be called knowledge to be derived from the senses, and that the only real knowledge has to do with *concepts*.[81] Heraclitus, added by Socrates, that everything is always changing, *i.e.* that 'all the things we are pleased to say are really are in process of becoming'[82] in an empirical sense. This last one is assimilated by Plato in his theory of changing forms. The idea of number in the Platonic sense exemplifies the eternal forms which are conceptual rather than empirical, it is *non-temporal* and *non-spatial*, a conceptual reality in its purest form.

In Mathematics, the number 'one' (1) is neither a prime number nor composite number. Its multiplicative identity is the number itself. As an integer, it is indivisible or produces one itself. Therefore, one is called a unique number. But most importantly, one is a whole number, and as a mathematical idea, it is used either as a unit for counting, cardinals, establishing relations, and to express the *state*, *oneness* (or *stateness*).

The idea of number is a logical fiction.[83] Human perception is not capable of being aware of fictions but of descriptions of things. Awareness of such fictions is nothing more than tautology crafted by (social) scientists or philosophers. Our statement that 'we have *one* Constitution' is really a statement of our perception of what we have. That is, our perception that the Constitution exists. But that does not logically signify the existence of the Constitution. Because, the one (the Constitution) has multiple significations for multiplicity of citizenry (groups).[84] Thus the statement

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and noumenal world. The first world which we inhabit is liable to our experience and therefore all things in it can be perceived. The other one we can never even fathom. The noumenal world is the world that exists beyond our experience, what is called 'things in themselves'. *See,* Immanuel Kant, THE CRITIQUE OF PURE REASON Ch. III, Paert-I, 338 (Paul Guyer & Allen W. Wood *trans.,* 1998)

[80] The idea of knowability of law is an absolute claim of the business of modern social sciences. *See,* Chanchal Kumar Singh & Mritunjay Kumar, *The Uniform Civil Code Debate in India: Conceptual Predicaments, Historical Legitimacy and Challenges to Pluralism* V SML. L. REV. (2022).

[81] Bertrand Russell, HISTORY OF WESTERN PHILOSOPHY 149-150 (1946).

[82] *Id*., at 155.

[83] Pythagoras, as everyone knows, said that 'all things are numbers'. This statement interpreted in a modern way is logically nonsense. *See,* Bertrand Russell, HISTORY OF WESTERN PHILOSOPHY 43 (1946).

[84] *See,* Upendra Baxi, *Constitutionalism as a Site of State Formative Practices*, 21 CARDOZO L. REV. 1183 (2000). One way of conceptualizing constitutions is to differentiate the idea of constitutions at three interlocking planes, which I name as *C1*, *C2,* and *C3. C1* stands for the word as the world. *C2* represents constitutional hermeneutics. *C3* signifies "constitutionalism," a set of ideological sites. These three forming practices may constitute the idea, in complex and contradictory mode, of a constitution. *Id.,* at 1188. '…the founding notions of modern constitutionalism: the rule of law, separation of powers, autonomous constitutional review, and guarantees of basic human

Contd…

precisely signifies our awareness of the (descriptive) object and not the object (*jati:* qualitative kind) itself.

Numbers are *formal*. Thus, they do not refer to the constituent elements of a thing but to the *form.* They are, in a sense, symbols and mean nothing, because, when they are used in a statement, there is no corresponding constituent in the meaning of the statement, as exemplified in our statement that 'we have *one* constitution'. The logical fallacies of the use of predicate *one* in the expression ONOE may indicatively be understood with the following analysis of number propositions provided by one of the greatest of modern logicians, Bertrand Russell:

> *'I come now to understanding numbers. Here there are two very different things to be considered: on the one hand, the propositions of arithmetic, and on the other hand, empirical propositions of enumeration. "2 + 2 = 4" is of the former kind; "I have ten fingers" is of the latter.*
> *I should agree with Plato that arithmetic, and pure mathematics, generally, is not derived from perception. Pure mathematics consists of tautologies, analogous to "men are men," but usually more complicated. To know that a mathematical proposition is correct, we do not have to study the world, but only the meanings of the symbols; and the symbols, when we dispense with definitions (of which the purpose is merely abbreviation), are found to be such words as "or" and "not," and "all" and "some," which do not, like "Socrates," denote anything in the actual world. A mathematical equation asserts that two groups of symbols have the same meaning; and so long as we confine ourselves to pure mathematics, this meaning must be one that can be understood without knowing anything about what can be perceived. Mathematical truth, therefore, is, as Plato contends, independent of perception; but it is truth of a very peculiar sort, and is concerned only with symbols'.*
> *Propositions of enumeration, such as "I have ten fingers," are in quite a different category, and are obviously, at least in part, dependent on perception. Clearly the concept "finger" is abstracted from perception; but how about the concept "ten"? Here we may seem to have arrived at a true universal or Platonic idea. We cannot say that "ten" is abstracted from perception, for any percept which can be viewed as ten of some kind of thing can equally well be viewed otherwise. Suppose I give the name "digitary" to all the fingers of one hand taken together; then I can say "I have two digitaries," and this describes the same fact of perception as I formerly described by the help of the number ten. Thus in the statement "I have ten fingers" perception plays a smaller part, and conception a larger part, than in such a statement as "this is red".*[85] *(emphasis added).*

Thus, the number or qualifier *one* in the expression 'one nation one election' (ONOE) prioritises conception over experience/perception, logic over experiences. When we speak, we do not speak of words but we speak of what the words mean. The ancient Greek philosopher Parmenides, the inventor of metaphysical logic, talked of the *One* as the truth which was an immutable existence of everything we can think and speak of. Thus, thought and language presuppose objects of thought outside the speaker herself. *It is a particular relationship between the percipient and the object of the perception*.

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rights… appear tainted to the peoples of the First Nations, or to postcolonial peoples because they experience in and through constitutional development the replication of the foundational violence… the histories of this violence have to be traced from distinctly subaltern perspectives, rather than those furnished by metanarratives of the "bonds of nationhood." *Id.*, at 1185.

[85] Bertrand Russel , HISTORY OF WESTERN PHILOSOPHY 149-150 (1946).

Hegel,[86] in his *Philosophy of Rights*, takes the idea of one in its modern form and developed his theory of dialectics: which can produce the ultimate synthesis, that '*the state is the march of the god on earth*' (emphasis added): that is the ideas of true reason and freedom. In contemporary philosophy, the idea of one is to be found in Wittgenstein's 'language game' theory,[87] and Saussure's[88] category of the signifier and the signified. The concept of sign, for Saussure, comprises the combination of the concept and the sound image: the whole. The two, concept and image, are designated respectively by the terms the signifier and the signified. He concludes that the bond of signifier and signified is arbitrary. This principle dominates all the linguistics of languages and its consequences are numberless.[89] One, in ONOE, is such a signifier of the English language, and its counterpart may be found in Hindi in the form of "एक भारत, श्रेष्ठ भारत". *Shrestha* (श्रेष्ठ) is synonymous with one. The linguistic phenomenon needs to be seen in the light of the nature of contemporary political and legal discourses, where one as a number is abstracted from the language and number structures and elevated as the source of deontological conformity. The concept may need further elaboration in terms of Jacques Derrida's conception of 'transcendental signifier' which does not require any co-relation between signifier and signified. '*It is therefore a situation where the signified commands, and is yet free of all signifiers, a recognizably theological situation*'.[90] The signifier *one* in ONOE becomes a transcendental identity, a mystical source of all truths and values.

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[86] *See*, G. W. F. Hegel, PHILOSOPHY OF RIGHTS (S. W. Dyde *trans.*, 1896), 'It is a celebrated saying that a half philosophy leads away from God, while a true philosophy leads to God. (It is the same halfness, I may say in passing, which regards knowledge as an approximation to truth)'. *Id., at IXX.* In his 'Lectures on Philosophy of History, 'Hegel says that "the essence of spirit is self-determination or freedom. Where Spirit has attained mature growth, as in the man who acknowledges the absolute validity of the dictates of conscience, the individual is 'a law to himself', and his freedom is realised. But in lower stages of morality and civilization, he unconsciously projects his legislative principle into some 'governing power' and obeys it as if it were an alien, extraneous force, not the voice of the spirit of which he himself is an embodiment. The philosophy of history exhibits the successive stages by which he reaches the consciousness, that it is his own inmost being that thus governs him, i.e., a consciousness of self-determination or 'freedom'. *See*, G. W. F. Hegel, THE LECTURES ON THE PHILOSOPHY OF HISTORY 110 (J. Sibree *trans.*, 1914).

[87] The idea of 'language games' is based on underlying 'uniformity' of rules supplying unity of meanings to the language which enables us to have the description and perception of reality. *See generally*, Ludwig Wittgenstein, PHILOSOPHICAL INVESTIGATIONS SECTION 68, Part-I (G. E. M. Anscombe *trans.*, 1953, 1958).

[88] Ferdinand de Saussure, COURSE IN GENERAL LINGUISTICS Chap-1 (Perry Meisel & Haun Saussy *eds.*, Wade Baskin *trans.*, 1959, 1987).

[89] *Id*., at 67-68.

[90] 'Derrida would not privilege a signifier into transcendence. … we should not satisfy our longing for transcendence by giving primacy to the signifier: word over meaning'. Here meaning may refer to the experience/perception or to the concepts themselves. *See,* Jacques Derrida, OF GRAMMATOLOGY lxiv, *lxx* (Gayatri Chakravorty Spivak *trans.*, 1967, 1997).

The mathematical predicate *one* demolishes the distinctions of subject and object and establishes the concept itself as what Derrida called 'transcendental signifier': a modern theology of public law. *In this process, the subject (people) is lost and assimilated by the object as oneness*. *This is how the state of 'oneness' is constituted.* Examples of one are innumerable: one cow, one stone, one elephant, one mountain, one child, one teacher, one citizen, etc.[91] 'Oneness' brings the individuality of them all subject to the essence of number one which we have determined to be fictional/theological. It is neither a union nor a natural unity of subjects themselves or that of the unity of the subject and the objects. It is simply the loss of thought of reality historically and culturally situated, the perceptions of which stimulate rise and fall of a (political) society.

Moreover, in the expression, ONOE, ontologically, the conceptions of the nation and the people lose their significance as they become part of the whole: 'one/oneness'. The parts cannot but must go along the whole and do not exist away from the latter: the emergence of the new deontology. We will rest the case of the 'philosophical analysis', against 'one' here, as the investigation sufficiently discredits the idea of 'one' in its archaeology. What follows, under the rest of this section, we shall briefly undertake a 'theoretical' analysis of 'one' that forms the substance of ONOE.

Theoretical Critique

As part of the philosophical analysis, we have seen that numbers are *formal*. They do not refer to the constituent elements of a thing but to the *form.* They are, in a sense, symbols and mean nothing, because, when they are used in a statement, there is no corresponding constituent in the meaning of the statement. Now it is imperative, in view of the significance of the study, to further investigate how and what constitutes the concepts in 'one nation one election'? The problematic, essentially, raises the question what are the constitutive elements of the concept of *one*. Arguably, the one has risen in our polity to the status of a theoretical concept.

The constituent elements of a concept are agreed components that function as foundations of the concept and supply empirical meaning and are independent and prior to the application of the concept.[92] A theory is a hierarchical statement based structure erected over functionally *a priori* principles, which aims to provide a more or less detailed description of reality.[93] The attempts of refutation of the constitutive elements implies the dismissal and modification of the theory itself.[94] The Kantian system of thought contains principles which are contributions of reason to knowledge and which comes from the structure of minds that are necessary

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[91] *Cf.* numerous policies and agenda in law of the Indian Government under the banner of 'Oneness mentioned at *note* 1, above.

[92] *See,* Mariano Sanjuán, *Constitutive Elements Through Perspectival Lenses* 11 (1) EUROPEAN OF PHILOSOPHY OF SCIENCE 1-18 (2021).

[93] *See,* D. J. Stump, CONCEPTUAL CHANGE AND PHILOSOPHY OF SCIENCE (2015).

[94] *Id.,* note 85 at 15.

conditions for any experience to be possible at all. The principle is called *a priori*.[95] The knowledge of the principles is a product of human analytic judgements. The *a priori* as necessary framework for sense-perception and understanding is called s*ynthetic a priori*.[96] The capacity of the human mind to have analytic judgement based on universality and necessity enables us to have *a priori* knowledge. *A priori*, in a platonic sense is idea,[97] refers to a knowledge which is neither derived from experience nor is dependent on it.[98]

The Constitutive Element of 'Form'

The project of 'one nation one election' has generated an aura of being a theory for itself. A theory has, as indicated above, diverse identifiable components as its conceptual conditions that must be met for its empirical meaningfulness, possibility, and feasibility. The judgement of the existence and formation of 'people' is an analytic judgement (concept)[99] and constitute the *form* of the ONOE. The judgement is logically extended by the statement, such as India is a 'one nation'.[100] Law mediates the constitution of personality of the individual (people) and logically reconstitute the persona of an individual, the attributes of which is extended to the concept of nation having, in Kantian constitutive epistemology, a distinct 'personality and soul'[101] capable of moral actions.

'People' or *dimos*, a Greek term, has no equivalent in Indian languages. In Sanskrit, the proximate term for people is *Gana* (गण).[102] *Ganatantra* (गणतंत्र) is translated in English as the republic. From the same etymological root, the expression *Ganana* (गणना), the act of counting, is derived, therefore, *plurality* of units that are counted together. The plurality certainly refers to plurality of agency or plurality of free agentive wills. *Gana* or *Ganana* are opposite to the idea, 'one'. The socio-cultural and religious history of the country affirm the plurality of human conditions and the Constitution repose in 'We the people of India'.[103] But the plurality of human conditions does not necessarily lead to individuality under the authority of mystery of power situated in the 'might

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[95] *See,* Immanuel Kant, PROLEGOMENA TO ANY FUTURE METAPHYSICS 68 (Paul Carus *trans.,* 1912).

[96] *Id.*

[97] *See,* above, the discussions in the beginning of the present section.

[98] *See,* Immanuel Kant, PROLEGOMENA TO ANY FUTURE METAPHYSICS 74-75 (Paul Carus *trans.,* 1912).

[99] An analytic judgement is one that does not add anything to what is included in the concept. *Id.*, at 30.

[100] Even the Kantian system of categories recognizes the epistemic limits of human cognition by assuming that knowledge is always situated both historically and culturally.

[101] *See generally,* Immanuel Kant, PERPETUAL PEACE: A PHILOSOPHICAL ESSAY (M. Campbell Smith, *trans.,* 1795).

[102] The Sanskrit term, "जन" (Jana) means human, person or population.

[103] For an excellent analysis of the expression 'we the people,' watch Professor Arindam Chakrabarti 'Rajni Kothari Lecture, 2015', on *We The People: General Will Re-considered* (organized by CSDS, New Delhi 18 Dec., 2015), *available at:* https://www.youtube.com/watch?v=1oSt5465Ejw (last visited 5 Nov., 2025).

of the law'. An ontological and semantic question should be asked, did the phrase 'We the people of India' mean the same thing for all the people who pronounced it on the day of 26th January, 1949 in the Constituent Assembly?

The concept of 'We', as a subject, does necessarily signify 'the other' or 'otherness'. Therefore, the concepts of 'I', 'We', and 'Other' are socially imbedded and not divested and emptied, as has been done by the liberal law that has taken all the *three* into itself. It must not be omitted that the Constitution or law is the *fourth: 'another-other*'. Ontologically, the modern law is parasitic on the existence and beings of the first three.[104] Thus, the *form* relates to being and existence which cannot be determined by the law. However, the identification of any being is a historically and culturally situated phenomenon dependent on the agency of *Gana*, the plurality. Accordingly, the freedom of identification forms part of the core principles of any Constitution. The freedom of action including the freedom of politics, as its core substance, therefore, is the most valued principle to be found guaranteed by the Constitution of India.[105] A simple reading of the provisions of part third of the Constitution, particularly, under Articles 19 to 25, establish the idea of subject not in its mere existence but in the 'modes of becoming'.[106] The nature of the existence of the subject is necessarily plural which is a fundamental condition of politics and the human condition necessitates that every human can act and innovate something new. Thus, political action is socially and personally contingent. Whereas, the conception of ONOE has the primary objective of reconstituting the being through the idea of the *one*. Beings of the subjects are dwarfed and arbitrarily determined and reduced to as a slavish collective(s) by the essence of authority or power. Such beings will live the life but for the law: the one.

The Constitutive Element of 'Functions'

The second important component in the theory of ONOE is that of democracy and elections; what we have called the *functions:* actions of the people. Election, selection,

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[104] H.L.A. Hart, THE CONCEPT OF LAW (1961). Hart, holds that the secondary rule, which is embodiment of power (public or private), are in a sense parasitic upon the primary rules which *exists* and requires human being to do or abstain from doing certain actions. *Id.,* at 78-79.

[105] The freedom of politics/action is the most profound right recognized by the Constitution in its articles 19 to 25, which forms the fulcrum of the 'Indian' idea of democracy. "True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country". *See, Secretary, Ministry of Information and Broadcasting, Government of India* v. *Cricket Association of Bengal* (1995) 2 SCC 161, at para 82.

[106] Though democracy has been declared to be part of the Basic Structure doctrine, in *S. R. Bommai* v. *Union of India* (1994) 3SCC 1, the underdeveloped rights to vote and the right to caste vote, partially, signify the reluctance of the Supreme Court to recognize the subjective right of the 'right action' of the citizens. *See, Union of India* v. *Union of India* v. *Association for Democratic Reforms,* (2002) 5 SCC 294 para 46; *People's Union for Civil Liberties* v. *Union of India* (2003) 4 SCC 399 para 55 & 78, holding that the freedom of expression, under article 19, includes casting of votes and to know the antecedents of candidates contesting elections. However, a political party does not come under the Right to Information Act, 2005! '

and rejection are the characteristics of human action. It connects the idea of a being to the actions of the active citizens, the people, (though, neither the democracy nor politics is confined to only elections). The idea of democracy, in the Indian scenarios, is much the same as Raymond Williams traces the history of the term 'democracy':[107]

> *The second important word is democracy., which had been known, from the Greek, as a term for 'government by the people', but which only came into common English use at the time of the American and French Revolutions… Certainly, it is in reference to America and France that the examples begin to multiply, at the end of the eighteenth century, and it is worth noting that the great majority of these examples show the word being used unfavourably; in close relation with the hated 'Jacobinism, or with the familiar mob-rule. England may have been (the word has so many modern definitions) a democracy since Magna Carta, or since the Commonwealth, or since 1688, but it certainly did not call itself one. Democrats, at the end of the eighteenth and the beginning of the nineteenth centuries, were seen, commonly, as dangerous and subversive mob agitators. Just as industry and its derived words record what we now call the Industrial Revolution, so democracy and democrat, in their entry into ordinary speech, record the effects, in England, of the American and French Revolutions, and a crucial phase of the struggle, at home, for what we would now call democratic representation.*

The idea of democratic representation refers, therefore, to the evolution, in modern times, of the pure political action of the subjects and is necessarily related to their being. Politics is the opposite of despotic rule. Hannah Arendt remarks that the highest human action is politics which is tied to the public and political sphere. It (representation) is not the ontological issue of metaphysics of politics. It is the praxis of human existence. Arendt observes:[108]

> *'… the fundamental condition of politics: that it goes on among plural human beings, each of whom can act and start something new. The results that emerge from such interaction are contingent and unpredictable, "matters of practical politics, subject to the agreement of many; they can never lie in theoretical considerations or the opinion of one person. ….*
> *The root of the ancient estimation of politics is the conviction that man qua man, each individual in his unique distinctness, appears and confirms himself in speech and action, and that these activities, despite their material futility, possess an enduring quality of their own because they create their own remembrance. The public realm, the space within the world which men need in order to appear at all, is therefore more specifically "the work of man" than is the work of his hands or the labor of his body…'*

Arendt firmly argues that the views of man's appearance and actualisation in ways otherwise than politics are 'unpolitical, and will incline to denounce action and speech as idleness, idle busy-bodyness and idle talk, and generally, will judge public activities in terms of their usefulness to supposedly higher ends!'[109]

In this backdrop, the structural utility of democracy through the system of representation needs to be investigated. The system and issues of representation,

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[107] *See*, Raymond Williams, CULTURE AND SOCIETY: 1780–1950 xii (1960).
[108] Hannah Arendt, THE HUMAN CONDITIONS 5, 207 (2nd edn. 1958).
[109] *Id.*, at 208

what we have called 'electoral justice', which is undoubtedly a part of the theory of ONOE, in its multitudinous aspects, needs thorough deliberations and investigations. The function of representation, therefore, cannot be viewed on the basis of economy, efficiency, and administrative convenience. Hannah, looks at this picture of individual subjects as submerged in 'the collective life of a human species, devoted to production and consumption and moving inexorably on its way'. She finds 'this revealing representation of modern society, in which economic concerns have come to dominate both politics and human self-consciousness'.[110] This theme of analysis is further taken up under the section 'electoral justice' below.

The Constitutive Element of Limitations (on power)

The third and the most potent component in the conception of ONOE, as it has emerged under Indian polity, is that of power in the predicate of *one*, which forms the substratum of expressions, the nation as well as the election. In the theoretical hierarchy of the components of the theory, it occupies the highest role for the conception of ONOE.

Our theoretical moorings suggest that the third constituent components of a concept should be limitations in the sense of ethical checks and controls. The *one* in the concept of ONOE, however, springs into the reality of 'governance technology' which may be called 'uncontrol' ('अमर्यादा', opposite of ethics). It signifies the present practice of laws and a future desirability of legislations institutionalizing authority and power in a specific form, the foundations on which the modern (Western) 'civilisations' have been constructed and is bequeathed to us as a colonial legacy for state formation, i.e., the notion of power in a specific sense whose essence cannot be discerned through the categories of sovereignty, rule of law, or the metaphysical principles of justice.

When we talk of the Indian Constitution having less federal or of the essence of unitary features we capture partially the essence of the concept: one. When we afford to neglect the aspects of electoral justice, we are moving in totality towards the specific sense of authority and the subjection of (all) human conditions and actions to it, the in-operativity of political action,[111] where the government wants to take responsibility for people's conduct, to conduct people,[112] eliminating possibilities of action/politics which goes amongst men caused by human conditions of plurality.[113] Governmentality, the 'government of men' is understood as an activity that undertakes to conduct individuals. It involves the techniques and

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[110] *Id.,* at xii.

[111] *See,* Georgio Agamben, THE KINGDOM AND THE GLORY: FOR A THEOLOGICAL GENEALOGY OF ECONOMY AND GOVERNMENT, *HOMO SACER*-2 XIII (2011); Hannah Arendt, THE HUMAN CONDITIONS 5, 207 (2nd edn. 1958).

[112] Michel Foucault, *SECURITY, TERRITORY, POPULATION* LECTURES AT THE COLL GE DE FRANCE, 1977–78 (Michel Senellart *ed.,* Graham Burchell *trans.,* 2009).

[113] Hannah Arendt, THE HUMAN CONDITION 6-7 (2nd edn. 1958).

practices of conducting human beings,[114] and consequently reducing the subject to the status of 'apolitical beings'.

The idea of government (men) governing human subjects is not a Greek or Roman idea. In ancient Greek, one (king, God, or chief as a shepherd or *berger*), could govern a territory, city or ship but not human subjects. The original Greek word "*kybernan*" (government) meant 'to steer' and 'to pilot a ship'. The expression 'Government' of men emerged from 'pastoral powers of kings as an agent of the God in Hebrew (Eastern) civilisations for governing 'flocks' of sheep.[115] The pastoral powers formed the basis of doctrine of trinity of early Christianity which was invented out of the Greek household concept of *Oikonomia*.[116] Thus, the 'government of men' is a Christian idea which was developed by the church and by the late 19th century came to be established in the form of reason and rationality of the modernity and propriety and monopoly of law by the government of men.[117] The root substance, therefore, of the modern public law is power.[118] It is the apparent peculiar rationality of the modern Constitutions that the 'political power originates in representation, and the people exercise sovereign authority only through the medium of their representatives',[119] where policies such ONOE are decisively significant and the reason, will, and the 'constitution of man' becomes crucial for understanding the subject (*see, Part V, below*). Our concern here, however, is the idea of power (or public power) in the polity which the concept of one symbolises.

The idea of modern liberal state as power, is deep-seated in the historical incidence of 'transcendent religion'. Roberto Unger in his canonical work, *Law in Modern Society*, establishes that the development of 'legal order', was purely a European

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[114] Hannah Arendt, THE HUMAN CONDITION xix, 128 (2nd edn. 1958).

[115] Under this new (Christian) paradigm, "to govern," covers a very wide semantic domain in which it refers to movement in space, material subsistence, diet, the care given to an individual and the health one can assure him, and also to the exercise of command, of a constant, zealous, active, and always benevolent prescriptive activity. It refers to the control one may exercise over oneself and others, over someone's body, soul, and behavior. And finally, it refers to an intercourse, to a circular process or process of exchange between one individual and another. Anyway, one thing clearly emerges through all these meanings, which is that one never governs a state, a territory, or a political structure. *Those whom one governs are people, individuals, or groups"* (emphasis added). *See,* Michel Foucault, SECURITY, TERRITORY, POPULATION LECTURES AT THE COLL GE DE FRANCE, 1977–78 122 (Michel Senellart *ed*., Graham Burchell *trans*., 2009).

[116] *See generally,* THE KINGDOM AND THE GLORY: FOR A THEOLOGICAL GENEALOGY OF ECONOMY AND GOVERNMENT, *HOMO SACER*-2 (2011).

[117] 'All significant concepts of the modern theory of the state are secularized theological concepts'. *See,* Carl Schmitt, POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY 36 (G. Schwab *trans*., 2005).

[118] According to normativism, "broadly conceived, public law divides into three main strands: the law concerning the acquisition and generation of political power, the law concerning the institutionalization of political power and the law concerning the exercise of political power". *See,* Martin Loughlin, *The concept of constituent power* EUROPEAN JOURNAL OF POLITICAL THEORY, 13 (2), 218-237 (2013).

[119] *Id*., at 221.

phenomenon, as a result of the struggle among: monarchy, the aristocracy, and the 'third state' (merchants and professional groups)'[120] finds that the Christian religion provided its crucial background. He further remarks that Islam, Hindus, Jewish and Romans did not demonstrate or were associated with such transcendental religious features. Unger remarks:[121]

> *'Up to this point, I have suggested relationships between transcendent religion as a mode of consciousness and the beliefs that make a legal system possible. Now, let me complete the discussion by pointing out how the institutionalized forms these religions adopted bear on the emergence of legal systems.*
> *The religion of transcendence depends on the availability of institutions capable of maintaining its unity and thereby of safeguarding its survival. Its dogmas must be authoritatively established and propagated. From this need to mediate God's word to mankind there arises both the quest for some kind of stable church organisation and the possibility of prophecy. The prophet articulates God's word…. And systematize the divine commandments.*
> *… the Islamic Sharī'ah, the Hindu Dharmaśāstra , the Jewish HalaKhah, and even the Roman fas illustrate the extraordinary stability and influence of bodies of priestly law associated or not with the transcendental religion. In most of these cases, however, the sacred law was never made the basis of secular legal system with the characteristics of autonomy and generality…'*[122]

The recent researches on the subject of legal order and Christian theology have shown much deeper and apparent connections. The idea of power as *one* is derived from the Christian theology of 'one God'. While the theological conception of mystery of economy (*oikonomia*) through the doctrine of trinity produced *art* of governance (by men) and administration as immanent orders for life divine and human. The current triumph of economy and government over every other aspect of social life entailed from the theory of mystery of economy which was developed, primarily, to solve the problem of *being* and *will* of the God. The idea of God was conceived as the fountain of all powers earthly and transcendental, both. However, the being and will of God was conceived separate from each-other.[123] That necessitated the birth of 'trinitarian' doctrine: *the God, the Son* and *the Holy Spirit* (ghost): 'the three in one mystery'.[124] The

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[120] Roberto Mangabeira Unger, LAW IN MODERN SOCIETY: TOWARDS A CRITICISM OF SOCIAL THEORY 70-72 (1976).

[121] Roberto Mangabeira Unger, LAW IN MODERN SOCIETY: TOWARDS A CRITICISM OF SOCIAL THEORY 81-82 (1976).

[122] *Id.*

[123] In Greek philosophy, for example, Aristotle conceived of God as an unmoved mover, there was no need to presuppose the existence of a special will or a specific activity. The classical conception was based on the perfect unity of being and praxis. However, the doctrine of the *oikonomia* radically revokes this 'unity'. The trinitarian thesis separated that God is one according to the *dynamis* (*ousia*, essence) and triple only according to the economy. The latter represented praxis/will of the God. *See,* THE KINGDOM AND THE GLORY: FOR A THEOLOGICAL GENEALOGY OF ECONOMY AND GOVERNMENT, *HOMO SACER*-2; 6, 54 (2011).

[124] Matthew W. Bates, THE BIRTH OF THE TRINITY: JESUS, GOD AND SPIRIT IN NEW TESTAMENT & EARLY CHRISTIAN INTERPRETATIONS OF THE OLD TESTAMENT 7 (2015).

body (being)[125] became the symbolism of the site of power and the will entailed the exercise of the power in the form of government and administration. Accordingly, the popular saying of Christianity goes, '*God reigns but does not govern'*. The responsibility of governing lies with the son and angels: the ministers of the god. God is synonymous with power, one God, one source of Power.

However, as per the Christian theology, God is *anarchos* (anarchy, without *arche*, foundations: that is without foundations/principle).[126] However, the son has his *arche* (his principle-foundation*)* in the father. Thus, foundations of the modern public law power lie in a 'non-principle'. This problem led the modern Western theorists of law to begin and anchor their theories of law and legal system in some kind of presuppositions invariably![127] The genealogy progressed into modern theory of political and legal philosophy, for example, Hegel in his *History of Philosophy* formulated the idea of God as 'reason' (universal and divine). 'God governs the world: the actual working of his government, carrying out his plan, is the history of the world'.[128] God is one. Power becomes the immanent of one and not the transcendence, which became the basis of 'government of men'.

In the history of the South, however, the problematic of *one* has been conspicuously absent. The philosophical, political, and social discourses had never been anchored on the idea of one power (even under the Indian spiritual and theological traditions, the conception of *Brahman* had limited contextuality exclusive of politics and human laws). For example, Buddhism does not believe in the ultimate *one*. The traditions of Hinduism belong to pantheism, *i.e.,* there are multiple gods and goddesses. It does not have one book that is placed beyond 'human interpretation'. In Hinduism, there are multiple holy books, the authority of which is accepted by some as well as contested by others. Further, there is no definite meaning or path that people need to abide by or follow. All are entitled to interpret the holy books. However, every meaning or interpretation is contested. The concept of *Dharma* had many significances, it was believed as the framework of natural and social order, based on dialogical character. Elsewhere, we have carried out the analysis of why the idea of power, in Indian history, did not develop in all its pernicious branches in which it

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[125] For the significance of temporal and divine conceptions of King's body that the concept acquires in the pre modern age, *see generally,* Ernst Kantorowicz *et. al.,* THE KING'S TWO BODIES: A STUDY IN MEDIEVAL POLITICAL THEOLOGY (1957, 2016).

[126] *See,* THE KINGDOM AND THE GLORY: FOR A THEOLOGICAL GENEALOGY OF ECONOMY AND GOVERNMENT, *HOMO SACER*-2; 57-58 (2011). Agamben observes that, Hegel was aware of this when he stated the equivalence of his thesis on the rational government of the world with the theological doctrine of the providential plan of God, and presented his philosophy of history as a theodicy ("that the history of the world [. . .] is the effective becoming of the spirit [. . .] this is the real theodicy, the justification of God in history"). *Id*., at 5.

[127] *See, for example,* Austin's conception of Habitual Obedience, Kelsen's *Grundnorm*, Hart's idea of social (secondary) rules and also the naturalist theories, devices of social contractarian tools of original position, or its versions, in Hayek Rawls, and Dworkin, Nozick, etc.

[128] G.W.F. Hegel, THE LECTURES ON PHILOSOPHY OF HISTORY 51 (J. Sibree, *trans.,* 1914).

could develop in the West.[129] The law continued to enjoy an existence autonomous of the idea of power to a large degree in the Indian traditions which established the unity of the diversified life-worlds.

IV

Constitutional Reason and Governmentality

Under this section, we take up the idea of reason and its conceptions which constitute the beings and modes of human beings reflected into the development of law, the liberal legal order, and what we have as its products. This specific sense of reason we have called the 'Constitutional Reason' whose manifestation can apparently be seen in law and policies, such as ONOE, which are causal consequences of the modern science, social sciences, and jurisprudence that reversed the historical relationship of nature as dynamics of plurality and unity, and was subdued by reason constituted by the 'will to power'[130] of the homo sapiens. The modern law is an offspring of the 'externalised reason', the constitutional reason, which has subordinated the spatial and temporal provinces of life, *i.e.*, the control of space and time, body and soul, and situating them all in the province of artificially produced economic management through the standards of efficiency, productivity, and bureaucratic convenience.

Art of Nature: Unity and Plurality

The overpowering vision of a collective cultural life, which shapes the uniform experience of 'nationalized life' or 'life of nation', derives the authorization and its validity from the juridical power of 'Constitutional Reason', an overpowering *techne*, the supreme form of instrumentality, which aims to transform communicative life world into a uniform system. The constitutional reason as the 'apparatus of juridifications' is re-forming the plurality of cultural values and practices as per the uniformalised artificial necessities constantly generated to sustain the logic and practices of profitability and normalised and self-perpetuating mis-order of polity. What has essentially provoked the violent rupture of social life and its plural mode of existence? Who has abandoned it to be an object of curiosity for the political machine? These questions are ordinarily too ordinary to provoke thought provoking exploration.

For millennia, it was believed that nature is independent from the human consciousness and thought. Its harmonious law, the constant pattern, unity and regularity are well crafted by the first cause, the necessary being, in mythical and

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[129] *See,* Chanchal Kumar Singh, *State and Equality from Sadācār(a) to Bazaar: Searching Alternative Impressions in Light of the Sanskriti Litigation* I SML. L. REV 51 (2018).

[130] *See generally*, Friedrich Nietzsche. THE WILL TO POWER (2017).

theological language, indicated as God. However, what was indicated as cosmic law or regularity is not necessarily an objective fact independent of human consciousness and their province of thought. As per Alfred Whitehead, natural and social orders are the same truth realising its essence in every 'actual occasions'[131], its 'concrescence'[132], as being always already is becoming in its creative annihilation and transitions into the other life forms, realise the potentials of the eternal being in the temporal and spatial worlds.

Nature, its artistic unfolding, is always mediated with consciousness, the 'stream of consciousness'[133]. What appears inside to us is also outside pervading as gross manifestation as an extension of the 'phenomenal awareness'[134] and all-pervasive emptiness, voidness, and silences, what *Samkhya* visualised *Purusha* as witness consciousness witnessing the creative unfolding of *Prakriti*.[135] Regularity of nature is not a fact independent of observation, perception, imagination, and conception perceived or conceived by the thinking. Human's world of science, their artistic expression and contemplative freedoms are interdependent on the material fulfilment and un-fulfilment. Science and art are not necessarily the autonomous endowment of civilization. Both have been a combined endeavour to contemplate and create a world-view based on what is given to the senses and mediated with the intuitive feeling and 'stream of awareness'. Therefore, 'Being Human' has been no less than being an expression of nature, becoming a manifestation of existence, qualitatively and quantitatively integral to the creative unfolding of nature in its actual occasions, appearing and existing as the mode of existence, embedded in the silences and expressions of nothingness, hence existence and nothingness, logos and physis are the same process of reality exemplifying the feminine creativity and masculine manifestation. The natural art of expression is qualitatively one single mode of existence, uniting consciousness with the material expression, as thoughts are manifesting as spatial-temporal modes of extensions.[136] That unity is all pervasive and immanently necessary for the existence and manifestation, that nothingness is logically necessary and phenomenologically embracing the manifestation as unity of being and nothingness, the two modes of the natural expression, always defined what it means to 'being human', as one of the modes of natural blossoming.

Being is a series of becoming, in circularity merging into its essence and exploding and out-bursting in its various forms and patterns. The becoming, movement, or time is a formal scaffolding of its own essence, grounded in the essence of Being as nothingness, the Being as infinite potentialities and finite actualizations in the

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[131] Alfred North Whitehead, PROCESS AND REALITY 61 (David Ray Griffin *ed.,* 1929, 1978).
[132] Alfred North Whitehead, *Id.*, at 18-30.
[133] William James, PSYCHOLOGY: BRIEFER COURSE 151-175 (1892).
[134] Richard E. Aquila, *Kants Phenomenalism* in R.C.S. Walker *(ed.)*, THE REAL IN THE IDEAL 13-31 (1989, 2019).
[135] *See generally*, Īśvarakṛṣṇa, SĀṂKHYAKĀRIKĀ WITH THE COMMENTARY OF GAUḌAPĀDA (2004).
[136] Benedict de Spinoza, ETHICS 43-84 (James Gutmann *ed.,* 1949).

negation of potentialities. The being is becoming yet remains what it is in its own essence, like order in change and change in order.[137] The essence of change is the atemporal and eternal ground of all-encompassing Being. Time is the mode of existence of the quintessence of Being; its essence is beyond the horizons of time; its existence is grounded in its own annihilation. Time is the gross manifestation and subtle desires of Being which embraces its own nothingness; therefore, it exists in form of life and decay, its manifestation is the plural dimensions of transformations of the nature of Being. The presence of time is its absence and its absence is presence. In its existence or manifestation, it is everlasting and, in its essence, it is eternally nothing. Time as the basic nature of Being is extended as forms and patterns or space and abstracted as nothingness. It is the *causa causans* of formal appearances; the identities and differences. Being, therefore, is the communion of its own plural manifestation, its temporal and spatial dimensions extended and abstracted. The circular movement of Being as time is encompassing in its essence the multiplicities of forms. Being in its natural existence is anathema to uniformity. Its essence is unity and its existence is plurality. Being as the gross manifestation of forms is the World-Form (*Vishwarupa*),[138] appearing and encircling as living and perishing, both appear to be different but in essence it is the same process and the same event; creation is the transformation of the old form into a new pattern. This everlasting process is the basic adjective of nature grounded in the Being as pure potentialities. Its subtle movement is the 'will to perpetuate' itself everlastingly and un-exhaustingly, fulfilling itself to the fullest extents, yet it remains unquenched like an empty vessel devoid of any base or ground. Its quest to fulfil or eliminate itself, explodes it into the manifold forms or wills. The subtle unity of will, its existence is the plural manifestations of nature.

The will is the seed of movement and action; its creative process makes nature pluralistic adventures. Will, in its natural manifestation, is the instinctual necessity for its self-perpetuation. To the contrary, the social imagination of human beings specifies uniformalised necessities in the form of social norms, as a uniform prescription of desire and desirability. Its technological sciences endeavour to eliminate the strangeness of particular events through uni-dimensional practices of uniformalisation at the abstract scale of instrumental rationalization. However, the desire for uniformity remains an artificial quest whose actualization is always contingent on the dynamic process of nature and its multidimensionality. No social life can claim its superiority over the ground which maintains and sustains itself through its creative unfolding in time and space.

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[137] Alfred North Whitehead, PROCESS AND REALITY 339 (David Ray Griffin *ed.*, 1929, 1978); ('The art of progress is to preserve order amid change, and to preserve change amid order. Life refuses to be embalmed alive. The more prolonged the halt in some unrelieved system of order, the greater the crash of the dead society').

[138] *See*, *Mandukya Upanishad* in Sarvepalli Radhakrishnan, THE PRINCIPAL UPANISHADS (1953).

Nature's unity is manifested through its plurality as in the framework of time and space. Plurality as a mode of existence is apparent in its material and conceptual manifestations, their unbounded possibilities for creation and existence. Therefore, no abstraction of thought remains stable; it is affected and recreated by the movement of consciousness and external material conditions. The very essence of nature is, therefore, the plurality of existence. Nature as a configuration of internal harmony is temporally and spatially related in its differentiations and variations. The mechanistic imaginations of human species have confined natural phenomena into arbitrary sets of law based on presupposed 'scientific postulates'.[139] The anthropomorphic projection of cause and effect and problem of induction and deduction make our science as a system built on edifice of presuppositions and consequently logical conclusions. Thus, an elusive search for uniformity of law is a human introjection on the site of nature in Bacon's sense. This process is undertaken on the premise of alienation and reification of nature from the human consciousness and establishes the archetypical imagination that the human species is an unnatural extension of nature, hence the human being uniformalises the art of nature into uniform pattern of positivistic law exemplified by technological rationality of the Modern sciences and jurisprudence at the cost of violating the principle of modesty and humility, the twin virtues for integral knowledge and holistic actions.

The province of inclination, an existential will to perpetuate itself, breeds into conflicts of the wills. This process has creative as well as destructive potentials, simultaneously both exist in the same process and event; every form is in transition, its existence is like temporality, always moving and creatively transforming itself, carrying forward in its particularity the whole history of being and the immense possibilities of the future.[140] The manifest plurality of wills is the 'explicate order'[141], whose ground can be known and felt in the 'intuitive awareness' (*scientia intuitiva*)[142] of the totality. Every reasoned analysis could establish reason as the necessary ground whose graded radiance is emanated and pervaded in the entire cosmos of what pre-Greek and Stoics conceived as logos. The process of analysis through an instrument of reason does save reason. Therefore, no reasoned analysis could transcend beyond the power of reason itself, i.e., its ability to dissect and unify itself,

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[139] Bertrand Russell, HUMAN KNOWLEDGE: ITS SCOPE AND LIMITS 439-527 (1948).

[140] Alfred North Whitehead, PROCESS AND REALITY 18-30, 61 (David Ray Griffin *ed.,* 1929, 1978).

[141] David Bohm, WHOLENESS AND THE IMPLICATE ORDER 177-217 (1980, 2002).

[142] Benedict de Spinoza, ETHICS Chapter VIII (James Gutmann *ed.,* 1949); Henri Bergson, INTRODUCTION TO METAPHYSICS 1-3 (Hulme *trans.,* 1913); (Bergson contrasted analysis with intuition, 'The first implies that we move round the object; the second that we enter into it. The first depends on the point of view at which we are placed and on the symbols by which we express ourselves. The second depends neither on a point of view nor relies on any symbol. The first kind of knowledge may be said to stop at the relative; the second, in those cases where it is possible, to attain the absolute'). *See also*, Charles A Bennett, *Bergson's Doctrine of Intuition* 25(1) THE PHILOSOPHICAL REVIEW 45-58 (1916).

two necessary ingredients of the physis or cosmos, therefore, an ontological necessity of unity does produce its corollary in form of plurality and totality.

Thus, to analyze or to think beyond reason is self-contradictory, logically leading the thinking towards infinite regression in a circularity of absurd relations and conclusions in a formal structure of logic. Any possibility of thought beyond the reason is inconceivable through reason. Therefore, one may be intuitively aware about the nothingness and its silences whose formlessness is the first uniting principle for a manifested world of nature and its multidimensionality. The Being in its primordial sense is nothingness as the pure potentialities,[143] therefore, the that is the highest potency of creation whose profound abyss is the source of all creations and manifestations. Being in the sense of *One*, the highest manifestation of intelligent power, does create the necessity of hierarchy and subordination. It is a necessity of the formal structure of power as reason that it brackets out the aesthetical or moral experiences of particularities to build a system based on the vertical hierarchy. This uniformal abstraction is the technological power of the human being, who produces its own technological essence and social and political life at the calculus of technological efficiency. Only technology is a means to save the familiar against the hostile conditions of strangeness, hence, the boredom of familiarity is deployed for the efficient management of the knowns to efface the possibilities of unknowns. This mentality breeds the violence of control, the quest is to save the given and restrict the possibilities of open future; however, the anxiety to control everything is as futile as a dream to erect and sustain a castle of sands, even a slight blow of winds is potent enough to reduce its essence into caricature.

'Being Technological' and 'Technological Being'

Human, a finite mode of being, lost and found one day, amidst clouds of unfamiliar and open future, to discover the strange journey of life. His source of curiosity was the natural order; its asymmetric symmetry, its constant change, its unity and plurality. The word 'Nature' was derived from Latin 'Natura', which means 'to be born' or 'birth'.[144] The Latin translation changed the primordial meaning of life and being. Nature and its order were denoted in Greek as *Physis* and *Logos*. According to Martin Heidegger, Physis is 'what emerges from itself (for example, the emergence, the blossoming, of a rose), the unfolding that opens itself up, the coming into-appearance in such unfolding, and holding itself and persisting in appearance-in short, the emerging-abiding sway….Physis as emergence can be experienced everywhere: for example, in celestial processes (the rising of the Sun), in the surging of the sea, in the growth of plants, in the coming forth of animals and human beings from the womb… But physis, as emerging sway, is not synonymous with these processes, which we still today count as part of nature. This emerging and standing-

[143] Alfred North Whitehead, *Op. Cit.*, at 31-38.
[144] Martin Heidegger, AN INTRODUCTION TO METAPHYSICS 14 (1953, 1999).

out-in-itself-from-itself may not be taken as just one process among others that we observe in beings. Physis is *Being* itself, by virtue of which beings first become and remain *observable*'.[145]

In primitive communities, it may be discerned that rituals and mythical explanations were deeply connected with the natural phenomenon.[146] The conception of the divine was not alien to the natural environment of human beings. The mystery of life was celebrated with a sacred attitude. Such societies developed 'mutualistic obligations' among human beings on the principle of reciprocity.[147] For Greek philosophers and Stoics, the natural and social orders were the one mode of existence whose unity was logos, the truth of Being, the substratum of harmony, which may be visible to our experiences or may be hidden from the human's abilities of sense perception and cognition. In pre-Socratic philosophy, Parmenides and Heraclitus expressed their profound insight into nature and concluded by Parmenides that 'Thinking and being are the same'.[148] In the words of Heraclitus, 'But while the logos remains always this, men remain uncomprehending, both before they have heard and just after they have heard. For everything becomes essential in accordance with this logos'.[149] In another fragment, Heraclitus expressed, 'Therefore it is necessary to follow it, i.e., to adhere to togetherness in the essence; but though the logos is this togetherness in the essence, the many live as though each had his own opinion'.[150] What is so peculiar about human beings is that they remain with their own concepts and images, consciously cultivated or unconsciously inherited, therefore, their mode of existence has apparent duality of the truth as 'phenomena' and 'noumena',[151] conceived by the human thoughts which are worshipped as the only truth by the human species.[152] The world of opinions is inherently divisive in a sense that human beings introject the hopes and desires into the realm of truth, which exacerbates the duality of fact and value; 'what is' and 'what ought to be'. In the beginning of human society, natural and social orders were supposed to be integrally embedded. Human species developed social institutions as an extension of the natural process.

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[145] Martin Heidegger, *Id.*, at 15.

[146] Murray Bookchin, *Anarchy and Progress* (1975), BIOPHILY2 (Jan., 23, 2018), *available at*: https://www.youtube.com/watch?v=0yG3v1kQjsc (last visited 10 Jan., 2025).

[147] Murray Bookchin, *Id.*

[148] Martin Heidegger, *Op. Cit.*, at 136.

[149] Martin Heidegger, *Id.*, at 127.

[150] Martin Heidegger, *Id.*

[151] Immanuel Kant, CRITIQUE OF PURE REASON 257-275 (Norman Kemp Smith *trans.,* 1781, 1929).

[152] Friedrich Nietzsche, ON TRUTH AND UNTRUTH: SELECTED WRITINGS (2010); ('In some remote corner of the universe, poured out and glittering in innumerable solar systems, there once was a star on which clever animals invented knowledge. That was the haughtiest and most mendacious minute of "world history"- yet only a minute. After nature had drawn a few breaths the star grew cold, and the clever animals had to die').

The Greco-Roman traditions of natural law were all about discovering the natural law and the society was considered as the natural extension of the natural state of being. The first basic principle they discovered was 'reason', whose existence was supposed to be internal and external to the human world. The concept of logos was conceived as the uniting spirit between human beings and nature. As Cicero remarked, 'law is a right reason in agreement with nature'.[153] Thomas Aquinas also exemplified the idea of 'natural reason'[154] potentialities to know and live by all pervasive harmony in macrocosm and microcosm, inside and outside, mental world and its material extension in its pluralistic forms.

In the Greek Age, Aristotle defined the meaning of 'society and politics' as a natural extension of the essence and existence of 'being human'. (Aristotle) Therefore, social and political instincts were conceived as natural as other inclinations for food, sleep, or sexual instinct. In words of Aristotle:

> *'When we come to the final and perfect association, formed from a number of villages, we have already reached the city or polis. This may be said to have reached the height of full self-sufficiency, or rather we may say that while it comes into existence for the sake of mere life, it exists by nature, just as did the earlier associations from which it grew….From these considerations it is evident that the city belongs to the class of things that exist by nature, and that man is by nature a political animal. He who is without a city…is either a poor sort of being, or a being higher than man: he is like the man of whom Homer wrote in denunciation: 'Clanless and lawless and heartless is he'*.[155]

The art of politics was, therefore, believed as the natural state of being human; their sociability was the mode of existence, ingrained in their soul; their power of reflection and contemplation was believed as the highest manifestation of their divine likeness and image in the Christian theology. Their ability to think gave them creative powers to organize a normative world of arts, sciences, morals, and politics. Behind all these realities, the thought of 'being human' was the central framework of organizing the normative world.

There is certainly perpetual dialectics of the world of causality and the province of the normalisation, creating and un-creating each-other in the Modern Age; the province of human arts and sciences is the figment of human thoughts. Its creative powers create and un-create what it means to be human and divine. In this frame of thinking, being is a manifestation of human existence and the essence of being. In the beginning of the Modern Age, human as an all-encompassing conceptualisation

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[153] Marcus Tullius Cicero, CICERO: DE RE PUBLICA SELECTIONS 26 (James E. G. Zetzel *ed.,* 1995); (Cicero while referring Plato's *Timaeus* writes, 'Both individual and universe are ruled by the divine principle of right reason; each is eternal; the nature of each is congruent with natural law'). *See also*, F. H. L. Alonso, *Cicero and Natural law*, ARCHIVES FOR PHILOSOPHY OF LAW AND SOCIAL PHILOSOPHY 157-168 (2012).

[154] St. Thomas Aquinas, SUMMA THEOLOGICA, Vol. I, Part I, 59 (1846, 2007); ('The Knowledge which we have by natural reason contains two things: images derived from the sensible objects; and the natural intelligible light, enabling us to abstract from them intelligible conceptions').

[155] Aristotle, POLITICS 10 (Ernest Barker *trans.,* 1995).

of being was conceived, as the 'highest shadow of manifestation of reason and will', who does not simply belong to life but the life belongs to it, human being is not simply an extension of natural life but it is the only mode of being for whom nature surrenders itself, its powers control the nature, bends and twists it to perpetually make it subservient to the needs and desires of the human being. The human thoughts are so central to the life itself that its province creates and limits the possibilities of experiences, envision nature and its unity of beingness and nothingness as per the uniformity imposed by the cultural practices of the human sciences and arts; the mathematical providence of human species is created with self-assurance that nothing stranger has a place in its systems of thoughts and consequent technological configurations.

The human arts and sciences create a 'uni-verse' of self-perpetuation, the estrangement of self at the uniformal calculus of objectification. The Modern 'Age of Reason' and post-modernity are trapped in the circularity of 'positivization'[156], 'rationalization'[157], and 'uniformalisation'[158]. Each one of them is essentially inter-related like 'false logical necessities'[159] generated and sustained anxiously to control the destiny of human species or define their teleological and technological progression and regression. Positivization is a process to fulfil the quest of instrumental necessity of the human species. It is used as a *techne* to establish and perpetuate the inglorious powers of human beings as 'technological beings'. Human beings were believed to be essentially the most reasonable and rational beings 'created in the image and likeness of God'[160], 'the measure of all things'[161]. This idea was invented and subscribed by thinkers since the Greek Age till the Modernity, though scepticism is visible in the Modern poetic expression. As Shakespeare defined the grandiose and insignificance of the ontology of human-being:

> *'What a piece of work is a man!*
> *How noble in reason!*
> *How infinite in faculty!*
> *In form and moving how express and admirable!*
> *In action how like an angel!*
> *In apprehension how like a god!*

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[156] Martin Loughlin, FOUNDATIONS OF PUBLIC LAW Chap I (2010).

[157] Martin Loughlin, *Id. See also*, Max Weber, THE VOCATION LECTURES 12 (David Owen *ed.*, Rodney Livingstone *trans.*, 2004); ('Thus the growing process of intellectualization and rationalization does not imply a growing understanding of the conditions under which we live….It means that in principle, then, we are not ruled by mysterious, unpredictable forces, but that, on the contrary, we can in principle, *control everything by means of calculation*').

[158] Chanchal Kr. Singh, and Mritunjay Kumar, *The Uniform Civil Code Debate in India: Conceptual Predicaments, Historical Legitimacy, and Challenges to Pluralism* V SML. L. REV 12 (2022).

[159] Roberto Mangabeira Unger, WHAT SHOULD LEGAL ANALYSIS BECOME? 6-8 (1996).

[160] Oried E. Graves, GOD CREATED MAN IN HIS IMAGE AND LIKENESS 1-8 (2013).

[161] Protagoras was quoted in Paul Oskar Kristeller, PHILOSOPHY AND HUMANISM: RENAISSANCE ESSAYS IN HONOR OF PAUL OSKAR KRISTELLER 200 (Edward P. Mahoney *ed.*, 1976).

The beauty of the world!
The paragon of animals!
And yet, to me, what is this quintessence of dust'?[162]

The divine essence of the human species was also attributed for their incredible abilities to reflect on the question of what is truth and lie, what is just and good; their capacities to act one way or another, their creative will to imagine and create its own parallel world and their will to transcend the laws of nature. No other species has enough ability, as believed by the philosophers who established Modernity such as Immanuel Kant, to match the rational and autonomous nature of the human species. The categorization of various souls as per the sensibility, movement, rationality, and free action by Aristotle or the unique gradation of monads by Leibniz indicated the seed of thought whose heightened culmination is apparent in the theory of evolution propounded by Charles Darwin and its application in the development of evolutionary sociology, psychology, and jurisprudence.[163] In the absence of prior imaginations, others are impossible to achieve and realise. In this sense, human beings are rewriting their evolutionary history by their slavish desires, restructuring their state of being, transforming it from 'being human' to 'human being', 'being social' into 'social being', 'being political' into 'political being', 'being technological' into 'technological being'.

The quest to know unity is different from the desire to actualize the manufactured realms of uniformity. Unity is a central question of *noumena* whose grasp-ability in human thoughts is as good as imagining the impossible, a will-o-the-wisp whose relevance remains as a potential, yet actual is not different to its potentials, seed is not different to its tree-ness, child is not different to its movement in time. *Noumena* is too obvious to be distant, yet too far away to remain a mystery for the mystical poets and the prophets of Modern philosophy and science. For Immanuel Kant, the world of noumena is only a 'regulative concept'[164], a 'heuristic necessity'[165] to unite the random world of cause and effect into the imagined kingdom of ends, a possibility of intelligent design, which may be teleologically imagined to crown the baffling world of instrumental yet reified sciences, in the end, the human thoughts end up uniformalizing what is and what ought to be, the appearances and mysteries, fact and value, phenomena and noumena. This imagination is visible in the development of experimental logic, which limits the question of law of nature within the structure and circumference of human language, separates the world of

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[162] William Shakespeare & William Harness, THE COMPLETE WORKS OF WILLIAM SHAKESPEARE 833 (William Harness *ed.,* 1882).
[163] Charles Darwin, THE ORIGIN OF SPECIES Chap III & IV (1862, 2013). *See generally*, Herbert Spencer, THE EVOLUTION OF SOCIETY: SELECTIONS FROM HERBERT SPENCER'S PRINCIPLES OF SOCIOLOGY (1967).
[164] Immanuel Kant, CRITIQUE OF JUDGEMENT 1, 186-188 (J. H. Bernard *ed.,* & *trans.,* 1790, 2005).
[165] Immanuel Kant, *Id.*

value from the fact and the province of teleological potentialities from the sphere of causal determinacy.

The search for unity is a failed quest for a philosopher of Modern science like Francis Bacon. The experimental logic applied in Modern sciences is unconcerned with the question of the truth in itself.[166] The contemporary sciences are the shadow of pragmatism and instrumentalism. Therefore, the ambition of Modern sciences, including social sciences and jurisprudence, is not to uncover the highest possible truth or to discover the intelligent design but to create the norms of truth, to define the contours and limitations of it, to make it useful for the human species for the fulfilment of desires.

Hence, the goal of science and jurisprudence is to annihilate its essential endeavours for uncovering unity. It creates the paradigmatic values for establishing the scope and limitations of its own province and application; its purpose is uniformalisation, positivization, and rationalization of life itself; it enables the categorisation of scientific domain and unscientific-dogmatic beliefs, and establishes its own identity as the objective knowledge, its non-conformity is condemned as speculative, therefore, such claims are delegitimized to have any chance of standing before the established practices of veridictions. Science and jurisprudence in the Modern Age have essentially and methodologically been transformed as technological as a means to familiarize the strange dynamics of natural events and to estrange the familiarity; it is deployed as techne to realise the anthropocentric 'will to power'[167], a quest whose failure is written in its genetic codes from the very beginning itself. In this sense, sciences, social sciences, or jurisprudence does not have a linear progression or regression of rationality; it is an artefact of rationalization. Its quests for clarity, certainty, or objectivity are nothing less than 'will to control' of the limitlessness and sublime dynamics of nature. Science and jurisprudence produce the domain of knowledge of what it means to be a human being, a technological being. In Greco-Roman cultures, science was considered as the pursuit of uncovering the harmonious play of nature, inside and outside of the beings, science was considered as the practice to know the essence and existence embedded in nature. Society and nature were embedded in each-other. Arts and politics had the status of natural extensions of the natural events. Modern science, social sciences, and jurisprudence reversed that relationship, therefore, nature as dynamics of plurality and unity was subdued by reason constituted by the will or power of the homo sapiens. Such a reason is, what Michel Foucault called, 'Governmental Reason'[168], or 'Constitutional Reason'.

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[166] Francis Bacon, NOVUM ORGANUM 45 (1620, 1901).

[167] Friedrich Nietzsche, THE WILL TO POWER (Elisabeth Förster-Nietzsche, Heinrich Köselitz *eds.*, 1901, 2018).

[168] Michel Foucault, THE BIRTH OF BIOPOLITICS: LECTURES AT THE COLLÈGE DE FRANCE, 1978-1979 11-21 (Michel Senellart *ed.,* Graham Burchell *trans.,* 1979, 2008).

Emergence of Constitutional Reason

Why are human freedoms produced by technological apparatuses of law? This question was vaguely answered by Rene Descartes who said; human reason is finite and limited but their province of will, inclination, or desire is comparatively larger than reason, hence, human beings commit errors and sins.[169] This explanation is significant in understanding the rationality that leads to enhance reason through education or governmental practices, to establish reason as government, within the self, which functions as superego as the moral principle through constant practices of observation, examination, penance, sacrifice, and the practices of confession, developed in the governmental practices by Christian pastorate or by the moral principle, constituted by the externalization of authority, apparent in the social contract traditions which produced political justifications for the State and its 'constitutional reason'. Christian pastorate, as explained by Michel Foucault, is an archetype of governance in the Modern sense, which allowed the pastor to observe and discipline each sheep, to help each of them to confess their sin, to enable them to discover their implicit truth hidden in the dark and mysterious realm of conscience, to allow and facilitate the purification of their souls to constitute a 'pure self', to ensure the renunciation of the self and consequently the constitution of the self.[170] Michel Foucault conceptualized such practices of the governance as 'technologies of the self' or 'hermeneutics of the self'.[171] To the contrary, Greco-Roman ethics considered the Governor of a City-State as helmsman, a Captain of the ship but not of the sailors, whose concern was the general well-being of the entire City-State.[172] Even in Greek and stoic ethics, the consultation of the master was motivated by the urge of self-mastery and success in social and political life.[173] The practices, such as, memorisation of the rules, writing down every detail in the notebook, or constantly reminding what is required to be done in order to live a good life, were required to constantly guide one's life towards good virtues by

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[169] René Descartes, DESCARTES: MEDITATIONS ON FIRST PHILOSOPHY: WITH SELECTIONS FROM THE OBJECTIONS AND REPLIES 35-50 (John Cottingham *ed.,* & *trans.,* 1641, 2017).

[170] Michel Foucault, SECURITY, TERRITORY, POPULATION: LECTURES AT THE COLLEGE DE FRANCE, 1977-78 115-162 (Arnold Davidson *ed.,* 2004, 2007).

[171] Michel Foucault, *Foucault: Truth and Subjectivity* (1980), SOCIOPHILOSOPHY (August 06, 2021), *available at:* https://www.youtube.com/watch?v=V0URrVbpjW0&list=PLF87631E02AAE1C0B (last visited 5 March, 2025); Michel Foucault, *Foucault: The Culture of the Self* (1983), SOCIOPHILOSOPHY (August 6, 2011), *available at*: https://www.youtube.com/watch?v=umi43Ho-I24&list=PL9C78808A41B0AC89 (last visited 5 March, 2025); Michel Foucault, THE HERMENEUTICS OF THE SUBJECT: LECTURES AT THE COLLÈGE DE FRANCE 1981-1982 (Frédéric Gros *ed.,* Graham Burchell *trans.,* 2005); *See also*, Michel Foucault, THE GOVERNMENT OF SELF AND OTHERS: LECTURES AT THE COLLÈGE DE FRANCE 1982-1983 (Arnold I. Davidson *ed.,* Graham Burchell *trans.,* 2010).

[172] Michel Foucault (2007), *Op. Cit.*

[173] Michel Foucault, THE HISTORY OF SEXUALITY: THE USE OF PLEASURE, Vol. 2, 212 (Robert Hurley *trans.,* 1985).

adhering to certain disciplines.[174] It was, in words of Michel Foucault, an executive relationship between the master and disciple. It is under Christian ethics, the focus shifted towards deploying technologies to discover and create the 'pure self' by permanent gaze over the thoughts, its normality and deviations, the practices of penance and public confessions, all these liturgical practices germinated into the ontology of governmental power, externalised as authority and power of punishment, and interiorized as self-discipline, the governance of soul by the 'juridicalization of conscience'.[175]

In Christian *liturgia*, the God was established as Sovereign which reigns and his Son, Christ governs with its ministry to the Kingdom of God on earth.[176] While the Sovereign is concerned with the jurisdictional power over a defined territory, the supreme Shepherd, the government, like a subaltern shepherd, a delegate of God, is responsible and accountable for each sheep. In the words of Michel Foucault, 'God is the shepherd (*berger*) of men. The subaltern shepherd to whom God has entrusted the flock of men and who, at the end of the day and the end of his reign, must restore the flock he has been entrusted with to God'.[177] (169). Michel Foucault distinguished the traditional sovereignty established by Greece and Roman with the governmental power established by Hebrews and Christian *liturgia*. As per his considered opinion: 'You never find the Greeks having the idea that the gods lead men like a pastor, a shepherd, leads his flock. Whatever the intimacy between the Greek gods and their city, and it is not necessarily very great, it is never that kind of relationship. The Greek god founds the city, he or she indicates its site, helps in the construction of walls, guarantees its soundness, gives his or her name to the town, and issues oracles through which he or she gives advice. The god is consulted; he or she protects and intervenes; he or she is sometimes angry, and then makes peace; but the Greek god never leads the men of the city like a shepherd leads his sheep. What is it, then, that characterizes this power of the shepherd, which we can see is foreign to Greek thought, but present and intense in the Mediterranean East, especially in the Hebrews? What are its specific features? I think we can summarize them in the following way. The shepherd's power is not exercised over a territory but, by definition, over a flock, and more exactly, over the flock in its movement from one place to another'.[178]

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[174] Michel Foucault (1980), *Op. Cit. See also*, Michel Foucault (1983), *Op. Cit.*

[175] Michel Foucault (2007), *Op. Cit.*, at 135-162; Michel Foucault (1980), *Id.*; Michel Foucault (1983), *Id.*

[176] Giorgio Agamben, *The Power and the Glory, CSDS* (2007), MBOUDOUR (October 21, 2007), *available at*: https://www.youtube.com/watch?v=jz7dxevH7Rs&list=PLD2EDB60B9D860026 (last visited 5 March, 2025); Giorgio Agamben, *Liturgia and the Modern State*, EUROPEAN GRADUATE SCHOOL VIDEO LECTURES (October 03, 2009), *available at*: https://www.youtube.com/watch?v=IIYDSkAAHl0&list=PLB7EB87B68B3B938F (last visited 5 March, 2025).

[177] Michel Foucault, SECURITY, TERRITORY, POPULATION: LECTURES AT THE COLLEGE DE FRANCE, 1977-78 169 (Michel Senellart *ed.*, Graham Burchell *trans.*, 2009).

[178] Michel Foucault, SECURITY, TERRITORY, POPULATION: LECTURES AT THE COLLEGE DE FRANCE, 1977-78 170-171 (Michel Senellart *ed.*, Graham Burchell *trans.*, 2009).

In this sense, it is established by Michel Foucault and Giorgio Agamben that 'Sovereign reigns but does not govern'.[179] One is required to trace two paradigms of power, one controls the jurisdiction and other controls the human behaviours, the movements of body and transgressions of the soul, one constitutes the control of space and other the efficient use of time, one is concerned with legitimacy and illegitimacy, legality and illegality, the other one is engaged in efficiency and productivity, the prior domain is juridical and the latters province is economic management.[180] One aspect is common in both the paradigms of power is that 'it externalises the reason' in the realm of power, either divine mystical power or the human power (Leviathan or Body Politic) constituted by the common or general will.

The psychology of authority may be contra-distinguished from the quest of harmony in antiquity. Greco-Roman ethics emphasised on the 'harmony of reason and will', not necessarily their quest was the living reality of the society, but normatively their contemplation on theoretical and practical rationality, their meditations on ethics, politics, and economy were leading towards a quest for the harmony amidst the chaotic dance of nature. From macrocosm to microcosm, Greco-Roman cultures visualised a harmonious continuity from theoretical contemplation to practical wisdom or from natural processes to social practices.

A similar paradigm of thought is apparent in *Samkhya* and *Yoga* schools of philosophy in India whose synthesis may be traced in *Bhagavad Gita*. The Platonic dialogues, Aristotelian systems of contemplative wisdom, Stoic metaphysics or ethics, Neo-Platonism, and other philosophical systems, in antiquity, emphasized on the harmony of reason and will. In Platonic dialogues, the conclusion is indicated that the highest knowledge is to understand the eternal form (*noesis*).[181] Understanding does not mean acquiring knowledge or skills; it is a state of equilibrium of subject and object, thought and action, *purusha* and *prakriti*,[182] *yin* and *yang*[183], *Shiva* and *Shakti*. Spinoza echoed a similar idea that the highest form of knowledge emanates from intuition, i.e., 'intellectual love of God'.[184] The symbol of

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[179] Giorgio Agamben, *Liturgia and the Modern State*, EUROPEAN GRADUATE SCHOOL VIDEO LECTURES (October 03, 2009), *available at*: https://www.youtube.com/watch?v=IIYDSkAAHl0&list=PLB7EB87B68B3B938F (last visited 5 March, 2025); Giorgio Agamben, *The Power and the Glory, CSDS* (2007), MBOUDOUR (October 21, 2007), *available at*: https://www.youtube.com/watch?v=jz7dxevH7Rs&list=PLD2EDB60B9D860026 (last visited 5 March, 2025).

[180] Giorgio Agamben (2007), *Op. Cit*; Giorgio Agamben (2009), *Op. Cit.*

[181] Richard Robinson, *Up and down in Plato's Logic* 84(3) THE AMERICAN JOURNAL OF PHILOLOGY 300-303 (1963).

[182] Richa Baghel, *Purusha and Prakruti of the Samkhyakarika Philosophy: Rationalising Decisions of an Individual in Synchronization with the Environment* 1 INTERNATIONAL JOURNAL OF HINDUISM AND PHILOSOPHY 55-64 (2019).

[183] *See generally*, Antony Cummins, THE ULTIMATE GUIDE TO YIN YANG (2021).

[184] Benedict de Spinoza, ETHICS Chapter VIII (James Gutmann *ed.,* 1949).

harmony between reason and will may also be traced in Ramayana, in which Ram is known as '*Maryada Purushotam*', the first person, or the first principle, whose actions and freedoms are guided by a sense of moral duty (*dharma*), the will of Ram, as believed, was embedded in the reason of *dharma*. It was a paradigm, exemplifying, a fine balance between *poesis* and *praxis*[185], creation and action.

However, the Greeks were aware about the 'weakness of the will'[186] (*Akrasia*), choosing the immediate pleasures at the cost of compromising the greater good. But they never underestimated the powers of human reason, and believed that such weaknesses may be cured by the 'rule of reason'. It was also believed by Aristotle in particular that reason brings moderation in human life while the will, inclination, or desire over-exhausts itself, or potentially, harms the self unless its unruliness is checked by the power of reason which brings moderation in human actions.[187] In Platonic dialogues, it is quite apparent that the goodness of the reason as the fundamental condition for the harmony was well-appreciated in his 'allegory of divided lines'[188], in Aristotle's metaphysics, epistemology, and ethics; reason was conceived, as a potency or potentiality, a rational ability, to decide what is practically good for a rational agent and what is social desirability as a social good. However, he observed that all people in society are not born with equal capacity to reason, therefore, their will is subject to the rule of external authority, who can reasonably govern them by rule of reason. Fundamentally, Greco-Roman and Medieval scholasticism conceived law as 'rule of reason' or 'natural reason'[189], as the basis of harmony all pervasive in the macrocosm to microcosm.

This belief that those whose passions for the material pleasures exceed the bound of reason, commit the sin, or even thinking about those material fulfilments, the appetite for sexual pleasures was considered as sinful, as exemplified in the *Confessions* by St. Augustine.[190] The arts of governing the body by the law of purity of soul was concretized by the Christian technologies of penance and public confessions; their governmental practices over the human beings, especially the 'governance of soul' or 'economy of soul', as expressed by Gregory Nazianzen.[191] In the words of Michel Foucault: 'We should not forget that Saint Gregory Nazianzen was the first to define this art of governing men by the pastorate as the *technē technōn*, *epistemē epistemōn*, the 'art of arts', the 'science of sciences' (Foucault). This would go down until the eighteenth century in the familiar traditional form of *ars artium*,

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[185] Jacques Taminiaux, *Poiesis and Praxis in Fundamental Ontology*, RESEARCH IN PHENOMENOLOGY 137-169 (1987).

[186] Pierre Destrée, *Aristotle on the Causes of Akrasia* in Christopher Bobonich & Pierre Destrée *(eds.)*, AKRASIA IN GREEK PHILOSOPHY: FROM SOCRATES TO PLOTINUS 139-165 (2007).

[187] Aristotle & Sir David Ross, THE NICOMACHEAN ETHICS OF ARISTOTLE BOOKS II, V (2013).

[188] John Leofric Stocks, *The Divided Line of Plato Rep. VI* 5(2) THE CLASSICAL QUARTERLY 73-88 (1911).

[189] St. Thomas Aquinas, SUMMA THEOLOGICA, Vol. I, Part I, 59 (1846, 2007).

[190] *See generally*, Saint Augustine, THE CONFESSIONS OF SAINT AUGUSTINE (398 CE, 2014).

[191] Michel Foucault (2007), *Op. Cit.*, at 159.

regimen *animarum*: the 'regimen of souls', the 'government of souls', is the *ars artium*.[192] Those techniques were deployed to cure the sin hidden in the dark mystery of human thoughts; governing men like flocks required a permanent relationship of a judge and the judged, like a higher self, subordinates the lower self; reason subordinates the will, inclination, or desire for pleasure.[193]

The belief that human reason is potentially good, even if it is accessible to a few human beings, to direct the will towards good virtues got dismantled in an early Modern period, when Machiavelli and Thomas Hobbes mirrored the social thoughts of early modernity. There was the hermeneutics of suspicion which produced the modern 'Oyster-Self', whose life-success is defined through the controlled inviolability of persona. The ontology of individualism was conceived on the fundamental assumption that human beings are by nature 'selfish and cruel', the rational nature is an ideal type, a normative desirability, which is violated in every moment of human life.[194] The irrational nature of the human species is therefore corrected by the external authority, their basic impulses or inner drives for the pleasures and minimization of pain, their motivation to act for the rewards and their actions in conformity with the law to avoid the punishment, require common source of juridical power to sublimate the bestiality in human nature to conform the standard of civilization. The idea of civilization from a utilitarian perspective is to establish the kingdom of cause and effect; to understand the natural drive in human nature for pleasure and avoidance of pain, and to institutionalize a system of rewards for certain desirable actions and a system of punishment to ensure the conformity of law. As Jeremy Bentham designed the architecture of the hedonistic character of human nature:

> *'Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it. In words a man may pretend to abjure their empire: but in reality, he will remain subject to it all the while" (Bentham, 1). Therefore, Bentham advocates to institutionalize society on the principle of utility, the highest reason of law, which may harness the hedonistic drives in human nature towards uniformalized conformity. In his words, "The principle of utility recognizes this subjection (of pain and pleasure), and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law. Systems which attempt to question it, deal in sounds instead of sense, in caprice instead of reason, in darkness instead of light'*.[195]

Even John Locke and Rousseau, who conceived the rational nature of human beings, conceived a society governed by the common reason defined in the Constitution of State or the incorporation of State through Constitution as the manifestation of

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[192] Michel Foucault (2009), *Op. Cit.*, at 201-202.
[193] Isaiah Berlin, *Two Concepts of Liberty* in LIBERTY READER 33-57 (2017).
[194] Thomas Hobbes, LEVIATHAN 84 (1651, 1904).
[195] Jeremy Bentham, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 1 (1876).

General Will.[196] As Rousseau identified the freedom in conformity to all, viz., 'to give freedoms to all means giving to none', the obedience to all means obedience to none, consequently 'obey only himself, and remain as free as before'[197] therefore it follows the obedience to a regulated self in socio-psychogenic sense.

These political justifications established the idea of '*Raison d'etat*', 'Reason of State' as the Constitutional Reason, which is internally free to regulate the lifeworld as per the systematic desirability but externally limited by the principles of natural law or natural rights, internally dynamic in the process of managing the economy of governance but externally fixed as the common standard for the constitution of the self, social self, and art of politics.[198]

Human being as an image and likeness of God, a Medieval belief, was displaced by a realistic understanding that by nature human beings are nothing more than an irrational animal, the Medieval normativity of law as 'rule of reason' or 'natural reason' failed to solve the problem of social and political order. The modern prophets of public law observed the failure of human nature in establishing harmony with their fellow beings. This fundamental suspicion shifted the dynamics of public law from 'right reason' to 'reason of authority', from internal governance to external supervision, from inner light of the self to the external light of constituted reason under the umbrella of social contract, from autonomy of the will to heteronomy[199] of constituted conscience; in this sense, the art of rational governance of the self was kept under the umbrella of constitutional reason, a collective will for the production of reasonable freedoms.

The management of power and rationalization of natural rights were hyphenated as twin necessities under the constitutional reason established by the modern public law. Human beings, therefore, were considered as a mass of flocks, required to be governed not by rational vigilance or a divine will but by a 'common reason' constituted by their shared will, a reflection of protestant ethics in a secularised form to realise the temporal fulfilment of the life as calling or vocation.[200] The fundamental presupposition of the irrationality of human beings caused an inevitable necessity to constitute a common source of power, as justified by social contractarians, by their uneven freedoms to produce 'reasonable freedoms' through the *uniformalisation of the*

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[196] Jean-Jacques Rousseau & Henry John Tozer, THE SOCIAL CONTRACT 108 (1762, 1998); Isaiah Berlin, FREEDOM AND ITS BETRAYAL 36 (Henry Hardy *ed.,* 2002, 2012).

[197] Jean-Jacques Rousseau & Henry John Tozer, *Id.*, at X.

[198] Michel Foucault, THE BIRTH OF BIOPOLITICS: LECTURES AT THE COLLÈGE DE FRANCE, 1978-1979 1-50 (Michel Senellart *ed.,* Graham Burchell *trans.,* 1979, 2008).

[199] *See generally*, Immanuel Kant, KANT: CRITIQUE OF PRACTICAL REASON (Andrews Reath & Mary Gregor *eds.*, Mary Gregor *trans.,* 2015)

[200] Max Weber, THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM 39 (Talcott Parsons *trans.,*1904, 2005); ('Now it is unmistakable that even in the German word Beruf (vocation), and perhaps still more clearly in the English calling, a religious conception, that of a task set by God, is at least suggested').

self and lifeworld and the rationalisation of law and 'rationalisation as law'.[201] The irrationality of the rational self-necessitated enlightened absolutism, as *Leviathan (Hobbes)* or incorporated collective will (Rousseau), which was an endeavour to establish the highest possible secular reason, to permanently rule over the unruly desires of human beings, to determine their fate as per the collective necessity of social order. *There was a fundamental belief in the project of modernity that every expression of morals and politics is not rational unless conforming to one value of truth or morality. Plural expression of morals and politics, it was believed, is self-annihilation; without reaching to one truth or one rational moral value, one cannot determine any value for the truth or morality.* The necessity of the one was believed to be a regulative necessity and teleological necessity,[202] ontological necessity,[203] or political necessity[204] to structure the social and political order. That one standard of reason and will was earlier believed to be sacred but it was sublimated as profane in the process of rationalisation of the lifeworld.[205] The process of 'linguistification'[206] ushered the sacred profanization and profanized sacred of divine mystical powers. *God was replaced by common constitutive reason, which was the mark of conquest of human reason as the secular source of rationalization and positivization of the lifeworld.* In this process, the art of politics was alienated from social life, the prior was established as the practices based on, what Jurgen Habermas called, 'strategic action'[207] and the other was constituted by 'communicative action'[208] for developing the understanding with the fellow members of the community. The systematic necessity of the political organization produced and sustained the necessity of 'de-linguistification'[209] of the lifeworld by the symbolic transactions of money or the process of rationalization deployed by bureaucracy to sustain the 'juridifications'[210] as an efficient alternative strategy to constitute the social and political life and to manage its messy affairs by disengaged engagements. *All efforts towards making one standard of truth and values, resulted in 'governmentality'[211], or 'governmental reason', as deployment of numero uno technology, which may be called the 'governance of economy' or 'economy of governance'.[212] The ethics of economy is the genetic*

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[201] Max Weber, THE VOCATION LECTURES 12-13 (David Owen *ed.,* Rodney Livingstone *trans.,* 2004).
[202] Immanuel Kant, CRITIQUE OF JUDGEMENT 334-414 (J. H. Bernard *ed.,* & *trans.,* 1790, 1914).
[203] René Descartes, MEDITATIONS ON FIRST PHILOSOPHY 25-37 (Michael Moriarty *trans.,* 1641, 2008).
[204] *See generally*, Patrick Riley, WILL AND POLITICAL LEGITIMACY: A CRITICAL EXPOSITION OF SOCIAL CONTRACT THEORY IN HOBBES, LOCKE, ROUSSEAU, KANT, AND HEGEL (1982).
[205] Jurgen Habermas, THE THEORY OF COMMUNICATIVE ACTION Vol. II 77-112 (Thomas McCarthy *trans.,* 1987).
[206] Jurgen Habermas, *Id.*
[207] Jurgen Habermas (1987), *Op. Cit.*, at 196.
[208] Jurgen Habermas, *Id.*, at 194-195
[209] Jurgen Habermas, *Id.*, at 172-178.
[210] Jurgen Habermas, *Id.*, at 356-360.
[211] Michel Foucault, THE BIRTH OF BIOPOLITICS: LECTURES AT THE COLLÈGE DE FRANCE, 1978-1979 15-16 (Michel Senellart *ed.,* Graham Burchell *trans.,* 1979, 2008).
[212] Giorgio Agamben, THE KINGDOM AND THE GLORY: FOR A THEOLOGICAL GENEALOGY OF ECONOMY

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code of the modern form of governmentality. In this process, one is governed less yet remains embedded in the permanent economy of governance.

Economy of Governance

The economy of governance begins with the rule of reason that inhabits the soul. The first governor is the soul which governs the body.[213] Each corporeal being has a soul, as believed by Aristotle, but each does not have equal capacity to reason, therefore they are governed by the external authorities. Aristotle in *Politics* defined the means and characteristics of the governmental functions:

> *'There is a principle of rule and subordination in nature at large: it appears especially in the realm of animate creation. By virtue of that principle, the soul rules the body; and by virtue of it the master, who possesses the rational faculty of the soul, rules the slave, who possesses only bodily powers and the faculty of understanding the directions given by another's reason. But nature, though she intends, does not always succeed in achieving a clear distinction between men born to be masters and men born to be slaves'*.[214]

The statement of Aristotle indicates the archetype of modern 'society of control'[215] which shared a common belief that each member of the society is not innately capable to be ruled by reason, therefore a direction from the person in authority is required for their governance. The idea of governance signifies the techniques of subordination by the rational self over the bestial self,[216] a perpetual tension of reason and sensual impulses. In this dynamic conflict, the higher self fails one day or another to constitute and control the will as per its dictates, therefore law as external authority is *sine qua non* to control the will as per its artificial dictum. There was also a pre-supposition that the person in power, either master or king, is rationally superior than others, therefore, they are entitled to govern the rationally inferior persons. This model of governance was meant to produce certain values, a central framework of *Oikonomia* which became the modern paradigm of governance of the people.

In this model of governance, the governor and governed produce a joint value in which their values are cancelled and preserved in a dialectical sense. In the words of Aristotle:

AND GOVERNMENT, HOMO SACER-2 XIII (2011); Giorgio Agamben, *The Power and the Glory, CSDS* (2007), MBOUDOUR (October 21, 2007), *available at*: https://www.youtube.com/watch?v=jz7dxevH7Rs&list=PLD2EDB60B9D860026 (last visited 5 March, 2025); Giorgio Agamben, *Liturgia and the Modern State*, EUROPEAN GRADUATE SCHOOL VIDEO LECTURES (October 03, 2009), *available at*: https://www.youtube.com/watch?v=IIYDSkAAHl0&list=PLB7EB87B68B3B938F (last visited 5 March, 2025).

[213] Aristotle, POLITICS 15 (Ernest Barker *trans.*, 1995).

[214] Aristotle, *Id.*, at 14-15.

[215] Gilles Deleuze, *Postscript on the Societies of Control*, SURVEILLANCE, CRIME AND SOCIAL CONTROL 35-39 (2017).

[216] Isaiah Berlin, *Two Concepts of Liberty* in LIBERTY READER 33-57 (2017).

> *'...rule exercised over a man is better than rule over an animal. The reason is that the value of those contributing to it; and where one element rules and the other is ruled, there is something which they jointly produce'.*[217]

Economy symbolizes the functional character of human beings. Functionality carries forward a direction motivated by a desire to bring certain outcomes into the effect. Aristotle, in a broader sense, defined it as efficient cause. Economy was the central aspect of human life since antiquity in all the ancient cultures. In India, it was symbolised as *artha*, in a broader sense, it may be defined as the essence of being.[218] In *Politics*, Aristotle devoted great energies in establishing *Oikonomia*, as the management of household. The concept is constituted by *Oikos* (house) and *Nomos* (law).[219] The central tenet of the house was its governance and management. Each household was considered as the basic unit of governance. Such art of management was considered essential for living a good life.[220] In contrast to *chrematistike*[221], (a conventional art of acquiring property), *Oikonomia* was premised on the ethics of moderation, a central principle in Aristotelian ethics. The household resembled a microcosm of City-State, which was required to be governed efficiently in moderation.[222] The acquisition of private property was considered essential for living a good life, but to acquire it for the sake of acquisition was considered as futile.[223]

Modern life, to the contrary, reversed the art of living into the science of possession and accumulation, homo sapiens into *homo economicus*.[224] Modern life is premised on the ethics of instrumentalism, whereas the deployment of means becomes a self-sustaining goal. The final end or *telos* is nothing more than the constitution, acquisition, and expansion of self as resources, a purposeless purpose in insatiable hedonism, the conversion of the source in resources. Economy was once a central facet of ethics in antiquity but now ethics has been engulfed by economy and its pragmatic functionalism.

Modern society is a conceptualisation premised on economic rationality and the language of production and exchange is all too obvious discourses deployed in the management of State. Michel Foucault claimed that the production of the *Modern Self* was premised on the techniques of signification, production, and

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[217] Aristotle, POLITICS 15 (Ernest Barker *trans.,* 1995).
[218] Arvind Sharma, *The Purusārthas: an Axiological Exploration of Hinduism* 27 (2) JOURNAL OF RELIGIOUS ETHICS 223-256 (1999).
[219] Aristotle, *Id.*, at 33-37.
[220] Aristotle, *Id.*
[221] Aristotle, *Id.*, at 21.
[222] Aristotle, Id., Chap. I & II.
[223] Aristotle, *Id.*
[224] Michel Foucault, SECURITY, TERRITORY, POPULATION: LECTURES AT THE COLLEGE DE FRANCE, 1977-78 63 (Michel Senellart *ed.,* Graham Burchell *trans.,* 2009).

subordination.[225] *These paradigms constitute governance as an art of producing the modern self as an entrepreneur whose every life activity is guided by the desire of profitability, every relationship is a shadow of investment mentality, the focal point of economism is time.* It is time which is converted into money and resources and the accumulations and consumptions of resources produce the life of modern self. Hence, as Karl Marx suggested, the *'labour power'*[226] *is the human resource exhaustible in time which is converted into the capital and the capital converges into the temporalization and quantification of life itself. People invest in time to produce life and invest in life to produce time.* Efficiency is the archetype of modern mind, it is synonymous to the art of managing time; 'production mentality'[227] is its inherent characteristics, which is applied in the mechanical process of creating resources out of sources.

Governance is, therefore, pre-occupied to manage resources and human beings as resources. Governmental reason is a manifestation of economism, premised on market rationality, a system of veridiction, whose necessity is self-justifying, no other reason can be given to justify that why economic rationality is an end in itself. This mode of governance governs by letting the economy take the central place in the life of human beings. It was installed as a system of veridiction, a rationality which is unquestionably shared by the society as *doxa*.[228] This process is the consequence of alienation of society from nature, politics from society, economy from politics, and individuals from nature, social, and political. This is the way the wretched individual is conceived as an atom encompassing economic interests secured by a bundle of rights created or recognized by law[229] and their interests are managed and controlled under the assumption of market rationality or governmental reason. In words of Roberto Unger:

> *'It is only within a relatively recent compass of history that a truly different form of existence and of consciousness appeared. The new vision was inspired by the discovery that order could and indeed had to be devised rather than just accepted ready-made. This discovery had several aspects, which one might separate if only to clarify their relationships to each other. People distinguished society from nature. They began to treat the latter as something to tamper with in their own interests and the*

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[225] Michel Foucault, *Foucault: Truth and Subjectivity* (1980), SOCIOPHILOSOPHY (August 06, 2021), *available at:* https://www.youtube.com/watch?v=V0URrVbpjW0&list=PLF87631E02AAE1C0B (last visited 5 March, 2025); Michel Foucault, *Foucault: The Culture of the Self* (1983), SOCIOPHILOSOPHY (August 6, 2011), *available at*: https://www.youtube.com/watch?v=umi43Ho-I24&list=PL9C78808A41B0AC89 (last visited 5 March, 2025); Michel Foucault, THE HERMENEUTICS OF THE SUBJECT: LECTURES AT THE COLLÈGE DE FRANCE 1981-1982 (Frédéric Gros *ed.*, Graham Burchell *trans.*, 2005); *See also*, Michel Foucault, THE GOVERNMENT OF SELF AND OTHERS: LECTURES AT THE COLLÈGE DE FRANCE 1982-1983 (Arnold I. Davidson *ed.*, Graham Burchell *trans.*, 2010).

[226] Alex J. Feldman, Power, *Labour Power and Productive Force in Foucault's Reading of Capital* 45(3) PHILOSOPHY & SOCIAL CRITICISM 307-333 (2019).

[227] Teofilo Altamirano *et. al.*, *On the Production Mentality and the Communal Formation* 21(3) CURRENT ANTHROPOLOGY 373-375 (1980).

[228] Cécile Deer, *Doxa* in Michael Grenfell *(ed.)*, PIERRE BOURDIEU 114-125 (2014).

[229] *See generally* John William Salmond, JURISPRUDENCE (1907).

> *former as an artifact of their own efforts. One consequence of this view was that time turned into history; it became possible to conceive of progress and decline as characteristics of entire societies rather than merely of individuals and to contrast an era with those that had preceded or followed it. Another result was to bring out the conventional and contingent character of every form of social hierarchy so that the exercise of power had to be justified in new and more explicit ways'.*[230]

The emergence of new justifications of power proved as a catalyst in the development of sovereign powers, disciplinary powers, and bio-powers. The 'sovereign powers' were concerned with the control of territory and to ensure the basic law and order in the society.[231] The 'disciplinary powers' shifted the focus on the normalisation of thought and soul,[232] its preceding justifications were predominantly developed in the Christian theology, and bio-power was developed as a new technology to shift the focus of governance from individual thoughts and consciousness to the social consciousness.[233] The second and third paradigms exemplify the architect of governmentality in the modern world. *The one constitutes the disciplined and normalised individuals and the other fragments the essence of individuality into data management.*[234] The ontology of individuals in cyberspace makes it a symbolic representation, an opportunity to convert symbolic identity into symbolic resource. In the Age of Information, the management and control of data have become synonymous with governance. In this symbiotic relationship, governance is concerned with data and data is constituting and justifying the governance. This is the way society is constituted as a structured and controlled data whose constitution and management are the main purposes of governmentality.

As per the meticulous analysis of Michel Foucault, 'governmentality' is a different paradigm of power in comparison to *Raison d'état*. The classical idea of sovereignty was preoccupied with the control of the territory by the Sovereign. That political ordering was externally legitimated by the 'divine will' or natural rights under the framework of the social contract.[235] Internally, the sovereign had the power to control the territory through the enforcement of law and to create and control the market through regulations, so that the prices of the goods and services can be regulated as per the requirement of the State, keeping in mind the availability and scarcity of resources.[236] The primary concern of the State was to create and enable the basic framework of security and administration of justice, popularly known as

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[230] Roberto Mangabeira Unger, LAW IN MODERN SOCIETY: TOWARDS A CRITICISM OF SOCIAL THEORY 130-131 (1976).

[231] Michel Foucault, SECURITY, TERRITORY, POPULATION LECTURES AT THE COLL GE DE FRANCE, 1977–78 19 (Michel Senellart *ed.,* Graham Burchell *trans.,* 2009).

[232] Michel Foucault (2009), *Op. Cit.*

[233] Michel Foucault, *Id.*

[234] Gilles Deleuze, *Postscript on the Societies of Control*, SURVEILLANCE, CRIME AND SOCIAL CONTROL 35-39 (2017).

[235] Michel Foucault, THE BIRTH OF BIOPOLITICS: LECTURES AT THE COLLÈGE DE FRANCE, 1978-1979 1-26 (Michel Senellart *ed.,* Graham Burchell *trans.,* 1979, 2008).

[236] Michel Foucault, *Id.*

night-watchman state or police state.[237] The prime function of the State was to determine the question of legitimacy or illegitimacy, legality or illegality.[238] Economy and production were in the juridical control of the State, these institutions were organised and sustained by the State through its regulative powers. In this sense, the economy of governance was embedded in the political process of the State. Since antiquity, economy was a part of the ethics developed by the human community for their practical rationality, it was one of the aspects of life, one of the meanings of life. The economic thinking in Aristotle or Buddha provides the ethics of moderation or the middle path for living a good life, and economic thoughts of Kautilya were grounded in the holistic well-being of the human community.[239] It was never meant to be autonomous rationality which will work like what Emerson calls, 'things are in the saddle, And ride mankind'[240].

The State, in the process of secularisation, established generalised and autonomous law, separate from religion or Church,[241] encompassing its own secularized language and rationalised bureaucracy, which provided a general framework for creating and regulating the process of market.[242] In traditional liberal Sovereign-State, the market as a truth was organised by the powers of State, created and regulated by law.

Michel Foucault, however, in his analysis finds that Neo-Liberalism reversed that relationship, this thesis was also established by Roberto Unger in his magnum opus, *Law in Modern Society*, that freedom of market was possible under the enabling framework of less intervention of State in the spontaneous process of market to enable efficient governance, the neutrality of State, the frugality of governance, as Lao Tzu suggested, though in a different context, that the 'best governor governs the least'.[243]

In neo-liberal sense, the best governor lets the governed govern themselves as per a new economic rationality, a new system of truth, whose formative conditions are supposed to be artificially sustained by the State.[244] In a way, the freedom of market is an ideal-type whose freedoms are precariously managed and controlled by the State through competition or labour laws. The unconscious spontaneity of the

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[237] Michel Foucault, *Id.*

[238] Michel Foucault, *Id.*

[239] Aristotle & Sir David Ross, THE NICOMACHEAN ETHICS OF ARISTOTLE BOOK II, V (2013); *See generally*, R. Shamasastry, KAUTILYA'S ARTHASASTRA (1951).

[240] Ralph Waldo Emerson, *Ode, Inscribed to William H. Channing*, *available at*: https://www.poetryfoundation.org/poems/45874/ode-inscribed-to-william-h-channing (last visited 10 March, 2025).

[241] Charles Taylor, A SECULAR AGE 423-505 (2007).

[242] Roberto Mangabeira Unger, LAW IN MODERN SOCIETY: TOWARDS A CRITICISM OF SOCIAL THEORY 130-66-85, 134-137 (1976).

[243] *See generally*, Lao Tzu, TAO TE CHING (2016).

[244] *See generally*, Noam Chomsky, *Free Trade and Free Market: Pretense and Practice* in Fredric Jameson & Masao Miyoshi *(eds.)*, THE CULTURES OF GLOBALISATION (1998).

market demands rational control by the law. Its organization and sustenance require perpetual control by the law of State, so that it can be saved from its own process.[245] The market violates its own pre-supposed-unconscious laws, swallows itself, destroys its own freedoms, therefore, the State has to organize and manage its freedoms. In this sense, the State intervention or regulation is constantly required not to interfere in the process of freedom of contract or exchange but to protect the market as an economic rationality from its self-annihilation. In an ideal sense, the State is not supposed to interfere in the freedom of exchange or contract, but to constantly enable the conditions to sustain the possibility of self-regulation of the process of market, in this sense, minimum government but maximum governance may be achieved. This process establishes a paradigm of self-control, self-discipline, self-sustenance, a paradigm of governmentality, which has transformed the classical functions of the State from interventionist or regulator for facilitating distributive justice to an enabler of self-governance as the paradigm of the governance of the self. This mode of self-governance is not premised on self-knowledge; it is a civilizational process which makes the external authorities internal, as Freudian Superego.[246] If external authorities are organized and produced as an instrument to achieve the efficient governance and if this mode of governance is synonymous to market rationality, under these conditions, human beings are governed by the economic-self, this aspect of self is a bundle of rights, which is open to expand its possessive and accumulative domains to achieve the maximum output in the minimum input, maximum accumulations of resources in minimum time, maximum inflation of 'entrepreneurial self'[247] in minimum investment in life and relationship. In this way, the uniformalised rationality of the market becomes a shadow of human thoughts which perpetually observe and correct the inefficient thoughts and behaviour of human species. This shadow obscures the thoughts of Nation and becomes a permanent site of veridiction, a standard of the highest truth and value, which organises the practices of governmentality. In this process, what is 'intrinsically good' is overshadowed. Every policy or governmental practice endeavours to achieve the efficiency through accumulations and managements of resources, through management of human beings as resources, their utilities are perpetually evaluated in terms of their labour power with respect to production and management of resources. This mechanical thinking produces the human life as an 'actual occasion'[248] to produce itself and to put everything in the mechanical process of production, to become a resource for producing the resources extensively and to

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[245] Karl Polanyi, THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME 215 (2001).

[246] Norbert Elias, THE CIVILIZING PROCESS: SOCIOGENETIC AND PSYCHOGENETIC INVESTIGATIONS (2000).

[247] Michel Foucault, THE BIRTH OF BIOPOLITICS: LECTURES AT THE COLLÈGE DE FRANCE, 1978-1979 215-238 (Michel Senellart *ed.,* Graham Burchell *trans.,* 1979, 2008); Ulrich Bröckling, THE ENTREPRENEURIAL SELF: FABRICATING A NEW TYPE OF SUBJECT 1-30 (2015).

[248] Alfred North Whitehead, PROCESS AND REALITY 61 (David Ray Griffin *ed.,* 1929, 1978).

consume it to the possible extent, and to consume herself in the entire process of production and consumption.

The proposal for 'One Nation One Election' is the culmination of economic rationality to structure the national life as the 'efficient management of symbolic and human resources'.[249] In this mode of thinking, the process of multiple elections brings policy paralysis in the governmental processes and the national resources are depleted to manage the process of elections. The Model Code of Conduct, notified by the Election Commission of India before each election, affects the governance, hence, one time election in every fixed period will be instrumental to save the resources of the nation and to enable the governance unhindered without any obstacle.

These objectives appear to be significant for the modern welfare state, but it has to be balanced with certain non-instrumental, intrinsic values, such as democracy, pluralism, and federalism and the idea of human being as the becoming. It is well established that every election is a democratic expression of people, their heterogeneity necessitates open public reasoning, which is possible, if open and transparent communication is allowed in the public sphere, not only horizontally with the fellow citizens but also vertically with the authorities.[250] In this sense, every election is an expression of democracy and plurality, such expression controls the abuse of powers and makes the authority, responsible and accountable. The local elections at the different time periods enable the public aspirations to communicate with the authorities and empower the structure and functioning of Indian federalism. The uniformalisation of the public sphere, on the contrary, through policy such as ONOE may affect the possibility of public reasoning, the plural and democratic expression.

The second challenge is its articulation and artificial necessity to follow a cycle as per the requirements of the Centre irrespective of the political contingencies of the various States. The uncertain possibilities in politics makes the Indian political process vibrant, and human political action, pure and divine. The dialectics in politics is a possibility which thrives in the current structure of electioneering, the political powers organised under the various layers of the political units, from villages, panchayats, States to the Centre, check and balance the political and legal authorities of each-other. The cycle conforming to one uniformalised standard as per the necessity of the Centre might turn the other political units merely as an appendage to the political necessity of the Centre.

Democracy as a value and process is more than management of the symbolic and human resources. It is an intrinsic value which defines the quintessential structure

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[249] Government of India, LAW COMMISSION OF INDIA DRAFT REPORT ON SIMULTANEOUS ELECTIONS 4-10 (30 August, 2018).

[250] Jurgen Habermas, THE THEORY OF COMMUNICATIVE ACTION Vol. II 194-195 (Thomas McCarthy *trans.*, 1987).

of Indian polity framed by the Indian Constitution. The idea of democracy is premised on the plurality spaces strongly acknowledged by the Constitution so as to enable unity in diversity and diversity in unity. The quest of uniformity leads towards controlling the people as Christian Pastorate, whose well-being is desirable as the quest of politics but not at the cost of divesting their powers to perpetually express their democratic voices communicated through various mediums including elections. *Therefore, governance as a model of the efficient management of democracy creates a hyphenated tension between management and democracy. From the Sovereign mode of governance to governmentality exemplifies a transformation of the management of household or city-state from the management of economy into economic management, from 'democratic managerialism' to 'managerial democracy'*[251].

In the Age of Information, democracy has got the status of managing the population as data, the deployment of managerial tactics to sustain the average.[252] Individual well-being, the idea of actualisation of inherent potentials for good life, the art of politics as action, participation, and engagement have been replaced by the efficient management of data, an economy of information, from the management of maintaining the minimum risk to achieve the maximum efficiency is an art of managerial democracy which has been accepted as the modern technology of governance in many parts of the world. For example, in India, the efficient management of electoral rolls is undertaken as Special Intensive Revision (SIR) for cleansing the electoral roll.[253] The policy of National Register of Citizenship (NRC), prepared in the State of Assam, is another policy of data management to ensure the exclusion of illegal immigrants from the country for the efficient governance of the people and resources.[254] The United States of America is the classic paradigm of governmentality, which is engaged not only in art of governing the soul but governing the 'dividuals'.[255] 'Individuality' as an artificial ensemble of data whose constant management does not require apparatuses of surveillance, they are governed by the management of divided and fragmented identities of the human beings in the various forms of data, their constant creation, deletion, manipulation, and monetization. Data is the divine secret which reveals the history and future,

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[251] Sung-Don Hwang, BUREAUCRACY VS. DEMOCRACY IN THE MINDS OF BUREAUCRATS: TO WHAT EXTENT ARE THESE IDEOLOGIES COMPATIBLE WITH ONE ANOTHER? 21-26 (1999).

[252] Michel Foucault, SECURITY, TERRITORY, POPULATION LECTURES AT THE COLL GE DE FRANCE, 1977–78 435-454 (Michel Senellart *ed.*, Graham Burchell *trans.*, 2009).

[253] Sreeparna Chakrabarty & Shiv Sahay Singh, *SIR second phase begins in nine States, three U.T.s*, THE HINDU (November 05, 2025 01:29 A.M. IST - New Delhi/Kolkata), *available at*: https://www.thehindu.com/news/national/sir-20-begins-in-12-states-union-territories/article70240764.ece (last visited 05 November, 2025).

[254] K.V. Thomas, *The Politics of Citizenship: The National Register for Citizens (NRC) in Assam*, THE HINDU CENTRE FOR POLITICS AND POLICY (October 06, 2018 17:10 IST), available at: https://www.thehinducentre.com/the-arena/current-issues/article25142441.ece (last visited 05 November, 2025).

[255] Gilles Deleuze, *Postscript on the Societies of Control*, SURVEILLANCE, CRIME AND SOCIAL CONTROL 35-39 (2017).

whose perpetual management defines the efficient governance of the people. The idea of biopolitics, as Michel Foucault conceptualised, as an art of managing the biological life of the people, but the art of governance in the Information Age is not simply about managing the biological life of the people, but managing their explicit and implicit data created, deleted, manipulated, and stored beyond the classical framework of time and space,[256] they are omnipotent, omniscient, and omnipresent, whose erasure does also leave the traces, which are secret scars produced by the managerial democracy for establishing a controlled and uniform experience of life.

V

Indian Federalism and Representation System(s)

So far, we have investigated in the previous sections, the central issues and components of various philosophical and theoretical categories that are associated with the emerging character and essence of law as the one. The exploration of philosophical issues enabled us to develop a deeper understanding of the business of law and the Constitution as the world of ideas and vocation of lawmen. In the limited space available here, we shall, further, attempt to study, briefly, the Indian federalism and constitutional 'apparatuses of democratic representation' in the context of the law and its making of glorious being.

There are several ways in which one can begin the study, assessment and evaluation of federalism or federation. Lawyers' take is an array of judicial pronouncements as the basis.[257] The comparativists study select constitutions around the world to establish that it is a system and form in its own right for governing diversity of groups of people.[258] Theorists regard federalism as a means for rearrangement and reallocation of power.[259] There are political sociologists or theorists who view it as a mechanism for managing and eliminating ethnic plurality and diversity.[260] And some thinkers consider federalism, a moral system, foundational and civilizational

[256] Gilles Deleuze, *Id.*

[257] V. N. SHUKLA'S CONSTITUTION OF INDIA (14th edn., Mahendra P. Singh *ed*., 2024); Mahendra P. Singh, *The Federal Scheme* in The Oxford Handbook of the Indian Constitution (Sujit Chaudhary *et. al*., *ed*., 2016); M. P. Jain, INDIAN CONSTITUTIONAL LAW (9th edn., Sanjay Jain *ed*., 2025); Durga Das Basu, SHORTER CONSTITUTION OF INDIA VOL. 1 (14th edn., A.R. Lakshmanan & V. R. Manohar *ed*., 2009).

[258] Kenneth Clinton Wheare, FEDERAL GOVERNMENT (1946, 1980); Ronald L. Watts, COMPARING FEDERAL SYSTEMS (2nd edn. 1999); Sujit Chaudhary, THE MIGRATIONS OF CONSTITUTIONAL IDEAS (2009).

[259] Forrest McDonald, STATES' RIGHTS AND THE UNION: IMPERIUM IN IMPERIO, 1776-1876 (2000). H. M. Seervai, though, mentions 'federal situation'; his analysis of federalism under chapter titled, 'Federalism in India', would fall under this category. *See,* H. M. Seervai, CONSTITUTIONAL LAW OF INDIA Ch. V, Vol. 1 (4th edn. 1991).

[260] Katharine Adeney, FEDERALISM AND ETHNIC CONFLICT REGULATION IN INDIA AND PAKISTAN 2 (2007).

bonding device, necessary for ensuring the promise of communality and individuality', the inherent human condition of both individual and shared needs and identities.[261]

We shall take the last-mentioned perspective for it lies at the core, whether acknowledged or not, of every other way of looking at the idea/perspectives of federation. The origin of the expression, federation/federalism is traced back to ancient Romans. The Latin term *foedus,* (plural- *foedera* or *con-federati)* which was lexicographically associated with the term *covenant* (compromise, it meant an agreement/treaty with allies), is traced as the root of the modern concept of federalism.[262] The term *foedus* is cognate of *fides* that carried the meaning of *faith* and *trust*. Thus, through the idea of covenant, and the synonymous ideas of promise, commitment, undertaking, or obligating, vowing, and plighting one's word to a course of conduct in relation to others, we come upon a vital bonding device of civilization.[263]

> *'Thus, the idea of covenant betokens not merely a solemn pledge between two or more people to keep faith with each other, to honor an agreement; it involves the idea of cooperation, reciprocity, mutuality, and it implies the recognition of entities—whether it be persons, a people, or a divine being'.*

Thus, federalism was a tie that successfully promoted and reconciled both personal and common interests. In the Indian context the expression refers to 'We, the People of India'. Burgess, in his *Comparative Federalism* observes that, 'accordingly the federal principle is an organising principle and its fundamental purpose is essentially *moral*. Its *raison d'eȇre* is to furnish the basis for order and stability but in a framework that formally acknowledges, protects and promotes human dignity, difference and diversity. This is its moral content and purpose'.[264]

It is redeeming of comparative epistemology to note that the Sanskrit term, *sangha* (संघ), for federation- *foedus,* originally meant *connection*. It signified plurality. The cognate terms, *sandhana-sammilana* (सन्धान-सम्मिलन) signified 'joining' and 'coming together' of many. Another associated Sanskrit expression, *samyog* (सयोग) carries the meaning of 'union', 'combination', or 'association'. All of these words of Sanskrit signified a kind of continuous existence of many *in association* with the all, based on faith, trust, cooperation, commitment, promise, equality, respect, and hope. For example, this foundational exposition of Indian federalism is explained in the *Keshvananda Bharati*

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[261] S. Rufus Davis, THE FEDERAL PRINCIPLE: A JOURNEY THROUGH TIME IN QUEST OF MEANING 3, 8 (1978).

[262] The federation embodies a *compromise* under which the original Provinces agreed to federate and interpretation should not whittle it down'. Quoted from Judgement of the PC in *In re The Regulation and Control of Aeronautics in Canada* [1933) A.C. 54 at p. 70, by the Indian Supreme Court in *Kesvananda, see, His Holiness Kesavananda Bharati* v. *State of Kerala* (1973) Supp SCR 1.

[263] *Id.* Davis.

[264] Michael Burgess, COMPARATIVE FEDERALISM: THEORY AND PRACTICE 3 (2006).

judgment that 'the …… and the federal structure of the Constitution is built on the basic foundation, *i.e.,* the dignity and freedom of the individual. This is of supreme importance. This cannot by any form of amendment be destroyed'.[265]

The practice and notion of unified power as the one has no place in these conceptions. The idea of the *one* is somewhat implicit in another Sanskrit philosophical term, *Aikyam* (ऐक्यम्), which means 'unity' or 'oneness'. It refers to a specific *statetness* which has predominantly spiritual connotation. For example, one of core philosophical problems, what in the West is known as the 'essence' is tackled by Sanskrit texts with the help of concepts of *Jiva, Atman,* and *Brahman.* The body is insignificant. The *atman* of the body unites with the *Brahman* and is called *Ekikrit* (एकीकृत).[266] The unit(s) loses its own existence (teleologically) and being by becoming a part of the whole.

The political history of *Jambudvipa* (roughly, South Asia) testifies that political power had existed in a particular arrangement for millennia. India, therefore, had never witnessed a uniform political system of power at imperial seats and at the regional *Kshatrapas* (kingdoms/Suba). 'Territorial autonomy was a historically established ruling strategy for the Indian subcontinent, even if it was not the rigid codified constitutional federal form analysed by constitutionalists, such as Kenneth Wheare'.[267] Kingdoms, *Suba*/provinces, invariably, drew their territorial boundaries with linguistic and cultural congruity. *Thus, the idea of authority and power did not give any lasting unity to the country.* The sense of unity is postulated by the ideas and practices of culture. One, however, needs to be cautious and should not separate it from religion. The duality of culture and religion is a Western/Christian idea.[268]

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[265] *His Holiness Kesavananda Bharati* v. *State of Kerala* (1973) Supp SCR 1, page 165.

[266] In the contexts of types of constitutions, this meaning coincides with 'unitary 'constitutions'.

[267] Katharine Adeney, FEDERALISM AND ETHNIC CONFLICT REGULATION IN INDIA AND PAKISTAN 31 (2007).

[268] Western scholars have wondered if one can ever 'escape the vast implicit tautology that the religious is what the West considers religious on the basis of its own religious experience, namely, that religion implies exclusive adherence to *'one'* and religion is separate from culture'! Professor Arvind Sharam, criticizes the western conception of religion and its imposition in Indian society by formulating six arguments: "(1) that the Western hermeneutics of the word "religion" is conceptually foreign to India; (2) that its foreignness consists in the double implication of the "religion" (a) that one may adhere to only one religion at a time or what may be called singular or unilateral religious participation and (b) that religion is separate from and separable from culture; (3) that this foreign concept of religion was institutionalized in India during the colonial period; (4) that the introduction of this foreign concept met with both acceptance and resistance in India; (5) that the tension generated by this dual reaction was foundational for the development of Hindutva ideology, which might not have arisen in a purely Indian context and that, therefore, (6) the hermeneutical approach of the West to the category of religion, and its application to India, is in a large measure responsible for the appearance of Hindu nationalism, especially as denoted by the word *'Hindutva*". *See,* Arvind Sharam, *Hinduism's Socio-Political Response to Western Hermeneutical Theories of Religion Essays in*

Contd…

The British did endeavour to dissolve the social unity of India, but certainly could not destroy it.[269] The long-drawn freedom struggle, therefore, was able to revive the general sentiment of unity through compromise and trust.[270]

The Constitution of India, 1950 is a manifestation of that revival through trust, faith, and (com)promise and, therefore, the Constitution is an imprint of cultural and linguistic selves of numerous collectives of people.[271] The selves cannot be denied even with power of law as one. The Constitutional provisions, predominantly, are articulations of this conception.[272]

In the working of the Constitution, however, the political executive at the Union, irrespective of their Party or ideological affiliations, have treated federalism as a system or form, for governing a territory and its people or as a means for re-arrangement and re-allocation of power with a strong tendency of centralisation[273] even at the cost of democracy.[274] The judiciary, however, has adopted varied approaches over the period of time. Until the 1990s, the judiciary adopted a 'hands off' approach on political questions[275] with the rise of coalition politics.[276] However,

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Honour of Frederik Wisse ARC, [THE JOURNAL OF THE FACULTY OF RELIGIOUS STUDIES, MCGILL, Vol. 33 486-490 (2005)].

[269] Partially, the colonial rule was successful in as much as the birth of Pakistan is concerned on the basis of two nation (religion) theory. Further, the genesis of communal or separate electorate was a colonial regime induced issue.

[270] The strategies of the Indian National Congress included constitution of provincial Congress Committees on linguistic/cultural lines

[271] The pre-constitutional events/documents are annals of promise, for example, Nehru Report of 1928, Gandhi -Irvin pact of 1931, Gandhi-Ambedkar pact of 1932, The States Reorganization Act, 1956.

[272] *E.g., see,* The States Reorganization Act, 1956; Ramachandra Guha, INDIA AFTER GANDHI: A History Chap-9 (3rd edn. 2023). Article 261 of the Constitution recognizes 'full faith and credit' for the acts and records of every government (Union and States). Congruity between Schedule I and Schedule VIII of the Constitution and Special Directives under articles 350-351;

[273] The strategies, adopted by different (dominant) political parties running the Union Government at time, differed for eroding and undermining the federal autonomy and status of States. *See,* Tarunabh Khaitan, *Killing a Constitution with Thousands of Cuts: Executive Aggrandizement and Party State Fusion in India* LAW AND ETHICS OF HUMAN RIGHTS 14 (1) 49 (2020); Chanchal Kumar Sharma & Wilfried Swenden, *Modi-fying Indian federalism? Centre-State Relations under Modi's tenure as Prime Minister* 1(1) 51 (INDIAN POLITICS & POLICY, 2018).

[274] *See,* the holding of the Supreme Court in *His Holiness Kesavananda Bharati* v. *State of Kerala* (1973) Supp SCR 1, at page 221, that 'the essence of federalism being the distribution of 'powers between the federation or the Union and the states or the provinces'. *See also,* the decisions of the Supreme Court in Cases: *S. R. Bommai* v. *Union of India* (1994) 3SCC 1; *Kuldip Naiyar* v. *Union of India* (2006) 7 SCC 1.

[275] *State of West Bengal* v. *Union of India* (1964) 1 SCR 371; *State of Rajasthan* v. *Union of India,* AIR 1977 SC 1361.

[276] Douglas V. Verney, *How has Proliferation of Parties Affected the Indian Federation? A Comparative Approach* in INDIA'S LIVING CONSTITUTION: IDEAS, PRACTICES AND CONTROVERSIES 134 (Zoya Hasan *et. al., ed.,* 2002).

the Court shifted to the '*promise, faith, and trust' model of federalism*.[277] The connection between the absence of one-party dominance at the Centre and the shifts in the approach of the Court is apparent.

The executive approach sees federalism loosely embedded in the Constitution while the court's perspective views it as one of the main organising principles on which the Constitution is based. But what is crucial is that the view does not approach federalism from the point of view of what is known as the dark thing, called power. In other words, the 'social', what G. F. Sawer in his celebrated work required to be the 'federal situation',[278] becomes the arsenal for the Court to battle against the march of the power. Thus, the judgments of the Supreme Court, post 1980s, refers not only to the manner of making (or technical aspects of division of power) of the Constitution but also to the procreative socio-cultural environments of its creation. Thus, the *S. R. Bommai* judgment employed the idea of 'federal situation' for declaring federalism to be the essential feature of the Constitution which, therefore, formed part of the basic structure doctrine.[279]

Interpretations, such as those given by some judges in *Keshvananda* by way of interpretation of constitutional provisions, are facts in the Constitution! They are not the *reasons* for the claims. Facts and reasons belong to two different worlds, though, connected sometimes. *The thesis of our investigation is, however, that the assertions of facts have little legitimacy than the reasons for the claims asserted*. The *factum* is an 'art-play' for lawyers and politicians, while the *ratio*, reason, must be rooted into the true human condition in a society/country (plurality-diversity) and, therefore, are the substance of contemplation for social scientists and legal philosophers.

Thus, the problem of federalism and the basic structure can be seen, at least, in the following three perspectives: '*basic structure of governance*'; '*basic structure of a constitution*', and '*the basic structure of the society*'. There exists, and are, deep tensions amongst the three which gives specific character to the systems of governance, law, and democracy in India.

The last one, '*the basic structure of the society*', however, when seen to be determining the contents of the law and the constitution, furnishes the 'reason' (*raison d'eȇtre*) for the present law and the constitution. Thus, historicity of law and law as the product of the 'total culture' of the society has become a new and an accepted paradigm for legal studies, legal pluralism, challenging the 'Western Model Jurisprudence'.[280] The

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[277] *S. R. Bommai* v. *Union of India* (1994) 3 SCC 1.

[278] G. F. Sawer, MODERN FEDERALISM 2 (1976).

[279] The majority opinion of Justice P.B. Sawant employs the notion of 'federal situation' in *Bommai* to discredit the unitary label to the Indian Constitution, *see, S.R. Bommai* v. *Union of India*, AIR 1994 SC 1918.

[280] Masaji Chiba, ASIAN INDIGENOUS LAW IN INTERACTION WITH RECEIVED LAW 1 (1986). Peter Fitzpatrick observes that 'integral relations of mutual support between law and another social

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main project of the movement is to salvage the communities and individuals from the re-constitutive rigors of the liberal law viewing them to be source as well as agents of political action (*see previous section*).

The first structure, the 'basic structure of the government', in India, is borrowed from the Government of India Act, 1935 and is intended to internalise discipline of law. On the other hand, it is also seen as vestiges of colonial rule.[281] The conception is aligned with a strategy which focuses on the idea of power through state law, *i.e., law as repression*.[282] Whereas, the concept of the 'basic structure of the Constitution', in the context of federalism, is held by the courts to be the necessary product of individual liberty, freedom, and dignity, *i.e., law as emancipation*. It is again a technical and top-down approach of basic structure. It is, somehow, possible to see as attempts of the courts to limit the legitimate power of the Centre under the Constitution. For example, the Court has developed an 'identity-width' test for operationalising the basic structure doctrine.[283] This view is based not on social facts, of the country, but on the factum of the conceptions of liberty/dignity (under liberal law) of the individual and on a view of the docility of socio-cultural claims/aspirations of the individual to such conceptions. Thus, it is prone to carry problematic interpretations, regarding laws applicable to democratic-electoral processes, such as the holding of the Supreme Court that '*Hinduism*' or '*Hindutva*' is a way of life and nothing more.[284] The concept can go to the extreme, so much so that, where law may prohibit what to eat, what to wear, whom to associate with, on what day, at what place and time! There are inbuilt paradoxes in logic and certainly logic in law that logic kills logic and leads towards infinite regression! Again, the first two conceptions proceed on a common essence

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form tend towards their convergence. It is not such a matter of distinct influence operating from the outside. Elements of law *are ele*ments of other social forms and *vice versa'. See,* Peter Fitzpatrick, *Law and Societies* 22 (1) OSGOODE HALL LAW JOURNAL 122 (1984).

[281] *E.g.,* the intermittent attempt for reforming and replacing old colonial laws, the recent ones, the new criminal Laws, *The Bharatiya Nyaya Sanhita*, 2023; *The Bharatiya Nagarik Suraksha Sanhita*, 2023; and *The Bharatiya Sakshya Adhiniyam*, 2023 enacted by the Indian parliament and the chief reasons given by the government for enacting the same.

[282] Santos holds the view that' what most strongly characterizes the sociocultural conditions at the beginning of the century is the collapse of the pillar of emancipation into the pillar of regulation, as a result of the reconstructive management of the excesses and deficits of modernity which have been entrusted to modern science and, as a second best, to modern law'. *See,* Boaventura de Sousa Santos, TOWARDS A NEW LEGAL COMMON SENSE: LAW, GLOBALIZATION, AND EMANCIPATION 7 (2002). and Baxi….

[283] *M. Nagraj* v. *Union of India* (2006) 8 SCC 212; *Janhit Abhiyan* v. *Union of India* 2022 SCC OnLine SC 1540.

[284] *Dr. Ramesh Yashwant Prabhub* v. *Prabhakar Kashinath Kunte* (1996) 1 C.C.C. 130, para 44. *In Manohar Joshi* v. *Nitin Bhaurao Patil* (1996) 1 S.C.C. at 169, the view was reiterated by Justice Varma, 'that the words '*Hinduism*' or *Hindutva*' are not necessarily to be understood and construed narrowly', was confined only to the strict Hindu religious practices unrelated to the culture and ethos of the people of India, depicting the way of life of the Indian people. Unless the context of a speech indicates a contrary meaning or use, in the abstract these terms are indicative more of a way of life of the Indian people and are not confined merely to describe persons practising the Hindu religion as a faith.

of the law characterised by singularity.[285] The essence is fortified by the methodological techniques of liberal law; the chief function is rationalisation of legal powers dehors other conditions present in the community.

The idea of basic structure, in the sense of the *third* kind and meaning, as 'the basic structure of the society' goes hand in hand, in our view, with the true moral conception of federalism as the human-social/political organisation. This view holds that the law and Constitution cannot go away without perversion from the constitution of the society reflected in its history and aspects of culture (*law as expression,* as immanent of plural social conditions/orders, a bottom-up approach). But it also denounces the rationalising legal categories of the model which has been our subject matter of investigation here.

Thus, Sawer remarks about the Indian society that 'the sub-continent of India was another area which by reason of size, population, regional, linguistic, differences and communication problems presented an obvious federal situation if not the possibility of several distinct nations'.[286] There is no place for power to be the central organising principle of the system. Nor does it follow that decentralisation necessarily weakens the idea of the 'We the People of India'. On the contrary, the vociferous dissipating/ secessionist tendencies under the Indian Union have arisen significantly, only at times when historical expectations and social-cultural imaginations of *plurality* are put under suspension or to the risks of total termination. This is the answer to the question we raised earlier, i.e., Did the phrase, 'We the People of India' mean the same thing for all the people who pronounced it on the day of 26th January, 1949? They were alive to the plenteous and wonderful images of India.

Towards the end of this section, we now narrate the problem of the system of electoral mechanism under the Constitution. The electoral system is regarded to be the key to power sharing in a democracy as a means of representation.[287] In the introduction of the study we have claimed that Indian democracy has yet to mature through developing and refining procedural democratic justice. Further, the evolution of the desirable election system for the diverse country was not complete/matured either during the freedom struggle nor could it be accomplished in the Constituent Assembly. There is sufficient evidence that the First-Past-the-Post (FPTP) system of electoral representation was adopted due to political contingency and with the hope that the future generations shall fulfil the unaccomplished constitutional task in due course. The energy of the Constituent Assembly, in view

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[285] *See,* Chanchal Kumar Singh & Mritunjay Kumar, *Genealogical and Analytical Critique of the National Education Policy*, 2020: *The Rich Heritage of Indian Knowledge, Social Traditions, and the Problem of Social Order* IV SML. L. REV. 1 (2021).

[286] G. F. Sawer, MODERN FEDERALISM 204 (1976).

[287] E. Sridharan, *The Origins of the Electoral System: Rules, Representation, and Power Sharing in India's Democracy* in INDIA'S LIVING CONSTITUTION: IDEAS, PRACTICES AND CONTROVERSIES 345 (Zoya Hasan *et. al., ed.,* 2002).

of the historical and socio-political conditions, was consumed by the issues such as 'separate/communal electorate and reservation in representation for SCs and STs', having intense consequences for the future of new democracy and united India. On the other hand, Constitutional and legal status of the chief vehicle of democratic representation, the political parties, did not form subject matter of any serious debate in the Assembly (the very phrase, 'political party' or its cognates found no mention in the original Constitution).

An empirical system of democracy and institutional and legal status (including regulation of duties, responsibilities, liabilities, and accountability to the political parties through statutory laws and Constitution, etc.), of the political parties and system of electoral mechanism are inevitably connected, but unattended till now. These systemic issues are central on which the future of Indian democracy rests.

The draft Constitution provided for the FPTP system of election (under draft article 67 and 149) and the system was adopted, as signified, under articles 81 (1) (a) and (2) (b), and 170 (1) and (2). The Representation of People Act, 1951, enacted under these provisions, provides for the adoption of the FPTP system under Section 65 which is more specific.[288] The system of electoral mechanism was debated in the Assembly, as part of the debate on Article 81, on 4th January, 1949.

'Explicit debate on the merits of alternative electoral systems and their dynamics and implications for representation and, hence, power sharing over-time was a debate that did not really take place' in the Assembly.[289] The draft Constitution assumed the FPTP system which also became the strong assumption of the Constituent Assembly (please refer to the 'basic structure of the government' above).[290] Some of the members, Kazi Syed Karimuddin, from minority community, did propose the system of proportional representation (with multi-member constituencies by means of cumulative vote) to be included in the draft Article 67 of the Constitution.[291] Prof. K. T. Shah proposed for

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[288] Section 65 reads, "*Equality of votes:* If, after the counting of the votes is completed, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of those candidates to be declared elected, the returning officer shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote". Further, The Conduct of Election Rules (Statutory Rules and Orders), 1961, under rule 64 prescribes that, 'The returning officer shall, subject to the provisions of section 65 if and so far as they apply to any particular case, then— (*a*) declare in Form 21C or Form 21D, as may be appropriate, the candidate to whom the largest number of valid votes have been given, to be elected under section 66 and send signed copies thereof to the appropriate authority, the Election Commission and the chief electoral officer;… .'

[289] E. Sridharan, *The Origins of the Electoral System: Rules, Representation, and Power Sharing in India's Democracy* in INDIA'S LIVING CONSTITUTION: IDEAS, PRACTICES AND CONTROVERSIES 355 (Zoya Hasan *et. al., eds.*, 2002).

[290] *Id.*, at 356.

[291] CONSTITUENT ASSEMBLY DEBATES: OFFICIAL REPORTS Vol. VII, 1233 (Lok Sabha Secretariat, 6th Reprint, 2014).

proportional representation by way of single transferable vote.[292] It is interesting to note that the Assembly had accepted, on 3rd January, 1949, the system of proportional representation by means of single transferable vote for elections to the Rajya Sabha (upper house of the Parliament) as part of Article 80 of the Constitution.[293] Mahboob Ali Beg Sahib Bahadur proposed the extension of the same principle for the elections to the Lok Sabha.[294] The extension of the proposal was opposed by other members including Pandit Thakur Dass Bhargava on the ground that it would amount to be a 'reversion to separate electorate' (system).[295] However, the final rejection of the PR system proposed, was based on the grounds Dr. B.R. Ambedkar elaborated in reply to those proposals of K.T. Shah, Karimuddin, and others).

Ambedkar opposed the proposal of PR for Lok Sabha on the grounds: *one*, that the system of PR presupposes literacy on a large scale, 'at least to the extent of being in a position to know the numericals'. *Two*, he was very hesitant in accepting the PR system of election, because it will result in fragmentation of legislature into smaller groups/parties threatening the stability of government in a parliamentary system of government adopted by the Constitution. And, *three*, the PR system would do away, by surprise, with the reservation of seats (for SCs, STs & Anglo Indians in legislature under articles 330 & 331) which have been done by the *agreement between* majority and the minority.[296]

Thus, it is clear that, both, the members of the Assembly belonging to the religious minorities, including Muslims, as well as for the other sections, the issue of electoral system was a matter of their community political (power sharing) interest and did not proceed in the real context of issue of 'representation' and 'democracy' through political parties. Additionally, and interestingly, the draft Constitution contained neither proposal concerning the Constitutional/legal status of political parties nor was it debated while finalizing the present Constitution. As already mentioned, the two prominent countries, *Sweden* and *South Africa*, where simultaneous elections have been adopted by law, provide for an electoral system through versions of proportional representation with a fixed threshold.

The socio-political and educational circumstances which formed the basis of objections to alternatives to the FPTP system of elections have now largely disappeared. And in the context of ONOE which have potential of larger consequences for the law and federal system of India, the debate needs to be reopened

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[292] *Id.*, at 1236.

[293] The PR system for the Council of State was adopted on the basis of amendment proposals moved by members including Shri Mahavir Tyagi and Mahboob Ali Beg Sahib Bahadur. *See* CONSTITUENT ASSEMBLY DEBATES: OFFICIAL REPORTS Vol. VII, 1216-18 (Lok Sabha Secretariat, 6th Reprint, 2014).

[294] *Id.*, at 1244.

[295] *Id.*, 1245.

[296] *Id.*, 1261-62.

in its all seriousness (remarkably, the questions of regulation, accountability, duties and responsibilities etc. of the political parties are also pending for the consideration before the Supreme Court of India[297]). However, such a debate and any such attempt shall certainly remain partial if it does not include the issue of regulating, and developing principles for making accountable to 'the political parties'.

VI

Electoral Justice and Reforms

The section is devoted to the operationalization of the main thesis of this essay, such as, the institutions of democracy and formation of people's will, electoral mechanisms, political party system, transparency and accountability of the political party, etc. The two chief institutions, 'electoral system' and institutionalisation of 'political party in India' are the result of '*historical dependentia*' and the uncritical reliance upon the '*colonial basic structure of government*'. In this sense, the Indian electoral system has remained a victim of its own colonial past, and the intended transformative project of the Constitution has not fructified into the substantial realisation of electoral as well as political justice. It is this foundational project, we have called this, the unconsummated project of the Constitution. The inclusiveness and representativeness of the electoral system are the prior conditions to realise the under-developed theories of people's will and the freedom to express and Right to Vote[298] in India. The substantial realisation of the rights is essentially dependent on the system of representation and the legal and institutional configurations of the political parties that effectuate will into law and the emancipatory realisation of the Constitution. In this section, the core challenges for electoral justice in India are explored to provide an alternative institutional imagination.

Politics of Representation

'Representation' is a derivative of Latin *Repraesentare* which signifies to 'show, exhibit, display'[299] or 'standing or acting for another especially through delegated

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[297] A PIL has been filed by Advocate Ashwini Kumar Upadhyay in CWP (Civil) No. 43 of 2022, for regulation of allegedly corrupt practices by parties in giving pre-election freebies (bribing the voters). *See also,* the 'hesitant' decision of the Court, on the subject matter, in *S. Subramaniam Balaji* v. *State of Tamil Nadu* (2013) 9 SCC 659. Another litigation is initiated to bring political parties under the Right to Information Act, 2005, *See, Supreme Court Defers Hearing on PILs Seeking to Bring Major Political Parties under RTI* (May 08, 2025, The Hindu, New Delhi) *available at:* https://www.thehindu.com/news/national/supreme-court-defers-hearing-on-pils-seeking-to-bring-major-political-parties-under-rti/article69552569.ece

[298] *Union of India* v. *Association for Democratic Reforms* (2002) 5 SCC 294; *People's Union of Civil Liberties* v. *Union of India* AIR 2003 SC 2363.

[299] *See*, ETYMONLINE, *available at*: https://www.etymonline.com/word/representative (last visited March 1, 2025).

authority'.[300] S. Dovi characterises the dimensions of *political representation*, *viz.*, 'some party that is representing, some party that is being represented, something that is being represented, a setting within which the activity of representation is taking place, something that is being left out'.[301] Every representation is a presentation of political expression. The ideal-type of a democracy necessitates the presentation of voice to be delegated by the citizens to their capable delegates. The basic quest for such delegation was explained by James Madison, and referred to by Jonathan Symptom, that 'a chosen body of citizens was less likely to sacrifice the true interests of the country to short term considerations, *unthinking impulses* or *sectional interests'* (emphasis added).[302] He further writes that 'under such a regulation…, it may well happen that the public voice pronounced by the representatives of the people will be more consonant to the public good than if pronounced by the people themselves'.[303] Madison believed that most of the people in the society are governed by the unthinking impulses and driven by sectional interests, hence, they are incapable in contributing reasoned public opinion on the question of public good or national interest. Similar sentiment was echoed by David Hume who believed that the common people suffer from 'incurable narrowness of soul that makes people prefer the immediate to the remote'.[304] 'Narrowness of souls' metaphorically signifies the assumption that the common people are governed by the natural impulses rather than reason. The natural impulses are the cause, as Hume believed, which compel one to be driven for certain actions, in this sense, common people are not free. Their choices are compulsive; this antinomy is resolved by the 'device of representation'. Modern thought, in its core, has the fundamental suspicion about human nature, hence, all too quests for enlightened rationalism is an ideational line of thinking from which the experience of political life is evaluated or condemned. This normativity is visible in the Platonic system of politics which asks the reason to govern the will. In the modern sense, the idea of 'common', or 'ordinary' is hyphenated with the citizenries to indicate their feebleness and inability to guide their action as per the requisite standard of the reason.

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[300] *See*, MERRIAM WEBSTER DICTIONARY, *available at*: https://www.merriam-webster.com/dictionary/representative (last visited March 1, 2025).

[301] S. Dovi, *Political Representation*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Jan., 2, 2006), *available at*: https://plato.stanford.edu/entries/political-representation/ (last visited March 1, 2025).

[302] Jonathan Sumption, *In Praise of Politics: Law and the Decline of Politics,* REITH LECTURES, BBC (May 28, 2019), *available at*: https://downloads.bbc.co.uk/radio4/reith2019/Reith_2019_Sumption_lecture_2.pdf (last visited March 2, 2025).

[303] Jonathan Sumption, *Id.*

[304] Jonathan Sumption, *In Praise of Politics: Law and the Decline of Politics,* REITH LECTURES, BBC (May 28, 2019), *available at*: https://downloads.bbc.co.uk/radio4/reith2019/Reith_2019_Sumption_lecture_2.pdf (last visited March 2, 2025).

The concept of 'mass' indicates the nature of a crowd as a visionless group like an assembly of flock, unconsciously driven, their voices are considered as unreflexive opinions, required to be moulded and filtered by the process of representation. In this context, Jonathan Sumption, quoting A.V. Dicey, refuted his view about political parties and mass democracy:

> *'Political parties are the creatures of mass democracy. Writing at the end of the 19th century, when mass democracy was a new phenomenon, the great constitutional lawyer, AV Dicey, regarded them as conspiracies which sacrificed the public interest to sectional interests, and that is still a widely held view but experience has, I think, proved it to be wrong'*.[305]

Jonathan Sumption was refuting the logic of the past with the experience of the present. He was defending representative politics not to substitute the public opinions with the opinions of the representatives but to enable the public opinion to become an expression of the present as well as to guide an uncertain future of political life.[306] The representation is not meant to impose a view from the above but to cultivate it in an immanent framework of what Santos calls, 'subaltern cosmopolitanism'[307].

Representation, as a public good or a means of public good is, however, dependent on the inventive institutional imaginations to be more effective in the organic process of politics. Its methods are often enslaved by the imagination of the past which limits potentialities around the established norms and practices, such a political culture lacks inventive steps to free the 'culture of politics' and 'politics of culture'[308] to be dynamically relevant as per the necessity of time, or law of inertia psychologically inhibits the human minds to overcome 'institutional fetishism'.[309] Such ideological vacuum fructifies into replication of the past or '*historical dependentia'* which limits the possibility of freedom from the very beginning. In this sense, the Constituent Assembly assumed the First Past the Post System as the only alternative in realizing representative justice in its democratic spirit. This supposition was premised on the experience of the past but not on the hope for the future.

Alternative Electoral Systems for a Substantive Representative Democracy

The Plan of One Nation One Election is being debated in India but this policy is not able to address the core challenges of Indian democracy, such as inclusive and responsible representation of the rich diversity of India. This statement is justified

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[305] Jonathan Sumption, *Id.*

[306] Jonathan Sumption, *Id.*

[307] Boaventura de Sousa Santos, TOWARD A NEW LEGAL COMMON SENSE: LAW, GLOBALIZATION, AND EMANCIPATION 458 (2002).

[308] John Meisel, *Political Culture and the Politics of Culture* 7(4) CANADIAN JOURNAL OF POLITICAL SCIENCE 601-615 (1974).

[309] Roberto Mangabeira Unger, WHAT SHOULD LEGAL ANALYSIS BECOME? 6-8 (1996).

vis-a-vis electoral data which suggest that the highest possible shares of vote cast in the Lok Sabha were received by the Congress party in 1984; it was 48% of the total votes cast in that election.[310] In the last two general elections (2019 and 2024), the Bharatiya Janata Party (BJP) has received 37.4% and 36.93% of the total votes cast, and the total shares of votes cast for the NDA were 44.85% and 43.63% respectively.[311] In 2024, the difference of vote shares between the NDA and INDIA blocks were only 6.63% but the difference of winning seats was 87.[312] The statistical analysis of the electoral results suggests that no political party has ever crossed the 50% of the votes cast in any general election since the beginning of the first Lok Sabha. Therefore, the majority of votes have remained under-represented, and all the governments in India since the first general election were formed by receiving less than 50% of the total votes cast. In this context, it is significant to explore the alternative electoral systems for inclusive representation of India as a union of diverse cultures and ways of life.

The First Past the Post system (FPTP) is appreciated for its simplicity, since the system enables the people to elect between the individual candidates, in this system, the winning candidate remains directly accountable to the people. It is also accepted as a viable system for a country where the majority of the people lack even basic minimum education. However, this system suffers from various problems, for example, it is used in manoeuvring identity politics. People often elect a candidate belonging to their caste or religion, and therefore, other crucial aspects, such as the agenda of good governance and equitable development, which are required to be taken seriously in a representative democracy, are usually ignored.

The second problem is related to the under-representation of the majority of citizens whose votes are not translated into the success of the candidate for whom they are voting, since the winning candidates often receive less than 50% votes to win an election. The third problem is that there is a disproportionate relationship between the percentage of votes received by a political party in the election and the conversion of winning seats as discussed earlier. Fourthly, the fact that the under-representation of many subaltern and marginalised communities in the system raises serious questions about the electoral system. The representation of a particular group on the basis of gender, caste, and religion may be measured as per the group identity of the winning candidates. Since, the group identity in India is very strong and people prefer to choose a representative belonging to their religion

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[310] E. Sridharan, *The Origins of the Electoral System: Rules, Representation, and Power-sharing in India's Democracy* in Zoya Hasan & E. Sridharan, *et.al., (eds.)*, INDIA'S LIVING CONSTITUTION: IDEAS, PRACTICES, CONTROVERSIES 347 (2002).

[311] Election Commission of India, *Election Results-Full Statistical Reports*, *available at*: https://www.eci.gov.in/statistical-reports (last visited March 2, 2025). *See also, Lok Sabha Results and Voting Trends*, THE HINDU, *available at*: https://www.thehindu.com/infographics/2024-04-24/lok-sabha-election-results/index.html (last visited March 2, 2025).

[312] Election Commission of India, *Id.*

or caste. It is also believed that such a representative will be a voice for that particular group, if he or she is elected as a Member of Parliament or Member of Legislative Assembly. In this context, it is necessary to measure the inclusion and representativeness of women and religious minorities in the Parliament as indicators to evaluate the functioning of the electoral system. Due to reservation of the seats for Scheduled Castes and Scheduled Tribes, their inclusion is guaranteed by the Constitution.

The representation of half of the citizens in the Lok Sabha may be measured in context of the percentage of women elected in the last two elections (17th and 18th Lok Sabhas) which is 14.4% and 13.6% respectively.[313] The religious minorities, such as Muslims were only 26 in the 17th Lok Sabha and 24 in the 18th Lok Sabha, which are much lower in proportion to their population. As per the data, no Muslim, Christian, or Sikh Member has been elected as a Member of Parliament from National Democratic Alliance in 18th Lok Sabha, while 'the analysis by political scientist Gilles Verniers reveals Muslims account for 7.9 percent, Sikhs for 5 percent and Christians for 3.5 percent of the 235 MPs of the INDIA bloc'.[314] Out of the total members of the Lok Sabha, only miniscule percentage of the members belong to the religious minorities. These data reveal the under-representative nature of the electoral system in India.

In this background, the necessity of innovating with the electoral system becomes an imminent necessity for Indian democracy. Other viable systems functioning in the various democratic polities, includes Proportional Representation System (PR), List System, Run-Off system, or mixed system. As per Britannica, 'proportional representation…seeks to create a representative body that reflects the overall distribution of public support for each political party'.[315] This system has been institutionalised in the various countries, such as 'Belgium, Denmark, Finland, Greece, Hungary, Israel, Italy, Luxembourg, Norway, Russia, Spain, Sweden, and Switzerland'.[316] As per Britannica, 'Unlike the plurality system (FPTP), which uses single-member districts, PR systems use multimember constituencies. Systematic methods of applying PR were first developed in the mid-19th century in Denmark by Carl Andrae and in Britain by Thomas Hare and John Stuart Mill.[317] Methods

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[313] PRS Legislative Research, *Vital Stats Profile of the 18th Lok Sabha*, *available at*: https://prsindia.org/files/parliament/vital_stats/Profile-18th_LS.pdf (last visited 3 March, 2025).

[314] Shanker Arnimesh, *NDA in 18th Lok Sabha is 'Minority-Mukt' with no Muslim, Christian or Sikh MPs*, THE PRINT (June 09, 2024 06:30 A.M. IST), available at: https://theprint.in/politics/nda-in-18th-lok-sabha-is-minority-mukt-with-no-muslim-christian-or-sikh-mps/2123008/ (last visited 3 March, 2025).

[315] Britannica Editors, *Proportional Representation*, ENCYCLOPEDIA BRITANNICA (Dec. 3, 2025), *available at*: https://www.britannica.com/topic/proportional-representation (last visited 3 December, 2025).

[316] Britannica Editors, *Id.*

[317] Britannica Editors, *Id.*

currently in use include the single-transferable-vote method (STV), the party-list system, and the additional-member system'.[318] The method of Single Transferable Vote necessitates that voters may rank the candidates as per their preferences on the ballot.[319] 'In the 1860s Henry Richmond Droop developed a quota (the so-called Droop quota) to determine the number of votes a candidate needed to capture to win an election under STV.[320] The quota is calculated by dividing the total number of valid votes cast by the number of seats to be filled plus one, and one is then added to the quotient'.[321] List System (LS) is a variant of the PR system which enables 'a method of voting for several electoral candidates, usually members of the same political party (or other political parties), with one mark of the ballot'.[322] It is widely used in several countries, including Italy, Germany, Benelux countries, and Switzerland.[323] In this system, electors are required 'to vote for one of several lists of candidates, usually prepared by the political parties. Each party is granted seats in proportion to the number of popular votes it receives'.[324] As per Britannica, 'seats are usually awarded to candidates in the order in which their names appear on the lists. Although ordinarily the LS forces the voters to cast their votes for parties rather than for individual candidates, a number of variations on the system permit voter preferences for individuals to be taken into account'.[325]

The Run-Off system is a variant of FPTP system, which necessitates a simple majority of the total votes cast, *i.e.*, more than 50% of the votes cast to win a constituency, and if no candidate crosses that threshold, in that case, a run-off election is conducted between the two candidates who have received the highest votes in the election to ensure that either of them is accepted by more than 50% of the votes cast in the subsequent run-off election.[326]

The FPTP system is appreciated for bringing a stable government but the system lacks to facilitate an all-inclusive representative government, while the PR system and LS are appreciated for their representativeness but, as believed, these systems are complex for a country suffering from massive illiteracy and electoral illiteracy in particular. Further the latter systems are considered not adequate to provide a

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[318] Britannica Editors, *Id.*

[319] Britannica Editors, *Single Transferable Vote*, ENCYCLOPEDIA BRITANNICA (23 June, 2025), *available at*: https://www.britannica.com/topic/single-transferable-vote (last visited 3 December, 2025).

[320] Britannica Editors, *Id.*

[321] Britannica Editors, *Id.*

[322] Britannica Editors, *List System*, ENCYCLOPEDIA BRITANNICA (20 January, 2015), *available at*: https://www.britannica.com/topic/list-system (last visited 3 December, 2025).

[323] Britannica Editors, *Id.*

[324] Britannica Editors, *List System*, ENCYCLOPEDIA BRITANNICA (20 January, 2015), *available at*: https://www.britannica.com/topic/list-system (last visited 3 December, 2025).

[325] Britannica Editors, *Id.*

[326] E. Sridharan, *The Origins of the Electoral System: Rules, Representation, and Power-sharing in India's Democracy* in Zoya Hasan & E. Sridharan, *et.al., (eds.)*, INDIA'S LIVING CONSTITUTION: IDEAS, PRACTICES, CONTROVERSIES 344-369 (2002).

stable government due to fragmentation of seats among the various political parties. In this bipolar electoral worldview, the hybridisation of the system can be experimented taking inspiration from Germany. India has though progressed in the indicator of literacy in comparison to 1947, therefore, the justification to continue with the FPTP system is no longer relevant, if the challenges related to stability of the government are fixed.

Germany adopted a 'Personalised Proportional Representation System'[327]: a combination of 'FPTP System' and 'List System', to address the concern of stability and representativeness. Under this system, two votes are cast, one vote is cast for a candidate who is going to represent the constituency and the second vote is given for a candidate provided in the list of political parties. This system ensures that the voters may be directly connected with the local representative who may be responsible to raise their concerns and challenges before the national forum (legislature/government) in policy making, and the second one, it guarantees the proportional representation of the party as per the total vote share received in the election. The second elected representative through a list system may be responsible to translate the ideological framework of the party into the national policy and he or she may ensure the protection and promotion of national interests. In Germany, the minimum requirement to get a PR seat is that a party must get at least 5% of the total votes received in the election or minimum the party win on at least three directly elected seats.[328]

The quest for an alternative election system has also been considered by the Election Commission of India, in its Report in 1977, which recommended a hybrid electoral system consisting of 50% seats to be allocated in proportion to the share of votes received by the political parties under the list system and 50% seats may be kept under FPTP system in which the candidates may be directly elected.[329] In the 170th Report of the Law Commission of India (1999), it was recommended to adopt a mixed system as it is prevalent in Germany.[330] As per the recommendation, 25% seats of the Lok Sabha or Vidhan Sabha may be increased, and these extra seats may be given to the political parties as per the proportionality of vote share received in the election. For the rest of the seats, the election may continue under the FPTP system. Each voter, as per the Commission, will be entitled to cast one vote in the

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[327] E. Sridharan, *Id. See also*, Ulrich Karpen, *Between Proportional and Majority Voting-The German Electoral System in Need of Reform* 103 AMICUS CURIAE 6-8 (2015).

[328] Ulrich Karpen, *Id.*, at 8.

[329] Government of India, 255TH REPORT OF LAW COMMISSION OF INDIA 86 (2015), *available at*: https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081635.pdf (last visited 4 January, 2025).

[330] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA ON REFORM OF THE ELECTORAL LAWS Part II, Chap. II (May, 1999). *See also*, TARKUNDE COMMITTEE REPORT ON ELECTORAL REFORMS (1974); The Committee also recommended the Mixed-System as a viable electoral system for India.

election of Vidhan Sabha and Lok Sabha and in proportion to the percentage of vote shares of the recognised political parties, they may get seats under the list system.[331] The minimum requirement to get the seats under the list system should be the threshold of 5% of the total valid votes cast in the election.[332] The Commission also recommended that the independent member should be barred from contesting the election for bringing stability in the formation of the government, otherwise the threshold fixed would be diluted by contesting and winning elections independently.[333]

These institutional configurations may encourage the pre-coalition fronts and may discourage the proliferation of small political parties, as suggested by the Commission.[334] The belief was based on the contemporary practices in India, of government formation which primarily relied on the coalition of the smaller parties. Such a political condition was proving hostile to the stability in the formation and sustenance of the government. Therefore, the Commission recommended that for the Lok Sabha, the entire country should be the territorial unit for getting the seats under the list system in proportion to the share of votes of the recognised political parties.[335] Under this system, the significant challenge may arise for the regional parties which may not cross the minimum threshold of 5% of the total votes cast.

The 255th Report of the Law Commission of India suggested that the alternative to the FPTP system may be only a hybrid system as adopted in Germany. However, the minimum threshold of 5% of the total valid votes cast in the election would be an obstacle for the regional parties. The Commission recommended that the immediate adoption of the hybrid system is not required unless the Government considers all the practical challenges to adopt any other viable system.[336] In order to bring stability in formation and sustenance of the government, the 170th Report of the Commission also proposed to adopt 'Constructive No Confidence Motion' as experimented in Germany under Article 67 of the Basic Law.[337] This mechanism may

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[331] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA, *id.*

[332] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA, *id.*

[333] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA, *id.*, at Part III, Chap. III.

[334] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA, *id.*, at Para 3.2.14

[335] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA, *id.*, at Paras 3.2.14 & 3.2.15

[336] Government of India, 255TH REPORT OF LAW COMMISSION OF INDIA (2015), Para 4.19.1;

('As the discussion above has demonstrated, both electoral systems come with their own merits and demerits-proportional representation theoretically being more representative, while the FPTP system being more stable. It is also clear, from the experience of other countries that any changes in India's electoral system will have to follow a hybrid pattern combining elements of both direct and indirect elections'); (Para 4.19.2 of the Report suggests, 'As a result, the Law Commission recommends that the findings of the 170th Law Commission Report on the proportional system may be examined by the Government to determine whether its proposals can be made workable in India at present').

[337] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA ON REFORM OF THE ELECTORAL LAWS Para 7.1.4 (May, 1999).

curtail the mid-term elections which were frequent in India due to coalition politics, defection of the members, and instability of the governments.

However, since the last decade in India, the coalition politics has provided stable governments across the states and Centre. Another key recommendation was to amend the anti-defection law and to give power to the President, in the Centre, and the Governor, in the state, to decide the question of disqualification of the members for defection from one to another party. But such powers should be exercised on the recommendation of the Election Commission of India, suggested by the 170th Report of the Law Commission.[338] It was also recommended to abolish the practices of split and merger of the political parties to prevent horse-trading,[339] the first one was abolished by the 91st Amendment Act, 2003. But the second one still persists in India which is one of the obstacles for ensuring a stable government.

In order to provide the stable as well as representative government in the Centre and States, the 170th Report of Law Commission of India, alternatively, proposed to continue with the FPTP system with a minimum threshold of 50%+1 votes for winning a constituency. In failure to achieve the threshold, a Run-Off election was recommended between the two candidates who received the highest number of votes.[340] Under these electoral configurations, no political party can only appeal to one caste or religious group to win the constituency at the cost of excluding others. The Commission recommended adopting negative voting to ensure that only good candidates should be given the tickets by the political parties, subject to the condition that certain logistical necessities, such as Electronic Voting Machines, are properly arranged to conduct the Run-Off election.[341] Under this system, the quest for stability and inclusive representativeness may be achieved in a mixture of FPTP system and Run-Off election. But the practical challenges to conduct the Run-Off election, and in case, no one crosses the minimum threshold in the Run-Off election, then further complications may arise to provide a stable government. Therefore, the Commission left the matter at the wisdom of the legislature to address these issues.[342] The proposal for a Run-Off system was also supported by the National Commission to Review the Working of the Constitution (NCRWC) on these two reasons; 'First, it would result in legislators who have a simple majority of the vote, thus resolving the problem of representative character. Second, 'it also makes it in the self-interest of various political parties to widen their appeal to the electorate'

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[338] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA (1999), *Op. Cit.*, at Para 1.3.3.1.

[339] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA, *Id.*

[340] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA, *Id.*, at Para 8.2.1; ('No doubt this method calls for a run-off and a fresh election in case no candidate obtains 50% or more votes even in the run-off, and in that sense expensive and elaborate, yet it has the merit of compelling the political parties to put forward only good candidates and to eschew bad characters and corrupt elements').

[341] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA, *Id.*, at Para 8.7.

[342] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA, *Id.*, at Para 8.9.

(Sridharan, 353). Its critical evaluation leads to the conclusion, in the words of E. Sridharan, that the run-off system 'actually reduces the menu of choice by forcing an artificial lumping of political options into two major alliances. The majority that it produces for the elected legislators is a *manufactured* (emphasis in original) one, in which vote-seat disproportionality is greater than under FPTP elections'.[343]

One of the recommendations of the Commission was to conduct the simultaneous election for the Lok Sabha and Vidhan Sabha in every fixed period of five years, for this purpose, the Electronic Voting Machines (EVM) and Voter Identity Card were considered as desirable necessities.[344] As per the 170th Report of the Commission, the initial goal was to conduct the simultaneous election in the Centre and States which was disrupted due to premature dissolution of *Vidhan Sabhas* and *Lok Sabha* since 1967.[345] The multiple elections, as per the Commission, are antithetical to the process of, what may be called 'economy of governance' and 'governance of economy'.[346] The frequent elections, in view of the Commission, also cause public disenchantment.[347] Therefore, necessary amendments in the Constitution and statutes are required to conduct simultaneous elections every five years for the *Lok Sabha* and *Vidhan Sabhas*. The contemporary policy of the government is in support of this configuration of election but ignoring the other structural challenges, such as an alternative electoral system for providing a balance between stability and representativeness which requires serious attention to achieve, what we call, 'electoral justice'.

Inner-Party Democracy, Accountability and People's Will

The foundational principles of democracy are not simply institutional but also attitudinal. The core of democracy belongs to the practical space of the individual, and groups of people, forms the ideological school of thought and the plan of actions, which is called a political party. The Indian Constitution does not provide a framework to create and regulate the political parties except a framework for anti-defection law was added in the X Schedule by the 52nd Amendment Act, 1985.[348] The registration of the political party, by the Election Commission of India, is governed by Section 29A of the Representation of the People Act, 1951. The Act requires that a political party may be registered, if it through its rules or memorandum agrees to have 'true faith and allegiance to the constitution of India as by Law established, and to the principles of socialism, secularism and democracy and would uphold the

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[343] E. Sridharan, *The Origins of the Electoral System: Rules, Representation, and Power Sharing in India's Democracy* in INDIA'S LIVING CONSTITUTION: IDEAS, PRACTICES AND CONTROVERSIES 353 (Zoya Hasan *et. el., eds.*, 2002).

[344] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA, *Id.*, at Para 7.2.2.

[345] *Id.*, at Para 7.2.1.

[346] *Id.*, at Para 7.1.3.

[347] *Id.*

[348] 52nd Amendment Act, 1985 to the Constitution of India.

sovereignty, unity and integrity of India'.[349] However, there is no mechanism for ensuring efficient compliances to such pledges made in the memorandum or rules of the party in its internal functioning after its registration. It remains declaratory or ideational in character. Election Symbols (Reservation and Allotment) Order, 1968[350] provided the conditions for the registered political parties for their recognition as national or state party or to get the benefits of the exclusive allotment of a symbol. But these laws or orders are not sufficient enough to institutionalise democracy inside the functioning of a political party. There is no specific legal provision in India which enables the Election Commission of India to deregister a political party on the ground of its undemocratic and unaccountable practices.

Unlike India, Germany introduced, in its Basic Law, the constitution and regulation of political parties with respect to their ideologies and practices. Article 21 of the Basic Law for the Federal Republic of Germany, 1949 provides:

> *'Article 21: Political parties*
> *(1) Political parties shall participate in the formation of the political will of the people. They may be freely established. Their internal organisation must conform to democratic principles. They must publicly account for their assets and for the sources and use of their funds.*
> *(2) Parties that, by reason of their aims or the behaviour of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional.*
> *(3) Parties that, by reason of their aims or the behaviour of their adherents, are oriented towards an undermining or abolition of the free democratic basic order or an endangerment of the existence of the Federal Republic of Germany shall be excluded from state financing. If such exclusion is determined, any favourable fiscal treatment of these parties and of payments made to those parties shall cease.*
> *(4) The Federal Constitutional Court shall rule on the question of unconstitutionality within the meaning of paragraph (2) of this Article and on exclusion from state financing within the meaning of paragraph (3)'.*[351]

The Constitutional mandate provided by the German Constitution is categorically explicit that the ideology of the political parties must 'conform to the democratic principles' in its internal functioning and must not endanger the 'free democratic basic order'. Since the political party is the basic unit of democracy which plays a significant role in the formation of political will, therefore, it cannot function in violation of democratic principles, and its accountability must be fixed as the basic pre-condition. The German Constitution mandates that ideologically or in its practices, if political parties 'abolish the free democratic basic order' or 'endanger the existence of the Federal Republic of Germany', then such parties may be declared by the Federal Constitutional Court of Germany as unconstitutional,[352] and also state financing to such parties may be excluded.

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[349] The Representation of the People Act, 1951, Section 29A.
[350] Election Symbols (Reservation and Allotment) Order, 1968.
[351] The Basic Law for the Federal Republic of Germany, 1949, Article 21.
[352] *Id.*, at Article 21(2).

But the most significant aspect of this Constitutional mandate is that it provides the basic principle and requires parties to conform the democratic principle inside and outside the political party and to be publicly accountable about its resources, assets, and use of funds.[353] Consequently, The Law of the Federal Republic of Germany on Political Parties, 1967 stipulates the basic provisions to institutionalise democratic principles inside the party. As per Article 2(1) of the Act, 'Political Party' is defined as 'associations of citizens which exert influence permanently or for longer periods of time on the formation of the political will at federal or Land level and participate in the representation of the people in the German Bundestag or regional parliaments (Landtag)'.[354] The law mandates that the party must have written statutes and programs. It provides that the executive committee of the political party must be elected at least in every second calendar year, the resolutions of the political party must be adopted by simple majority votes, and certain elections inside the party must be done by secret ballot, etc.[355]

Portugal's Organisation Law, 2003 as amended in 2008 also regulates the ideology and internal practices of the political parties. Article 8 of the Law regulates the ideology of the party and prohibits 'racist or display a fascist ideology'.[356] Article 5(1) of the Law prescribes that 'Political parties shall be governed by the principles of democratic organisation and management and of participation by all their members'.[357] Article 18 of the Law mandates for the 'judicial abolition' of a political party if its aims are racist in nature or it displays fascist ideology.[358] The party may also be abolished if it does not adhere to the requisite democratic practices and transparency in the internal management of the party.

Spanish law, to the contrary, focuses on the internal democracy within the party and does not regulate the intentions, aims, or ideology of the party. As per Section 6 of Spanish Constitution, 'Political parties are the expression of political pluralism, they contribute to the formation and expression of the will of the people and are an essential instrument for political participation. Their creation and the exercise of their activities are free in so far as they respect the Constitution and the law. *Their internal structure and their functioning must be democratic*' (emphasis supplied).[359] Article 6 of Spanish Organic Law prescribes that 'In their organisation, operation and activities, political parties shall adhere to the democratic principles and that established in the Constitution and the laws'.[360] Article 7(1) of the Organic Law mandates that 'The internal structure and operation of political parties must be

[353] *Id.*, at Article 21(1).
[354] The Law of the Federal Republic of Germany on Political Parties, 1967, Article 2(1).
[355] *See generally*, The Law of the Federal Republic of Germany on Political Parties, 1967.
[356] Portugal's Organisation Law, 2003, Article 8.
[357] *Id.*, at Article 5(1).
[358] Portugal's Organisation Law, 2003, Article 18.
[359] Spanish Constitution, 1978, Section 6.
[360] Organic Law on Political Parties, 2002, Article 6.

democratic'. Article 10 of the Organic Law provides that the political parties in Spain may be declared illegal, suspended, or may be dissolved if 'party continuously, repeatedly and seriously infringes the requirement of a democratic internal structure and operation', or 'the party's activity repeatedly and seriously breaches the democratic principles or endeavours to deteriorate or destroy the system of freedoms or disable or eliminate the democratic system'.[361]

As per the 170th Report of the Law Commission of India, a political party cannot function on the principle of 'dictatorship internally and democratic in its functioning outside'.[362] The Commission recommended adding a new part in the Representation of the People Act, 1951 for the organization and the regulations of the political parties. The Commission was of the opinion that every political party in India must establish a constitution, stipulating the objectives of the party and it must ensure that the executive committee of the party must be constituted following the democratic principles for a maximum period of three years.[363] All the important resolutions of the political parties must be passed by the votes of simple majority using a secret ballot.[364] In its 255th Report, the Law Commission of India, recommended that the party in its memorandum must provide a provision to shun violence and to avoid discrimination merely on the ground of creed, race, caste, gender, language, or residence.[365] The Commission recommended that there must be a constitution of the party to stipulate the procedures for admission in the party or expulsion from the party and it must provide the constitution and powers of the executive committee.[366] The Commission reiterated the view of the 170th Report of the Law Commission, to bring the inner-party democracy by institutionalization of election by a secret ballot within the party, and the organisation of periodic elections for the committees under the supervision of observers nominated by the Election Commission of India, etc.[367]

Further, the Commission recommended that the Executive Committee shall select the candidates for the Parliament and State Legislative Assemblies while considering the resolutions and recommendations of the local units of the party.[368] Most importantly, the 255th Report also advocated to empower the Election Commission of India not to regulate the ideology of the party but to supervise the practices of the party in accordance with the established statutory laws and to

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[361] Organic Law on Political Parties, 2002, Article 7(1).

[362] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA ON REFORM OF THE ELECTORAL LAWS Para 3.1.2.1 (May, 1999).

[363] *Id.*, at Para 3.1.3.1

[364] *Id.*

[365] Government of India, 255TH REPORT OF LAW COMMISSION OF INDIA ON REFORM OF THE ELECTORAL LAWS Para 3.17.4 (2015).

[366] *Id.*

[367] *Id.*

[368] Government of India, 255TH REPORT OF LAW COMMISSION OF INDIA ON REFORM OF THE ELECTORAL LAWS Para 3.17.4. (2015).

deregister them in case of persistent violations of law.[369] The regulation of ideology of the political parties is unsuitable for a country like India which has immense diversities of life-worlds and its secular character fosters fundamental freedoms and pluralism. In the 170th Report, the Commission also recommended that the whip should not be issued against the members of the party, unless their vote might affect the continuation of the government.[370] The plurality of opinions, in the political party, must be respected to ensure ideological progressiveness. The issuance of whip is justified to maintain the party discipline; however, it affects the possibility of internal democracy within the party, and the culture of hierarchy and subordination moulds the opinions of the members to conform to the leaders in the high command of the party. Hence, there must be inner-party freedoms for the leaders to express their voices at the forum of the party and in the public domain to ensure the progressive developments of its core ideological principles and practices.

Apart from inner-party democracy, it is also crucial to bring political parties under the umbrella of Right to Information Act, 2005 to make them accountable, not only in their functioning as parties but also for their financial transparency. Notably, the Central Information Commission (CIC) in its judgment in *Subhash Chandra Agarwal* v. *Indian National Congress* (2013) held the six leading political parties as 'public authority' under the Act, therefore, they are under an obligation to provide information under the Right to Information Act (RTI), 2005 to the citizens of India.[371]

However, the question, whether all political parties are public authorities within the ambit of RTI, is pending before the Supreme Court of India for the conclusive determination which requires urgent judicial attention. In this Petition, the Petitioners, Association for Democratic Reforms (ADR) and lawyer Ashwini Upadhyay, are arguing that since the political parties are the beneficiaries of indirect State funding, such as, tax exemption, land allotment, and free airtime, and they are performing the public functions to form the government or they play a key role as opposition to check the powers of the government, therefore, they must be construed as 'public authorities' under Section 2(h) of the Right to Information Act, 2005 to make them publicly accountable.[372] However, the matter is still pending before the Apex Court, and meanwhile, the judgment of the Central Information Commission has not been implemented by any political party in India. Notably, the Supreme Court has played a significant role in expounding the 'Right to Know' as an essential component of the Right to Freedom of Speech and Expression in many

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[369] *Id.*

[370] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA ON REFORM OF THE ELECTORAL LAWS Para 3.4.2 (May, 1999).

[371] *Subhash Chandra Agarwal* v. *Indian National Congress* (AIR 2013 CIC).

[372] PTI, *Supreme Court Defers Hearing on PILs Seeking to Bring Major Political Parties under RTI*, THE HINDU (May 08, 2025 04:21 pm IST - New Delhi), *available at*: https://www.thehindu.com/news/national/supreme-court-defers-hearing-on-pils-seeking-to-bring-major-political-parties-under-rti/article69552569.ece (last visited 08 May, 2025).

of its judgments, such as *State of Uttar Pradesh* v. *Raj Narain*.[373] In *Union of India* v. *Association for Democratic Reforms*,[374] the Supreme Court of India held that the electors have a right to know about the particulars of the contesting candidates who are going to hold the public offices. The Court held 'right to be informed' as one of the facets of the freedom of speech and expression. This decision paved the way for the necessary disclosures of antecedents related to crime, assets declaration, and educational qualifications of the candidates as mandatory requirements for contesting elections.[375] Therefore, in order to fix the public accountability of the political parties in India, their inclusion under the RTI Act, 2005 as public authorities would be crucial to usher transparency vis-a-vis their functioning, accumulation of assets, receipt of funds, and expenditures.

Financial Transparency of the Political Party

The Law Commission of India, in its 170th Report, recommended that there should be financial transparency of the parties with respect to its assets, funding, and expenditure, and may be required annual auditing and its disclosures to the Election Commission of India for perusal and publication.[376] The lack of transparency and public accountability of the political parties raises the suspicion about the connection between the financers of the parties and the policy benefits which may be granted to them, if that political party forms the government. This relationship may be understood as a facet of crony-capitalism. As per Merriam Webster, 'Crony-Capitalism' is 'an economic system in which individuals and businesses with political connections and influence are favoured (as through tax breaks, grants, and other forms of government assistance) in ways seen as suppressing open competition in a free market'.[377] To tackle such possibilities in a democratic republic like India, financial transparency is key to establish the public trust in the functioning of democracy. The possibility of financial transparency in the political parties necessitates that the Election Commission of India (ECI) must be empowered to take cognizance either *suo motu* or upon the receiving of the information, to impose penalty on the party in violations of legal mandate for the financial transparency, and in case of persistent violations, the ECI must be authorised to deregister the party. These recommendations were given in the 170th and 255th Reports by the Law Commissions of India.[378]

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[373] *State of Uttar Pradesh* v. *Raj Narain*, (1975) 4 SCC 428.

[374] *Union of India* v. *Association for Democratic Reforms*, (2002) 5 SCC 294.

[375] *Id.*

[376] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA ON REFORM OF THE ELECTORAL LAWS Para 1.3.4.1 (May, 1999).

[377] MERRIAM-WEBSTER, *available at*: https://www.merriam-webster.com/dictionary/crony%20capitalism (last visited 05 March, 2025).

[378] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA ON REFORM (1999), *Op. Cit.*, at Para 9.16.

Such policy measures may tackle the problem of black money channelised in the elections and may also enable for accountable and transparent electoral funding. The Commission referred to the Inderjit Gupta Committee's recommendation for the partial State funding, subject to the condition that the political parties should internally regulate themselves and adopt the necessary measures for the financial transparency.[379] The 170th Report of the Commission and the National Commission to Review the Working of the Constitution (NCRWC) were sceptical about the exclusive reliance on the State funding in the elections which might open a new channel of the funding for the political parties at the cost of public exchequer and the undemocratic practices within the party and non-transparent receipt and management of funds in the elections might continue.[380] The Law Commission mentioned, in its 255th Report, the Dinesh Goswami Committee Report on Electoral Reforms, 1990,[381] which floated the idea of partial State funding in India for the political parties, not in cash but in kind, and reiterated the view proposed by the 170th Report of the Law Commission in favour of financial transparency of the political parties, and curbing the black money used in the elections.[382]

It is a well-accepted fact that the economic status of a party has a significant impact on the possibility of winning or losing an election. The issue is further exacerbated with respect to channelization of black money in elections or undisclosed electoral funding by the corporations to gain advantages in the policies of the government. The Law Commission proposed the amendment in Section 182(1) of the Companies Act, 2013 to mandate that all corporate donations must be sanctioned in the Annual General Meeting of the Company instead of the Board of Directors for the approval of the shareholders and accountable corporate funding.[383]

One of the key challenges of the Indian legal framework, contrary to the United Kingdom, is that it only limits the expenditures of a candidate in election and does not apply such limitation for a political party. Such limitation for the candidates is not enforced effectively due to under-reporting by the candidates in India. In the United Kingdom, the candidates and parties have the maximum limits of expenditure fixed by law.[384] As per the recommendations of the Law Commission, there is a possibility of under-reporting of the expenditures by the political parties as well, therefore, India should not limit the expenditures of the parties rather the policy of financial transparency would be a better option to establish a level-playing

[379] Government of India, 255TH REPORT OF LAW COMMISSION OF INDIA ON REFORM OF THE ELECTORAL LAWS Para 2.29.6 (2015).
[380] Government of India, 255TH REPORT OF LAW COMMISSION OF INDIA ON REFORM OF THE ELECTORAL LAWS Para 9.17 (2015).
[381] *Id.*, at Para 2.29.4.
[382] *Id.*, at Para 2.30.1.
[383] *Id.*, at Para 2.31.
[384] *Id.*, at Para 2.29.10.

field in the elections.[385] The Commission through data established that 75% of the funding of the political parties are anonymous in India due to the disclosure threshold of 20,000 Rupees under Section 29C of the Representation of the People Act, 1951 which is easily evaded by small donations given multiple times.[386] Therefore, the Commission proposed the mandatory auditing of annual accounts of the all-recognised parties in India and compulsory disclosure in public and before the Election Commission of India. The Commission was of the opinion that the anonymous funding of a party must be limited to 20% of the total funding or 20 Crore Rupees whichever is lesser.[387]

The government through Section 137 of the Finance Act, 2017 brought proviso under Section 29C of the RPA, 1951 which abolished the requirement of reporting the contribution in excess of 20,000 Rupees, if such contribution is made by purchasing the electoral bonds in favor of political parties.[388] The Finance Act, 2016 amended the definition of 'foreign source' under the Foreign Contribution Regulation Act, 2010, permitting the foreign companies as majority shareholders in the Indian Companies for the donations to the political parties.[389] Arun Jaitley, then the Finance Minister, introduced the scheme of Electoral Bond in the speech for the Union Budget (2017-2018).[390] He justified the scheme on the ground of 'reluctance in donating by cheque or other transparent methods' and protection of the contributors' identity for avoiding the other adverse effects.[391] To implement the scheme, the amendment was introduced in the Reserve Bank of India Act, 1934 for the authorization of 'any scheduled bank to issue electoral bonds'.[392] The Income Tax Act, 1961 was amended to exempt the political parties from preparing a report of contributions made through electoral bonds.[393] The Representation of the People Act, 1951 was also amended exempting the political parties to publish the details of contribution made through electoral bonds in their contribution reports, and the most importantly, the upper limit of the corporate donation and the obligation to show the breakup of donation to various political parties were abolished through amendment brought in the Companies Act, 2013.[394]

The scheme was implemented in 2018 by the Union Government which was challenged before the Supreme Court of India by various Petitioners in *Association*

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[385] *Id.*, at Para 2.28.3.
[386] *Id.*, at Para 2.27.4.
[387] *Id.*, at Para 2.27.4.
[388] *See*, SUPREME COURT OBSERVER, *available at*: https://www.scobserver.in/journal/a-complete-timeline-of-the-electoral-bond-scheme/ (last visited 05 May, 2025).
[389] *Id.*
[390] *See*, SUPREME COURT OBSERVER, *available at*: https://www.scobserver.in/journal/a-complete-timeline-of-the-electoral-bond-scheme/ (last visited 05 May, 2025).
[391] *Id.*
[392] *Id.*
[393] *Id.*
[394] *Id.*

of Democratic Reforms v. *Union of India* (2024).[395] The Petitioners argued before the Court that the scheme of electoral bond has 'opened doors to unlimited political donations, even from foreign companies and thereby legitimising 'electoral corruption' at a huge scale, while at the same time ensuring complete non transparency in political funding'.[396] The five judges Bench of the Supreme Court of India unanimously struck down the electoral bond scheme and held it violative of the voters' Right to Information under Article 19(1)(a) of the Indian Constitution. The Apex Court conclusively finds, 'Information about funding to a political party is essential for a voter to exercise their freedom to vote in an effective manner'.[397] The Court was of the considered opinion that 'the Scheme is not fool-proof. There are sufficient gaps in the Scheme which enable political parties to know the particulars of the contributions made to them'. The Supreme Court was also sceptical about the unlimited corporate funding and its ramifications over free and fair elections as well as just and fair governance.[398] The judgment has paved the way for a greater transparency in the electoral funding to enable an accountable culture of law and governance in the country. Recently, a Public Interest Litigation has been filed by Khem Singh Bhati before the Supreme Court of India to scrutinise Section 13A(d) of the Income Tax Act, 1961 which allows the exemption of the political parties to disclose the identity of the cash donors up to 2000 Rupees.[399] This provision is misused by the donors, as argued by the Petitioner, by splitting the larger amount of donations into the smaller ones. The Petitioner in its petition is relying on the ratio of Electoral Bond judgment and asking to establish complete transparency in funding to the political parties. This Petition would be another opportunity to institutionalise a transparent accountable system of governance for the political parties in India. These electoral changes are required in realising electoral justice, and consequently, political justice in India.

Criminalisation of Politics in India

Criminalisation of politics is one of the biggest challenges for Indian democracy. Strangely, contrary to the assumed relationship of literacy and the maturity of politics, the improvement of literacy rate in India is not translating into clean politics. One of the reasons may be hypothesised that the political parties in India are preferring to field candidates as per the winnability and the people having the unclean hands with respect to corruption and criminal records enjoy more political

[395] *Association for Democratic Reforms* v. *Union of India*, 2024 INSC 113.

[396] *See*, SUPREME COURT OBSERVER, *available at*: https://www.scobserver.in/journal/a-complete-timeline-of-the-electoral-bond-scheme/ (last visited 05 May, 2025).

[397] *Id.*

[398] *Id.*

[399] Krishnadas Rajagopal, *Supreme Court to Hear Plea to Stop Cash Donations to Political Parties*, THE HINDU (November 25, 2025 02:27 A.M. IST), *available at*: https://www.thehindu.com/news/national/supreme-court-to-examine-plea-to-stop-cash-donations-even-upto-2000-to-political-parties/article70317157.ece (last visited 25 Nov., 2025).

powers and privileges in terms of economic and human resources, therefore, such people are preferred in the distribution of tickets by all the political parties. As per the data provided by Association for Democratic Reforms (ADR), the 17th Lok Sabha constituted in 2019 had 233 Members of Parliament (MPs) facing criminal charges and the 18th Lok Sabha has 251 Members of Parliament facing criminal charges, i.e., 43% and 46% of the total strength of the Lok Sabha respectively.[400]

Article 102(e) of the Indian Constitution provides the powers to disqualify 'for being chosen as, and for being, a member of either House of Parliament if he is so disqualified by or under any law made by Parliament'.[401] A similar provision is prescribed under Article 191(e) of the Indian Constitution with respect to the Members of Legislative Assembly (MLAs).[402] In view of these Constitutional provisions, the Indian Parliament passed the Representation of the People Act, 1951. Section 8 of the Act provides the powers and conditions for such disqualification on the conviction for the certain offences. However, Section 8(4) of the R.P. Act, 1951 was enacted to protect the existing convicted Members of Parliament and Members of Legislative Assemblies. As per Section 8(4) of the Act, 'Notwithstanding anything [in sub-section (1), sub-section (2) or sub-section (3)] a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court'.[403]

This legal provision was abused as a 'protective umbrella' by the convicted MPs and MLAs from the disqualification, since the filing an appeal or an application for revision against the conviction or the sentence was sufficient enough to continue in the office as legislature. Section 8(4) of the R.P. Act, 1951 was under the Constitutional scrutiny in *Lily Thomas* v. *Union of India*[404] (2013), decided by a division bench of the Supreme Court of India. Justices A.K. Patnaik and Sudhansu Jyoti Mukhopadhaya found the said provision as ultra vires the Constitution. The Court held:

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[400] PTI, *43% newly-elected Lok Sabha MPs have criminal record: ADR*, THE HINDU (May 26, 2019 05:19 P.M. IST - New Delhi), *available at*: https://www.thehindu.com/elections/lok-sabha-2019/43-newly-elected-lok-sabha-mps-have-criminal-record-adr/article27253649.ece (last visited 5 March, 2025); Mukesh Ranjan, *Record 46% of newly-elected Lok Sabha MPs facing criminal cases: Study*, THE NEW INDIAN EXPRESS (June 06, 2024, 1:44 P.M.), *available at*: https://www.newindianexpress.com/nation/2024/Jun/06/record-46-of-newly-elected-lok-sabha-mps-facing-criminal-cases-study (last visited 5 March, 2025).

[401] The Constitution of India, 1950, Article 102(e).

[402] The Constitution of India, 1950, Article 191(e).

[403] The Representation of the People Act, 1951, Section 8(4).

[404] *Lily Thomas* v. *Union of India*, (2013) 7 SCC 653; INDIANKANOON, *available at*: https://indiankanoon.org/doc/63158859/ (last visited 06 March, 2025).

'The provisions of Article 101(3)(a) and 190(3)(a) of the Constitution expressly prohibit Parliament to defer the date from which the disqualification will come into effect in case of a sitting member of Parliament or a State Legislature. We also hold that Parliament, therefore, has exceeded its powers conferred by the Constitution in enacting sub-section (4) of Section 8 of the Act and accordingly sub-section (4) of Section 8 of the Act is ultra vires the Constitution'.[405] The judgment was supposed to be instrumental in checking the criminalisation of Indian politics, notably, there are a few political leaders convicted and consequently disqualified from the membership of a legislative body and for the further possible candidature in the election, but a few examples cannot be treated as a success story for the decriminalisation of Indian politics. The recent statistical pattern indicates the deviation of Indian politics from the righteous path of service, what Mahatma Gandhi professed and practiced as *suraj* and *swaraj*, to the instrumentalised 'politics of service' or 'living from politics' in Weberian sense.[406] To address the challenges of the criminalisation of Indian politics, the 170th Law Commission of India recommended to disqualify a member of legislative body for five years or till the acquittal, whichever is earlier, from the date of 'framing of charges' by a Court for serious offences punishable by death, life imprisonment, or offences related to election.[407] The Commission also recommended enhancing the punishments related to electoral offences under, then, the Indian Penal Code, 1860 and the Representation of the People Act, 1951.[408] However, these recommendations are not accepted due to the reason that the political party in power may abuse such laws to implicate the leaders in opposition on the false charges of the offences. Perhaps, the best solution to this problem is, what Max Weber calls, the acceptance of 'ethic of conviction' and 'ethic of responsibility' in politics. The first one might be a *synthetic a priori* in Kantian sense for the possibility of the latter. In absence of the first one, the second one is relegated to a rootless inclination towards cultivated and imitative desires.

The core challenges in Indian politics cannot be addressed only by economic rationality followed in the discourses for the One Nation One Election. These electoral challenges might be the seed having immense potentiality for a paradigmatic shift towards electoral justice, and consequently, political justice in India, if mature deliberations are allowed beyond the spectacles of electronic and so-called social media, and the solutions are contemplated transcending the blindness of immediacy. The core challenge for the electoral justice is not exclusively the interest of efficiency but the basic deontological values based on the purity of

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[405] INDIANKANOON, *Id.*, Para 20.

[406] See generally, Max Weber, THE VOCATION LECTURES (David Owen *ed.*, Rodney Livingstone *trans.*, 2004).

[407] Government of India, 170TH REPORT OF LAW COMMISSION OF INDIA ON REFORM OF THE ELECTORAL LAWS Para (May, 1999).

[408] *Id.*

means to progressively realise the fundamental postulates enshrined in the Preamble of Indian Constitution. If the core challenges for the electoral justice are addressed, such as, balancing of the stability of government and its inclusive representativeness, democratization of the political parties and within the political parties, the public accountability of the parties and transparency with respect to receipt and use of funds in the elections, the challenges vis-a-vis identity politics of religion and caste, the invisible corruption of the souls and minds in the service of self-interests, etc., then the policy of One Nation One Election would be redundant.

VII

Conclusion

India is a country encompassing immense plurality of cultures and political expressions. Its rich diversities are enabled and preserved by the fundamental principles of the Indian Constitution. The basic structure of Indian social order and political structure necessitates the delicate balancing between the uniformal urge of the positive law and peculiar expressions and vibrations of life-worlds blossoming in the soul of India. If more weightage is given to uniformalize, positivize, and rationalize the living cultures, then it may affect the diversity of musical and cultural expressions of life, the plurality of political actions and manifestations of freedoms. The 'idea of One' in a sense of expressing the unity is appreciated but once it becomes the veridiction (the ultimate standard to verify and falsify the truth and practical action), then the possibility of organic dynamism of society and polity is ossified and arrested. Once the iron-cage of rationalization and positivization controls the process of open and transparent communication, then the musical vibrations of social life lose its sublime touch with nature, and they are mechanised to conform the objective of One Truth and One Value; what else has replaced the religious archetype of the God in the modern world if not the conformity to the productive activities, the efficient management of the people as resources.

The history of reason is a progression from the self-mastery through moderation to the perpetual management of human beings as dividual data, whose creation, deletion, and manipulation are the spirit of Information Age. The idea of reason, earlier it was believed that it was supposed to be internal to the human beings, however, it was eclipsed by the Constitutional Reason as the 'One standard of Truth and Value', externalised in the early Modern Age. The Constitutional Reason is the manifestation of the humans' inability to recognize and trust the inherent reason and dignity, and therefore, the external stimulations cause their thoughts and actions to follow constantly one pattern after another. The language of uniformity is the basic framework of the modern human life, since the 'art of freedom to be' is controlled by the economic rationality of efficiency. The art of governing people, in sense of governmentality, is to let them govern themselves as per the conformity to

economic and entrepreneurial thinking and actions. In this context, the economy of life or life of economy is the religious values for the modern self which organises and delimits the practices of statecraft and arts of governance. The plan of One Nation One Election, in this sense, is the brainchild of economic rationality which disregards the other fundamental values, such as the principles of dialogical democracy and federalism as bond of trust between the Union and States. To treat the latter as mere appendage to the Union may violate the Constitutional trust bestowed by the founders of the Indian Constitution.

Instead of contemplating and deliberating about One Nation One Election, the central project for our nation must be to address the structural challenges to realise the electoral justice, and to incrementally achieve the possibilities of substantive and transformative political justice. Firstly, India is required to rethink the alternative electoral systems to achieve the objectives of stability of the government and to make it more representative and inclusive, so that the ideals of the representative democracy can be actualised into the reality. Second, it is paradoxical to think that undemocratic practices in the process of registration and functioning of political parties may be translated into the democratic practices when they form the government. Therefore, inner-democratization of the political parties is *sine qua none* to achieve the substantive potentials of the Indian democracy. Third, the ethics of responsibility and accountability are the twin sisters of good governance. Since, the political party is the basic unit for 'will formation' in India, therefore, it must be accountable and transparent in its internal governance and functioning, so that the democratic practices of political parties may translate into the actualisation of transformative democracy, in a sense, of the people, for the people, and by the people. Fourth, the problem of corruption and criminalisation of politics are required to be addressed structurally keeping in mind the recommendations of Law Commission of India and the best practices adopted in the globe, so that Indian democracy may be strengthened. There is little doubt to argue that democracy is not simply a mechanised institution whose installation is enough to sustain it. Democracy is an attitude which is required to be blossomed from within (poesis).