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'ONE NATION ONE ELECTION': A Juridical Critique of the Constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024

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‘ONE NATION ONE ELECTION’: A juridical critique of the Constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024

Virendra Kumar*

[Abstract: *This critique attempts to provide a rounded view of holding simultaneous elections of the Lok Sabha with State Legislative Assemblies as envisaged under the Constitution 129th Amending Bill of 2024 and the Union Territories Laws (Amendment) Bill of 2024. This has been done by taking note of the concerns expressed by various stakeholders before the ongoing Joint Parliamentary Committee about the salient features of the Amending Bills. In particular, it has responded to three contentious issues of core constitutional concern. One, whether holding of simultaneous elections in anyway tempers or dilutes the federal character of our Constitution? Two, whether the provisions of Amending Bills violate the Basic Structure Doctrine (BSD) of the Constitution? Three, whether the power given to the Chief Election Commissioner (CEC) to make recommendations to the President that the elections to any Legislative Assembly cannot be conducted along with the general election to the House of the People is unwarranted in the constitutional scheme of things? In addition to these three issues of major concern, this critique also includes within its fold a fourth category of minor ‘leftover lingering issues’ and thereby help in removing ambiguities in comprehending the statutory text of the Amending Bills. In conclusion, the critique hails the Amending Bills as the consciously contemplated constitutional attempt to return to the practice of the principle of ‘One Nation, One Election’ and thereby ‘assuring the dignity of the individual and the unity and integrity of the Nation!’*]

* LL.M., S.J.D. (Toronto, Canada) Professor Emeritus in Law [Founding Director (Academics), Chandigarh Judicial Academy; Formerly: Chairman, Department of Laws; Dean, Faculty of Law; Fellow, Panjab University & UGC Emeritus Fellow]. The author is beholden to Professor (Dr.) Chanchal Kumar Singh, Director of the Centre for Comparative Philosophy and Law, Himachal Pradesh National Law University, Shimla, India, for persuading him to do a critique of the Constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024, and share the same with the faculty and students of the NLU, which he did on April 29, 2025. Following thereafter, Professor Singh desired him to put his critique in publishable form for their journal Shimla Law Review with a view to present a rounded view of the Amending Bills of 2024.

I

Introduction

What is genesis of the expression, colloquially called, 'One Nation One Election'? Most seemingly, the current usage of the expression, 'One Nation One Election,' may legitimately be traced to the proposal of holding the simultaneous elections to the House of the People and all Legislative Assemblies as envisaged under the Constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024. However, there is one intervening expository question for overcoming the element of surprise and inquisitiveness: Is the proposal of holding simultaneous elections to the House of the People and the State Legislative Assemblies as envisaged under the amending Bill a new one, which was not in vogue earlier? That does not seem to be right to say. In fact, we began our democratic journey of 'One Nation, One Election' at the very threshold of our constitutional governance by holding the first general election to Lok Sabha in the year 1951-52, by simultaneously holding elections in all State Legislative Assemblies in India.[1] Thereafter, there was perpetuity of the practice of the principle of 'One Nation, One Election'. That is, initiated in 1951-52, we continued to follow the practice of holding simultaneous elections, as a guiding principle, in succeeding block-years of 1957-1962, 1962-1967 and 1967-1972.[2]

Why did we discontinue the practice of the principle of 'One Nation, One Election' after 1967? What were the reasons of its discontinuity? The reasons are not far to seek. It was the premature dissolution of some State Legislative Assemblies in 1968 and 1969, and also that of Lok Sabha in 1970 without completing the full term of 5 years, which resulted in holding general elections in 1971. This discordant deviation resulted in disrupting the whole cycle of simultaneous elections.[3] The Constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024 is the consciously contemplated constitutional attempt to return to the practice of the principle of 'One Nation, One Election'!

II

Genesis of the Constitution Amendment Bill of 2024

It is essentially based upon the recommendations made by the High Level Committee (HLC) constituted by the Government of India under the Chairmanship

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1 See, 'Statement of Objects and Reasons,' which is an elaborative Statement appended to the 129th Amendment Bill, 2024 (Bill No. 275 of 2024). Hereinafter, 'Statement of Objects and Reasons'.

2 The 5-year term in the block year of 1967-72 was broken by premature dissolution of Lok Sabha in 1971.

3 'Statement of Objects and Reasons' in the *Amending Bill* 2024.

of Ram Nath Kovind, former President of India, on 2nd September, 2023.[4] The mandate of the Kovind-Committee was 'to examine the issue of simultaneous elections and make recommendations for holding simultaneous elections in the country.'[5] 'After due deliberation and examination of all the material available on record and the consultations held on the subject, the Kovind-Committee submitted its recommendations to the Hon'ble President on 14th March, 2024.'[6] The Government instantly accepted the recommendations of the HLC and for their implementation set in motion the Constitution (One Hundred and Twenty-ninth Amendment) Bill, 2024.[7] Accordingly, the Bill, for due implementation of One Nation One Election, was introduced in Lok Sabha on December 17, 2024. The central concern of the Kovind Committee's recommendations is abstracted as under: at its core, 'One Nation One Election' proposes that India, a country with multiple State and general elections scattered across years, should synchronize its electoral cycle so that election to the Lok Sabha (the lower House of Parliament) and all State Legislative Assemblies are held simultaneously.

III

Strategic Approach of the 129th Amendment Bill for Holding 'Simultaneous Elections' in the Country

The strategy for holding 'simultaneous elections' connotatively implies the holding of 'general elections' for constituting the House of the People and all the Legislative Assemblies together.[8] This is, indeed, a dual constitutional strategy of, what we may crisply and concisely call, '*the strategy of restoration and sustenance*.' It works in the first instance by reverting to phenomenon of simultaneous elections as existed from the year 1951-52 to 1967, and then sustaining the same by arresting the tempt of deviant departure from *simultaneity* through the introduction of various constitutional constructs. These constructs are crystalized through the coining of such terms and expressions, bearing special and specific meanings, as *'full term'*,

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4 The other members of the Kovind-committee were Home Minister Amit Shah, former Rajya Sabha Leader of Opposition Ghulam Nabi Azad, former Lok Sabha secretary general Dr. Subhash C. Kashyap, former chairman of the 15th Finance Commission N.K. Singh, senior advocate Harish Salve, and former Chief Vigilance Commissioner Sanjay Kothari.

5 See, 'Statement of Objects and Reasons' in the *Amending Bill* 2024, paras 3 and 4.

6 *Id.*

7 See, *Id.*

8 This strategy is compendiously reflected through the insertion of new Article 82A, new clauses (3) to (7) after the existing Clause (2) of Article 83, and Clause (1A) after Clause (1), and Clauses (3)-(5) after Clause (2) of Article 172 of the Constitution. Apart from these insertions, the words 'conduct of simultaneous elections' shall also be added after the words 'delimitation of constituencies' in Article 327 of the Constitution. See, Article 82A (4) of the Constitution inserted vide Section 2 of the Amending Bill of 2024.

'general elections', 'mid-term elections', 'unexpired period', etc. All these work as constitutional contrivances to ensure continuity of simultaneity. These strategies may be identified and expounded as under:

A. First constitutional strategy:

This is to initiate the process of holding 'simultaneous elections.' That is, how to make the term of the State Legislative Assemblies fall in line or become co-terminus with the 'full term' of the House of the People in the first instance by breaking the inertia of prevailing practice of holding separate elections to various legislative assemblies? In other words, how to begin from the very beginning in the venture of holding simultaneous elections; that is holding 'general elections' for constituting the House of the People and all the Legislative Assemblies together?

The break-through in the prevailing practice of incongruency is made under the Amending Bill by expressly providing through the newly inserted 82A[9] stipulating that 'Notwithstanding anything in article 83[10] and article 172,[11] the term of all Legislative Assemblies constituted in any general election held after the appointed date[12] and before the expiry of the full term of the House of the People shall come to

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[9] The new article 82A is placed after article 82 of the Constitution, which is inserted vide Section 2 of Amending Bill of 2024.

[10] Article 83 of the Constitution provides for the duration of Houses of Parliament. It is specifically provided that the Council of States 'shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law;' whereas the normal life of the House of People, 'unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House: Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.' See, Clauses (1) and (2) of article 83 of the Constitution, as amended.

[11] Article 172 of the Constitution provides for the duration of State Legislatures. It is specifically stipulated that 'every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly: Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.' However, the Legislative Council of a State 'shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.' See Clauses (1) and (2) of article 172, as amended.

[12] The 'appointed date' refers the date on which the President may issue public notification after the first sitting of the House of the People after general election, signifying the date of bringing into force the provision of new article 82A.

an end on the expiry of the full term of the House of the People.'[13] What does it imply?

This implies that, to begin with, the full five-year term of State Legislative Assemblies (even if it is still incomplete) is only relative to the completion of five-year full term of the House of the People, and not independent of it, and, this is how the process of holding simultaneous elections is to be initiated.

B. Second constitutional strategy:

After making the terms of State Legislative Assemblies coterminous with that of the House of the People, the Election Commission of India (ECI), 'Notwithstanding anything in this Constitution or any law for the time being in force, and before the expiry of the full term of the House of the People,' is empowered to conduct general elections to both the House of the People and all Legislative Assemblies simultaneously,[14] by causing the requisite modifications in the provisions of Part XV, needed for holding such simultaneous elections.[15]

C. Third constitutional strategy:

This relates to accommodating deviant legislative assembly by bringing it back within the fold of 'simultaneous elections' through three-step constitutional measures as envisaged under the newly inserted 82A:

i. *First step constitutional measure:* If the Election Commission is of the opinion that the elections to any Legislative Assembly cannot be conducted along with the general election to the House of the People, it may make a recommendation to the President, to declare by an order, that the election to that Legislative Assembly may be conducted at a later date.[16]
ii. *Second step constitutional measure:* Where the elections to a Legislative Assembly is deferred under the preceding paragraph, then, notwithstanding anything in Article 172, the full term of the Legislative Assembly shall end on same date as the end of the full term of the House of the People constituted in the general election.[17]
iii. *Third step constitutional measure:* The Election Commission shall at the time of notifying the election to a Legislative Assembly under this Article declare

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[13] See, article 82A (2) of the Constitution inserted vide Section 2 of the Amending Bill of 2024.
[14] See, article 82A (3) of the Constitution inserted vide Section 2 of the Amending Bill of 2024.
[15] Part XV of the Constitution (articles 324-329A), dealing with Elections, vests the power of superintendence, direction and control of elections in the Election Commission of India. The envisaged modifications under the proposed amending Bill fall within the sweep of powers of the ECI under Part XV of the Constitution.
[16] See, article 82A (5) of the Constitution inserted vide Section 2 of the Amending Bill of 2024.
[17] See, article 82A (6) of the Constitution inserted vide Section 2 of the Amending Bill of 2024.

the date on which the full term of the Legislative Assembly shall come to an end.[18]

In short, under the third constitutional strategy, the deviant departure from 'simultaneous elections' is dealt with by defining the 'full term of the Legislative Assembly' in terms of 'the end of the full term of the House of the People constituted in the general election,' which in specific terms, the Election Commission, 'at the time of notifying the election to a Legislative Assembly shall also declare the date on which the full term of the Legislative Assembly shall come to an end.'

D. Fourth constitutional strategy:

This relates to restraining the House of the People from violating the holding of 'simultaneous elections', as envisaged under the Amending Bill of 2024**,** through the introduction of such innocuous constitutional expressions of 'full term', 'unexpired term', 'mid-term election', and 'general election'. These expressions, introduced through the newly inserted Clauses (3) to (7) placed after Clause (2)[19] of article 83, are to be construed connotatively as under:[20]

i. **'**The five-year period from the date of first meeting of the House of the People shall be referred to as the *full term* of the House of the People.' [Clause (3)] (*Emphasis supplied*).
ii. 'Where the House of the People is dissolved sooner than the expiry of its *full term*, the period between its date of dissolution and five years from the date of the first meeting shall be referred to as its *unexpired term*.'[21] [Clause (4)] (*Emphasis supplied*).
iii. 'Notwithstanding anything in clause (2) of Article 83, where the House of the People is dissolved sooner than the expiry of its full term, the new House of the People constituted pursuant to elections occasioned by such dissolution, unless sooner dissolved, shall continue for such period as is equal to the *unexpired term* of the immediately preceding House of the People and expiration of this period shall operate as a dissolution of the House.' [Clause (5)] (*Emphasis supplied*).
iv. 'House of the People constituted under clause (5) *shall not be a continuation of the previous House of the People* and all the consequences of dissolution shall

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[18] See, article 82A (7) of the Constitution inserted vide Section 2 of the Amending Bill of 2024.

[19] Clause (2) of article 83 of the Constitution expressly stipulates: 'The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House.'

[20] See newly inserted Clauses (3) to (7) after Clause (2) of article 83 vide Section 3 of the Amending Bill of 2024.

[21] If the House is dissolved, say, for more than once, the total tenure of the Lok Sabha counted after the first date of meeting, which is of 5 years, would remain unaffected for the purpose of construing the 'unexpired period'.

apply to the House of the People referred to in clause (4).' [Clause (6)] (*Emphasis supplied*).

v. 'The election for constituting the House of the People for its *unexpired term* shall be referred to as a *mid-term election*, and the election held after the expiry of the full term shall be referred to as the *general election*.' [Clause (7)] (*Emphasis supplied*).

The sum and substance of the Fourth constitutional strategy is as follows. Through the contrivance of constitutional constructs as outlined in Clauses (3) to (7) of article 83 of the Constitution, the sanctity of the initial period of full term of five years of the House of the People is maintained, and, thereby, any disruption in holding simultaneous elections of Lok Sabha with State Legislative Assemblies has been scrupulously avoided.

E. Fifth constitutional strategy:

This indeed is a replica of the Fourth constitutional strategy as outlined above in relation to the House of the People, and now applied the same to the State Legislative Assemblies through the insertion of Clause (1A) after Clause (1), and Clauses (3)-(5) after Clause (2) of article 172 of the Constitution, and, thereby, any disruption in holding simultaneous elections of Legislative Assembly with the House of the People has been scrupulously avoided.[22]

F. Sixth constitutional strategy:

This strategy is merely of 'consequential in character', inasmuch as it requires to incorporate words, 'conduct of simultaneous elections,' after the words 'delimitation of constituencies' in Article 327 of the Constitution, which empowers

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[22] Section 4 of the *Amending Bill, 2024* provides: In article 172 of the Constitution:
(a) after clause (1), the following clause shall be inserted, namely:—
'(1A) The five-year period from the date of the first meeting of the State Legislative Assembly shall be referred to as full term of the State
Legislative Assembly.';
(*b*) after clause (2), the following clauses shall be inserted, namely:—
'(3) Where the State Legislative Assembly is dissolved sooner
than the expiry of its full term, the period between its date of dissolution and five years from the date of the first meeting shall be referred to as its unexpired term.
(4) Notwithstanding anything in clause (1), where the State
Legislative Assembly is dissolved sooner than the expiry of its full term, and a new State Legislative Assembly is constituted pursuant to elections occasioned by such dissolution, then, such new State Legislative Assembly, unless sooner dissolved, shall continue for such period as is equal to the unexpired term of the immediately preceding 15 State Legislative Assembly and the expiration of this period shall operate as a dissolution of the Assembly.
(5) The State Legislative Assembly constituted under clause (4) shall not be a continuation of the previous State Legislative Assembly and all the consequences of dissolution shall apply to the State 20 Legislative Assembly referred to in clause (3).'.

the Parliament to make provision with respect to elections to Legislatures.[23] This means that thenceforth under Article 327, the Parliament is also empowered to make requisite provision for the 'conduct of simultaneous elections' as well.

IV

Why the Very Proposal of Holding Simultaneous Elections is Desiderated?

This is one of the basic questions that needs to be raised and responded in retrospect *vis-à-vis* 129th Amendment Bill of 2024. Perhaps, an express answer to this principal propositional perspective of holding simultaneous elections is found straight in the Statement of Objects and Reasons appended to the Bill. It is expressly stated that there is an 'imperative need for holding of simultaneous elections' in order 'to reduce the frequency of electoral processes.'[24] At least two related reasons are offered for this proposition. One, it saves the State from avoidable huge expenditure and dissipation of time and energy required in holding elections repeatedly.[25] Two, holding elections entails imposition of Model Code of Conduct (MCC) in poll bound areas of the country, which puts on hold 'the entire development programmes, cause disruption of normal public life, impact the functioning of services and also curtail the involvement of manpower from their core activities for deployment for prolonged periods for election duties.'[26]

However, in our view, there is one critical question which is also tagged to the principal question of desirability of holding simultaneous elections: it is the question of feasibility; that is, of workability or practicality of holding simultaneous election, which is indeed a gigantic task! Instantly, there are two positive responses to the critical question of feasibility. The first response is that holding simultaneous elections need not necessarily be construed as holding of simultaneous elections

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[23] Article 327 of the Constitution, dealing with the power of Parliament to make provision with respect to elections to Legislatures provides: 'Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in Connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.'

[24] See 'Statement of Objects and Reasons,' para 1, citing the Law Commission of India's 170th Report of 1999 on 'Reform of the Electoral Laws', *inter alia*, suggesting that holding separate elections for State Legislative Assemblies should be an exception rather than the rule, and that the general rule should be to conduct elections once every five years for the House of the People and all State Legislative Assemblies together; and the 79th Report of Parliamentary Standing Committee on Personnel, Public Grievances and Law and Justice, recommending 'an alternative and practicable methods of holding simultaneous elections.'

[25] See, *Id*., para 2.

[26] *Id.*

throughout India at one and the same time; that is, in just one go straight; it may be scattered in phases depending upon the availability of resources, both men and material, and other administrative and strategic facilities at the command of the Election Commission.[27] Our second positive response is in terms of exploitation of the modern technology of Electronic Voting Machines (EVMs), which is indeed an indispensable allay in the realization of the singular objective of 'One Nation, One Election' through the holding of simultaneous elections. It straightaway saves the dissipation of energy and precious resources of the Nation, comprehensively both in terms of time and money, with the super advantage of making the whole electoral system transparent and intensely efficient too! How?

On this count, however, we notice a remarkable co-incident. In terms of time-frame, there cannot be better co-incident than the recent judgment of the Supreme Court on the efficacy of functioning of EVMs.[28] This judgment, as if, spontaneously and generously, provides an admirable background to the realization of the objective of 'One Nation, One Election' through the holding of simultaneous elections! The Supreme Court judgment was delivered on April 26, 2024, so to speak, as if in anticipation of the impending 129th Amending Bill to be introduced in Lok Sabha on December 17, 2024, which seeks to empower the Election Commission to conduct elections for Lok Sabha and all State Assemblies at the same time (referred to as simultaneous elections).

The Supreme Court judgment of April 26, 2024, admirably shows how through the use of EVMs, the Election Commission of India could handle more than 97 crore eligible voters out of the population of more than 140 crore in one single general election, in seven phases, representing 'the largest electorate in the world,' [29] entailing an estimated expenditure of around Rs. 10,00,00,00,00,000 (Rupees One lakh crore); setting up more than 10 lakh polling booths to facilitate the voting process, through the full exploitation of EVMs technology.[30]

Bearing in mind the picture-profile of holding one single general election with all the entailing huge expenditure and creation of paraphernalia, the conduct of simultaneously elections of State Legislative Assemblies (Vidhan Sabhas) along the House of the People (Lok Sabha) is only a matter of synchronisation and a little

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[27] The general elections to Lok Sabha in 2024 were held in seven phases, representing 'the largest electorate in the world.'

[28] *Association for Democratic Reforms (Petitioner)* v. *Election Commission of India and Another*, 2024 SCC OnLine SC 661, per Sanjiv Khanna and Dipankar Datta, JJ. Hereinafter, simply for Association for Democratic Reforms. (Decided on April 26, 2024).

[29] See *Association for Democratic Reforms*, para 7 (per Dipankar Datta, J.).

[30] The EVMs are carried to the remotest areas of this country, occasionally on the backs of horses and other animals to the voting booths that have been set up in far-off villages at the foothills of the Himalayan mountains as well as the delta of the Sundarbans which are only accessible through boats. See, ibid, for appreciating the unique challenges involved in the election process in India.

extension. We need to add just only a couple of EVMs more in every polling booth without increasing any corresponding significant costs and administrative set up! And the corresponding gains are enormous: it would instantly reduce governance disruption caused by frequent elections, optimise administrative resources and significantly cut down on electoral expenditure.

V

Critique of the 129th Amendment Bill on 'Simultaneous Elections'

Our critique essentially revolves around the significant contentious issues that have been raised before the Joint Parliamentary Committee (JPC), constituted to critically examine the whole gamut of the concept in 'One Nation, One Election' (ONOE) as envisaged under the Constitution (129th Amendment) Bill-2024 and the Union Territories Laws (Amendment) Bill-2024.[31] The avowed objective of the JPC is to take note of all possible 'grey areas' through discussion and deliberation with all the stakeholders and straighten the proposed provisions as far as possible. That would help not only in the smooth sailing during the passage of the Bills in Parliament, but also in avoiding the prospect of resorting to subsequent 'judicial review' of the new legislations causing unwarranted avoidable delays.

The ongoing proceedings before the JPC, as reported in the national press on day-to-day basis, have hitherto revealed several issues, both major and minor, in their deliberation. We have, however, identified the following lingering constitutional contentious questions to respond in our present critique, which are looming large in popular public domain:

First lingering issue:

Whether holding of simultaneous elections in anyway tempers or dilutes the federal character of our Constitution?

The basic notion of 'federalism' is implicit in the phraseology and eloquence of the very first Article of the Constitution that ordains: 'India, that is Bharat, shall be a Union of States.' This notion is further amplified under Part XI, which exclusively deals with relations between the Union and the States. The Seventh Schedule of the Constitution, drawing three lists: List I, called the Union List; List II, the State List; and List III, the Concurrent List: dividing the class of subjects between the Union Government and State Governments, in which both are independent in their

[31] The Joint Parliamentary Committee (JPC) comprises of 39 members - 27 members from the Lok Sabha and 12 members from the Rajya Sabha. It is headed by Bharatiya Janata Party leader PP Chaudhary and was set up in December 2024. Although there is no time frame for the submission of the report, the term of the JPC has been extended till the first day of last week of the upcoming Monsoon Session.

respective areas of allocation of subjects, reflects concretion of the notion of federalism. Furthermore, with a provision of overriding power in favour of the Centre over the States in case of conflict between the two, as indicated in the existence of Concurrent List, List-III, reveals the intrinsic nature of federal character.

In this background, specifically the issue being addressed before the JPC is: whether the holding of proposed simultaneous elections under the Bill of 2024 seriously impinges upon the federal character of Indian polity? There already exits an overwhelming support provided by such Reports as the 170th Report of Law Commission of India, 'Reform of Electoral Laws' (1999),[32] and the 79th Report of Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (2015),[33] in favour of the proposition that implementing the idea of simultaneous elections does not damage the federal character. Despite this, the idea of 'One Nation, One Election' under the proposed Amending Bill of 2024 is being disputed, because it disrupts the federal notion under the Constitution. Such an objection against the proposed Bill, is highlighted through the national press, when it is stated, in round about manner, that its introduction amounts to 'curtailment of assembly tenures, as well as that of Parliament, would run afoul of the basic structure of the Constitution,'[34] and that 'compulsory reduction in the tenures of legislatures, which amounts to tampering with the will of the people.'[35]

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[32] The Law Commission of India headed by Hon'ble Justice B.P. Jeevan Reddy in their 170th Report, while examining measures for improving the electoral system in the country, recommended simultaneous elections to Lok Sabha and State Legislative Assemblies as one of the critical reforms in the arena of election laws.

[33] It had examined the feasibility of holding simultaneous elections to Lok Sabha and State Legislative Assemblies, and recommended 'an alternative and practicable method of holding simultaneous elections'.

[34] See, Animesh Singh, *One Nation One Election violates federalism, people's will: Singhvi*, THE TRIBUNE (Apr. 23, 2025)
Abhishek Manu Singhvi, a Congress Rajya Sabha MP, had been invited by the parliamentary panel, headed by BJP MP PP Chaudhary, as a legal expert to give his inputs on ONOE. He told the panel that though he initially supported the ONOE concept, on deeper consideration, he now opposes it on three 'serious counts': It is a serious violation of federalism, hence of the basic structure at the state level; it is a serious violation of the will of the people, hence of the electoral process, democracy and of the basic structure at the Central level; and in the absence of state ratification on issues affecting electoral cycles of not only states, but of the representation of the states of Rajya Sabha based on those cycles, rendering an Amendment without such ratification void. [The three points listed above are part of a long submission made by Singhvi before the joint parliamentary panel, but the same has been abstracted by *The Tribune*, who has a copy of the same with it.].

[35] *Id*. Earlier, BS Chauhan, former Supreme Court Judge and ex-chairman of the 21 Law Commission, who too had deposed the panel, supported ONOE concept, as he is learnt to have told the committee that any change in an existing system is good and there is no harm in implementing it, sources privy to the development said. However at the same time, Chauhan is said to have indicated to the panel that if need arises, then changes can be made in ONOE in

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The issue of curtailment of the present tenure of State Assemblies arises with a view to conform to the 'new electoral cycle' under the Amending Bill when it 'proposes to insert a new article 82A (Simultaneous elections to the House of the People and all Legislative Assemblies) and to amend article 83 (Duration of Houses of Parliament), article 172 (Duration of State Legislatures) and article 327 (Power of Parliament to make provision with respect to elections to Legislatures).'[36]

Perhaps, here also, the only stance that seems to deviate from the principle of federalism lies in the usage of non-obstante clause in the newly inserted Article 82A,[37] which has been essentially introduced to streamline the existing assorted 'electoral cycles', and thereby showing that any impingement of federalism is *only incidental and transitory, and not substantive*. Does this 'incidental and transitory' violation truly violate of federal character under the Indian Constitution? In our submission, it does not!

We have vehemently argued more than three decades ago[38] that the approach to the concept of federalism under the Indian Constitution, as proclaimed under article- 1 (India, that is Bharat, shall be a Union of States), is amplified by the division of subject jurisdictions,[39] which is unique or *sui generis* (that is, of its own kind). It is distinctly different from the classic notion of federalism as envisaged, say, under the Constitution of the United States of America, which is essentially premised on the precept of 'indestructible Union of indestructible States'. Under the Indian Constitution, as a matter of contrasting statement, the notion of federalism represents 'an indestructible union of destructible states.'[40]

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future, they informed further. Likewise, JPC also heard the views of another former Supreme Court judge Hemant Gupta on the matter, who had supported the Bill by saying that the whole 'idea behind this proposal is to streamline the electoral process, reduce government spending, and allow elected leaders to focus more on governance rather than constantly being in campaign mode.'

36 See, Statement of Objects and Reasons, paragraph 5.

37 See, *supra*, notes 12-14, 16-18, and the accompanying text.

38 See, Virendra Kumar, *Indian Federalism: An Abiding Approach to Ethnicity* 1 SOCIAL SCIENCES RESEARCH JOURNAL 27 (1992).

39 See, *supra,* the basic notion of federalism in the opening paragraph of 'First lingering issue: whether holding of simultaneous elections in anyway tempers or dilutes the federal character of our Constitution?'.

40 India gained independence on 15th August, 1947, with a political map differentiated into 565 princely states, 17 British provinces, and regions with various linguistic, cultural, and ethnic identities. Since then our ceaseless efforts have been to integrate princely Staters and unify the nation by continually drawing and redrawing the boundaries of the States bearing in mind the political principle that the Union remains permanent, States can be recognized or altered as needed! The major task of territorial reorganization of India was undertaken through the Seventh Amendment of the Constitution along with the States Reorganisation Act of 1956 dividing India into States and Union Territories, organising them mainly along linguistic lines.

In any case, as a general principle relating to any amendment of the Constitution, the passage of the Bills must pass the muster of constitutionality by fulfilling the requisites of the provisions of article 368(2), which stipulate:

> *'An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill.'*

The proviso appended to Article 368(2), requiring ratification 'by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures,' is not applicable in the instant case inasmuch as the Amending Bill is not proposing any substantive change in 'any of the Lists in the Seventh Schedule, or the representation of States in Parliament, or the provisions of this article 368.'

Be that as it may, holding simultaneous elections in no way distracts from the federal character of the Indian polity. To make the terms of state assemblies, by curtailing their term, coterminous with Lok Sabha elections by a constitutional amendment does not go against the fundamental design of the Constitution. It needs emphasis to state that in the proposed Bill, it is the Lok Sabha term (and not the terms of the State) that serves 'the pivotal point of reference.' This axiomatically, makes the Parliament as 'the central pivot', which is absolutely consistent with the basic constitutional design proclaimed under Article 254 of the Constitution.[41] It reinforces the centrality of the Parliament over the State Legislatures as the singular point of reference for defining the full term of the State Legislature, even when it is truncated, only in relation to the full term of the House of the People, and not independent of it, and, this is how the process of holding simultaneous elections is

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[41] Article 254 of the Constitution, while dealing with the primacy of the laws made by Parliament over the laws made by the Legislatures of States, provides:

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State [1]*** with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

to be initiated and sustained with least distraction from the principle of federalism.[42] After all, the functional notion of federalism under the Constitution, as revealed by Dr BR Ambedkar is that our 'Constitution is neither wholly federal nor wholly unitary,' and 'that we have given a Constitution, which will keep India united and strong both in times of peace and war.'[43]

Second lingering issue:

It relates to violation of the Basic Structure Doctrine (BSD) of the Constitution.

Whether the proposed Bill violates the BSD of the Constitution? We may look at this issue from two different angles; one directly from the perspective of basic structure principle, and the other indirectly *via* the violation of federal character of the constitution. From the *direct perspective*, the question is invoked specifically with reference to 'curtailment of the term of a governance,' which is fixed at five-year under the Constitution, by asking *whether the said curtailment affect 'the plenary powers' of the electorates?* The response to this question needs to be considered by asking, *first*, what is that Basic Structure principle in the context of voter's right to elect a government for five years, and holding the mid-term election if there is curtailment of the five-year term of governance, (which is said to be violated). The foundational principle, involved here is that of 'democratic governance'. Is this principle violated when there is curtailment of five-year term in order to synchronise it with the principal objective of simultaneity? Most apparently, this principle is strengthened rather than being violated.

In the *indirect perspective*, the assertion has come to the fore before the JPC that under the proposed Bill 'curtailment of assembly tenures, as well as that of Parliament, would run afoul of the basic structure of the Constitution,'[44] and *that 'compulsory reduction in the tenures of legislatures' amounts to 'tampering with the will of the people*.'[45] In this context, the specific counter question that we may raise here is: does the 'incidental and transitory' change in Assembly tenure with a view to conform to the 'new electoral cycle' under the Amending Bill is violative of Basic Structure Doctrine (BSD) of the Constitution? Our own pointed response to this pointed question is in the negative. We tend to base our negative response on the authority of the recent

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[42] See also *supra*, A. First constitutional strategy in Section III: Strategic approach of the 129th Amendment Bill for holding 'simultaneous elections' in the country.

[43] See, PTI, *Constitution has kept country united in crises: CJI*, THE TRIBUNE (Jun. 1, 2025). The CJI was addressing a function after the inauguration of advocate chambers and multi-level parking at the Allahabad High Court said: 'When the Constitution was being made and its final draft was presented before the Constituent Assembly, at that time some people used to say that the Constitution is too federal while some used to say that it is too unitary.'
'Babasaheb Bhimrao Ambedkar had replied that the Constitution is neither wholly federal nor wholly unitary. But one thing I can tell you is that we have given a Constitution which will keep India united and strong both in times of peace and war,' CJI Gavai said.

[44] See, *supra*, note 34 and the accompanying text.

[45] See, *supra* note 35 and the accompanying text.

judgment of the Supreme Court in *Janhit Abhiyan v. Union of India*, (delivered on November 7, 2022),[46] in which the Constitution Bench led by the Chief Justice Lalit dealt with the issue of constitutionality of 103rd Amendment of the Constitution, providing reservation for EWS by excluding SCs, STs, and non-creamy layers of OBCs. The Five-Judge Bench in *Janhit Abhiyan* was deeply divided. The minority of two judges (U.U. Lalit, C.J.I., and S. Ravindra Bhat, J.) has held that exclusion clause is violative of the fundamental right of the SCs, STs and non-creamy layer of OBCs, and as such an exclusion is not warranted by the BSD, and, therefore, the 103rd Amendment of the Constitution is unconstitutional. The majority of three judges (Dinesh Maheshwari, Bela M. Trivedi and J.B. Pardiwala, JJ.), on the other hand, have held that such an exclusion by the 103rd Amendment, even if it is violative of fundamental rights, it is in accordance with the BSD, and, therefore, perfectly constitutional.[47]

On the strength of *Janhit Abhiyan case*, we wish to argue that if the 103rd Amendment of the Constitution is held constitutional on the touchstone of Basic Structure of the Constitution, even if the provisions of 103rd Constitutional Amendment violated fundamental right to equality, we see no reason, why the Supreme Court would ever hold 'incidental and transitory' change in Assembly tenure with a view to conform to the 'new electoral cycle' under the Amending Bill of 2024 as violative of Basic Structure Doctrine (BSD) of the Constitution![48]

Third lingering issue:

Whether the power given to the Chief Election Commissioner (CEC) to make recommendations to the President while implementing 'One Nation, One Election' (ONOE) is unwarranted in the constitutional scheme of things?

It has been assertively stated before the JPC that 'Election Commission (EC) should not be given 'unbridled powers' to make recommendations to the President while implementing 'One Nation, One Election' (ONOE).'[49] However, the issue of

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[46] MANU/SC/1449/2022, *per* U.U. Lalit, C.J.I., Dinesh Maheshwari, S. Ravindra Bhat, Bela M. Trivedi and J.B. Pardiwala, JJ.

[47] The majority Court for their opinion, cited the author's research article on Basic Structure Doctrine published in 2007 by The Indian Law Institute, New Delhi. See, Virendra Kumar, *Basic Structure of the Indian Constitution: The doctrine of constitutionally controlled governance [From His Holiness Kesavananda Bharati (1973) to I.R. Coelho (2007)]* 49(3) JOURNAL OF THE INDIAN LAW INSTITUTE 365-398 (2007).

[48] See author's critique of *Janhit Abhiyan case*, recently published by the Indian Law Institute: Virendra Kumar, *Reservation for EWS under 103rd Constitutional Amendment via Basic Structure Doctrine of the Constitution: A critique of 5-Judge bench judgment of the Supreme Court in Janhit Abhiyan v. Union of India [Delivered on November 7, 2022]*, 65(4) JOURNAL OF THE INDIAN LAW INSTITUTE 351 (2023). [Released in November, 2024].

[49] See, Animesh Singh, *Ex-CJIs flag 'unbridled powers' to CEC on one poll, say parliamentary control must*, THE TRIBUNE (Jul. 12, 2025). The two former Chief Justices of India, Justice DY

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conferring 'unbridled powers' on EC arises under the proposed Bills when in a certain situation while holding simultaneous elections, the Election Commission is of the opinion that the elections to any Legislative Assembly cannot be conducted along with the general election to the House of the People, and it makes a recommendation to the President, to declare by an order, that the election to that Legislative Assembly may be conducted at a later date.[50] In this context, it needs close examination, whether the open-ended power of the EC under the Amending Bills of 2024, which is labelled as 'unbridled', is constitutionally unwarranted? In this wise, it would be instructive and illuminating if we could find out how and in what respects this 'unbridled' power of the EC is distinctly different from the power that it continues to enjoy in its own right, as a distinct 'creature of the Constitution' in the domain of Indian electoral system.[51]

A similar question in relation to the vast powers of EC under Article 324 of the Constitution arose about fifty years ago before the Constitution Bench of the Supreme Court led by Chief Justice M.H. Beg in the case of *Mohinder Singh Gill*.[52] The issue raised was, whether the CEC, in the conduct of elections, was also empowered to order re-poll without being questioned in anyway what so ever? In other words, whether the plenary power of the CEC, as envisaged under Article 324 read with other cognate constitutional and statutory provisions and the rules made thereunder the in the domain of elections, is absolutely absolute?[53] It is admittedly true that the plenary powers in the conduct of election, commencing from the

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Chandrachud and Justice JS Khehar made their respective presentations before the JPC on July 11, 2025 (8th sitting of the joint panel). Broadly agreeing with the concept of simultaneous elections, they are stated too have expressed the view that the Chief Election Commissioner (CEC) should not be given 'unbridled powers' to make recommendations to the President while implementing 'One Nation, One Election' (ONOE). They suggested that CEC's power needed to be checked through parliamentary supervision and intervention, and that there should not be a situation where recommendations were sent directly by the CEC to the President. Furthermore, it is learnt that Justice Chandrachud, to reinforce his assertion, cited the example of the Jammu and Kashmir Assembly elections without naming the UT, which were held in October 2024 after a delay of 10 years, and that the EC had cited the sensitive situation prevailing there for not holding the poll earlier even though the Lok Sabha elections were held there in May 2024 along with the entire country!

50 See, *supra*, note 16.

51 The assertion of the distinct identity of the CEC was once made by TN Sheshan (the 10th Chief Election Commissioner of India from1990 to 1996) when he stated to have said: 'Yes, I am part of the government, but not under it.'

52 *Mohinder Singh Gill* v. *Chief Election Commissioner*, (Civil Appeal No. 1297 of 1977) AIR 1978 SC 851: 1978(1) SCC 405, *per* V.R. Krishna Iyer, J. (for himself and M.H. Beg, C.J.I., P.N. Bhagwati, P.K. Goswami, and P.N. Shinghal, JJ.). Hereinafter, *Mohinder Singh Gill*.

53 See, *Mohinder Singh Gil,* para 17(2): 'Can the Election Commission, clothed with the comprehensive functions under article 324 of the Constitution, cancel the whole poll of a constituency after it has been held, but before the formal declaration of the result has been made, and direct a fresh poll without reference to the guidelines under Sections 58 and 64 (a) of the Act, or other legal prescription or legislative backing?'.

Presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate, tend to be absolute, because constitutionally there is a 'blanket ban' provided expressly under Article 329(b) 'on litigative challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result.'[54] The value of this widened amplitude of power is clearly recognized and affirmed, when it is judicially stated:[55]

> *'The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.'*

However, the critical question to be explored in this context is: whether there is any limitation on this expansive power of the EC, which is described as 'plenary power', implying thereby 'a complete and absolute power to take action on a particular issue, with no limitations.' Can such a plenary power be questioned and seek remedy against illegality, if any, at all?

The 'blanket ban' envisaged under Article 329(b) of the Constitution is not to be construed as 'no limitations' on the plenary power. It is the ban on the power of the EC *only* during the electoral process from 'end to end'; that is, from the date and time of the commencement of the election process to its culmination. Under the electoral jurisprudence, there is the clear rule that 'there is a remedy for every wrong done during the election in progress although it is postponed to the post-election stage and procedure as predicated in Article 329 (b) and the 1951 Act.'[56] 'The Election Tribunal has, under the various provisions of the Act, enough powers to give relief to an injured candidate if he makes out a case and such processual amplitude of power extends to directions to the Election Commission or other appropriate agency to hold a poll, to bring up the ballots or do other things necessary for fulfilment of the jurisdiction to undo illegality and injustice and do complete justice within the parameters set by the existing law.'[57]

In our submission, the very existence of this post-election stage full-fledged remedy to seek redressal provides a sobering influence on the EC in the exercise of its unlimited power *even during the election process!*

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[54] See, *Mohinder Singh Gill,* para 92[1(a)]. Since there is a non-obstante clause in article 329 and, therefore, even the extraordinary power of the writ court under article 226 stands pushed out where the dispute takes the form of calling in question an election…'. See, *Id*., para 25.

[55] *Id*., para 92[2(a)]

[56] *Id*., para 92(3).

[57] *Id*.

Apart from construing this indirect control mechanism in humanising the 'absolute power', the Constitution Bench in *Mohinder Singh Gill* has spelled out two operating constraints on the plenary power of the CEC:

> *'Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be a required of it as fair-play-in-action in a most important area of the constitutional order, viz., elections. Fairness does import an obligation to see that no wrong-doer candidate benefits by his own wrong. To put the matter beyond doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although not in full panoply but in flexible practicability. Whether it has been complied with is left open for the Tribunal's adjudication.'* [58]
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> *'In sum, a pragmatic modus vivendi between the Commission's paramount constitutional responsibility vis-a-vis elections and the rule of law vibrant with fair acting by every authority and remedy for every right breached, is reached.'* [59]

This is how Justice Krishna Iyer, speaking for the Constitution Bench of the Supreme Court led by Chief Justice has answered the knotty question, whether the Election Commission was 'immune to the observance of the doctrine of natural justice on account of any recognised exceptions to the application of the said principles and unaccountable for his action even before the Election Court?' [60]

With a comparative perspective we find that the power conferred on the Election Commission under the Amending Bills of 2024 is much more expansive than the plenary power, which is available to EC under article 324 read with article 329(b) of the Constitution. In the latter case, as *Mohinder Singh Gill* shows, it was indeed an up-hill task to control the absolute power of the Election Commission by ushering in the doctrine of natural justice in face of the existing blanket ban of Article 329(b)

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[58] *Id*., para 92[2(b)]. This is in response to the specific question. '*Whether, in fact or law, the order is validly made within his powers of violative of natural justice can be examined later by the appointed instrumentality, viz., the Election Tribunal,' see, id., para 31. See also, id., para 36: '… the question of natural justice raised under article 324 are of such public importance and largely fallow field, going by prior pronouncements, and so strategic for our democracy and its power process that this Court must decide the issue here and now.' Again, see, id., para 37(b): '… is it permissible to import into article 324 (1) an obligation to act in accord with natural justice?*'.

[59] *Id*., para 93.

[60] *Id*., para 17: The issue of immunity from the observance of the doctrine of natural justice by the CEC was one of the three constitutional questions framed by the Supreme Court to resolve the conflict problem, the Election Commission, clothed with the comprehensive functions under article 324 of the Constitution, cancel the whole poll of a constituency after it has been held, but before the formal declaration of the result has been made, and direct a fresh poll without reference to the guidelines under Sections 58 and 64 (a) of the Act, or other legal prescription or legislative backing.

of the Constitution. And this was so, when the re-poll was construed as a clear case of continuity of election, which was within the sweep of the power of EC. In the former case, on the other hand, the Election Commission under the Amending Bill of 2024 is empowered, not just to make an order for re-poll in continuation of the ongoing election process but, to defer it by making recommendation directly to the President, stating that in its opinion elections to any Legislative Assembly cannot be conducted along with the general election to the House of the People, and, therefore, the same may be conducted at a later date by postponing the already scheduled one. This indeed is an 'un-bridled' power, which needs to be controlled instantly through parliamentary legislation, lest the Election Commission should exalt itself 'into a law unto itself'![61] The seminal suggestion, therefore, made by two former Chief Justices of India, Justice DY Chandrachud and Justice JS Khehar before the JPC on July 11, 2025, needs serious consideration.[62] It is imperative to be done at this very stage of enacting the amending Bill of 2024 into an enforceable law, else we might create, unwittingly perhaps, a Frankenstein's monster, which would be difficult to discipline or control later through any amount of judicial intervention!

After having circumscribed the power of Election Commission through legislative enterprise by defining broad contours under which the legislative assembly elections could be legitimately deferred, of course the EC should be empowered, consistently with the electoral scheme as laid down in the Constitution, and proposed in the Amending Bill, should to allowed to proceed and make recommendation directly to the President for appropriate action.[63]

Here arises an ancillary question that also needs our attention: whether the President is bound by such recommendation made by the Election Commission? In our own view, the President should be bound. However, as a matter of course, since the recommendation of the EC for withholding election to a State legislative assembly is only by way of an extreme exception, it is unlikely that the EC's recommendation would be without the foundation of adequate self-sufficient or self-justified reasons.[64] Besides, and more specially, when such a recommendation

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[61] Justice Krishna Iyer made use of this expression, while dilating upon the power of the Election Commission under article 324 of the Constitution: 'we concede that even article 324 does not exalt the Commission into a law unto itself,' see, Mohinder Singh Gill, para 40.

[62] See, *supra* note 49 and the accompanying note.

[63] *Cf. supra,* note 49, where observation is made to the effect that the CEC should not send his recommendations directly to the President.

[64] See, *Mohider Singh Gill*, para 6: The Notification issued by the CEC in the exercise of his plenary powers under article 324 of the Constitution for holding re-poll, adducing rationale for the same:

> 'S.O. Whereas the Election Commission has received reports from the Returning Officer of 13 Ferozepore Parliamentary Constituency that the counting on 21 March, 1977 was seriously disturbed by violence; that the ballot papers of some of the assembly segments of the parliamentary constituency have been destroyed by violence; that as a consequence it is not possible to complete the counting of the votes in the constituency and the declaration of

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squarely falls within the domain of its plenary power of 'Superintendence, direction and control of elections' under article 324 of the Constitution.[65]

In this context, we may also draw sustenance on the basis of analogical deduction. Here position of the EC qua the President is similar to the one under article 103 of the Constitution,[66] which deals with the decision of the President on the questions as to disqualifications of members of either House of Parliament. On this count, it is clearly and constitutionally stated that '[b]fore giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.'[67] By this logic, the President herself shall be bound by the opinion of the EC under Clause (5) of article 82A of the Bill.

Fourth category of leftover lingering issues:

Whether reduction in the full term of five-years for any reason, say, if the government loses the confidence of the House and elections are to be held for the remainder of the full term, results in reducing the government's accountability? The answer to this question in the affirmative seems to be an artificially contrived response. In any democratic set up, a government's accountability is measured by the electorates in terms of its work done during the period in which it has been in power, even if that period were a short one, much shorter than the full term of five-year!

Sub-section (1) of Section 1 of the Constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024 states that the Bill, when duly enacted by the Parliament would be called 'the Constitution (One Hundred and Twenty-ninth Amendment)

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the result cannot be made with any degree of certainty;
And whereas the commission is satisfied that taking all circumstances into account, the poll in the constituency has been vitiated to such an extent as to affect the result of the election;
Now, therefore, the Commission, in exercise of the powers vested in it under article 324 of the Constitution, Section 153 of the Representation of The People Act, 1951 and all other powers enabling it so to do, cancels the poll already taken in the constituency and extends the time for the completion of the election up to 30 April, 1977 by amending its notification No. 464/77 dated 25 February, 1977 in respect of the above election ….'

[65] Article 324 of the Indian constitution bestows Election Commission with the power and responsibility of superintendence, direction and control of the preparation of the electoral rolls and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution. The parliament has further enacted the Representation of the People Act, 1950 and the Representation of the People Act, 1951 to define and enlarge the powers of the Commission.

[66] Article 103, dealing with the ultimate decision on questions as to disqualifications of members, provides: '(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.
(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.'

[67] Clause (2) of article 302 of the Constitution.

Act, 2024.' Sub-section (2) further stipulates that this Act 'shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.' Section 2 of the Amending Bill, inserting new article 82A after article 82 of the Constitution, provides in its clause (1) that '[t]he President may by a public notification issued on the date of the first sitting of the House of the People after a general election, bring into force the provision of this article, and that date of the notification shall be called the appointed date.' A comparative perusal of Section 1(2) and Section 2 of the Amending Bill shows that the provisions in both provide for 'notification': while the former provides for 'notification in the Official Gazette', the latter provides for 'public notification.' What does this difference in phraseology about 'notification' mean?

The difference between the two, if any, is more in the nature of their contextual usage. The former expression, 'notification in the Official Gazette', understood in the pure legal sense, signifies the culmination of the Act of Parliament (after being passed by both the Houses and received the assent of the President) into an enforceable law. That is, only when the Act is notified in the Official Gazette, it becomes enforceable. Here 'notification' essentially means 'publication' of the Act for its due enforcement. In other words, publication of the Act, termed notification', in the Official Gazette is mandatory in order to come into force. If the date of coming into force is not mentioned in the published Act in Official Gazette, then the date it receives assent of the President shall be the date when it becomes enforceable. The date of coming into force can also be postponed by the Government to any future date. Thus 'notification in the Official Gazette' become the authorised legal document of the Government of India.

Against this background, ambit of the expression 'Public notification' is much wider than that of 'notification in the Official Gazette.' Besides the inclusion of latter expression, it also embraces within its ambit the publication of the parliamentary Act through newspapers, radio, television, and other 'social media' that encompasses the exploitation of modern internet technology providing instantly a wide range of services, such as websites, emails, social media, online applications, and cloud storage for sharing of information across vast distances worldwide. In fact, dissemination of information through 'public notification' as envisaged under the new Article 82A(1), which is not to the exclusion of 'notification in the Official Gazette,' is a far effective mode to 'bring into force the provision of this article,' ushering the concept of simultaneous elections into our body politic. It brings into open what is otherwise lying embedded in the Official Gazette and thereby making the people at large aware and informed with which they are directly concerned under the new Act of 2024.

The next issues pertain to the actual date of starting of the electoral cycle. Is there any difference between in the usage of the two varying expressions, one, 'on the date of the first sitting of the House of the people after the general election,' 'called

the appointed date,' under the proposed Article 82A (1) and another, 'from the date appointed for its first meeting of the House of the People' under the similarly proposed clause (3) of Article 83? In our view there is no substantive difference between the two expressions. The seeming difference in phraseology is only contextual.

The newly proposed Article 82A, providing for simultaneous elections to the House of the People and all Legislative Assemblies, is placed after Article 82, which deals with the readjustment of seats after each census in the House of the People to the States and the division of each State into territorial constituencies, etc. There is little perspective proximity of Article 82A with the existing Article 82, excepting that both the articles deal with Union Parliament in Part V of the Constitution. Introduction of the concept of simultaneous elections through Article 82A is quite independent of readjustment of seats in the House of the People as a sequel of new Census. The provision of Clause (1) of Article 82A, therefore, is in the nature of beginning from the very beginning. In this context, 'the date of the first sitting of the House of the People after a general election,' declared by the President through a public notification, will serve as the date to 'bring into force the provision of this article (namely, Article 82A).' It is this date, that is the date of notification issued by the President, is called 'the appointed date.' Seen in this context, most apparently, the expression, 'the appointed date,' does not define the five-year term of the of the House of the People; it only refers to the date of commencement that would 'bring into force the provision of this article (namely, Article 82A).'

On the other hand, the expression defining the period of five years 'from the date appointed for its first meeting of the House of the People' as 'full term of the House of the People' under the newly inserted clause (3) of Article 83, is, in fact, in continuation of existing Clause (2), which defines that the term of the House of the People shall normally be five years by stipulating that 'The House of the People, unless sooner dissolved, shall continue for [five years] from the date appointed for its first meeting and no longer and the expiration of the said period of [five years] shall operate as a dissolution of the House.' Realizing in this context, the expression 'from the date of first meeting of the House of the People' in the newly inserted clause (3) of Article 83 is read as 'from the date appointed for its first meeting of the House of the People,' which 'shall be referred to as the full term of the House of the People.' Thus, there is no connotative difference between the meaning of 'the appointed date' under Article 82A(1) and 'the date appointed' under Article 83(3) read with Article 83(2) of the Constitution.

VI

Conclusion: Simultaneous Elections as Promotive of Core Constitutional Values

In addition to outright benefits in terms of saving huge costs, administrative dislocations and inconveniences, etc., holding of simultaneous elections also promote the preambular objectives of the Constitution, namely, 'FRATERNITY' by 'assuring the dignity of the individual and the unity and integrity of the Nation.' How does this advantage accrue cumulatively through 'simultaneous elections' in a parliamentary democracy? This, indeed, is a question, though seemingly very simple to look at, and yet, essentially very abstruse in nature, as it involves very many elements in a complex relationship! We may straightaway identify and abstract at least two phases of this complex relationship in the holding of 'simultaneous elections.'

First phase: It represents the period or spell of time, relatively an extended one, before a voter or an electorate, enters the polling booth in the case of holding 'simultaneous elections.' It is the phase in which a voter in the exercise of his right to vote, as a facet of his fundamental right to freedom of speech and expression, is entitled to have the fullest information about the election candidates standing for Lok Sabha and Vidhan Sabha. In fact, all the election candidates are legally bound to reveal their antecedents, including criminal cases, their educational qualifications, assets and liabilities, etc. Nondisclosure of information on such vital counts would *ipso facto* result into voiding of their elections, even if they are elected! Why such a stringent measure imputed to non-disclosure of antecedents?

The statutory answer for such a stringent measure is that non-disclosure of all such vital information constitutes an 'undue influence' on the electorates, and thereby, interfering 'with the free exercise of any electoral right' under Section 123(2) of the Representation of the People Act, 1951. Our own thesis is that the critical value of this provision is augmented many times more in the case of simultaneous elections, as it seriously impinges upon the 'free exercise' of his right to *relative evaluation* of the credentials of election candidates in terms of, say, national interests on the one hand, and local, regional or provincial interests on the other.

Second phase: It represents relatively a very short spell of time after the voter or the electorate enters the polling booth in the case of holding 'simultaneous elections.' Fully equipped with the information about the election candidates standing for Lok Sabha and Vidhan Sabha in terms of their antecedents, including the revealed history of criminal cases, their educational qualifications, assets and liabilities, and the unrevealed history of 'Aya Ram and Gaya Ram',[68] if any; the voter enters the

[68] It is an expression coined (by Madhavan Nair, the then Editor of The Tribune in 1967?) to

Contd…

polling both, fully assured that his secrecy and security are non-negotiable.[69] And here comes the opportune moment of his critical decision making of evaluating national interests against local or regional interests, and likewise evaluating local or regional interests against the national interests. How does the polling booth help the electorate in harmonizing the competing national and regional interests in the choice of candidates standing for Lok Sabha and Vidhan Sabha for eventually creating an 'inclusive society'? This is on the premise of classic principle of 'unity in diversity' within the broad framework of democratic governance.

A voter, standing in the voting enclosure, is called upon to choose, one candidate for Lok Sabha (House of People), another candidate for Vidhan Sabha (Legislative Assembly) [and still another candidate for Gram Panchayat/Municipal Committee (Local Bodies), which is not yet in the consideration of the Bills of 2024]. He is assured full safety and privacy, away from the gaze of others, completely free from of all sorts of constraints as well as restraints, and thereby ready and absolutely independent to exercising his right to vote by pressing the blue button of the Electronic Voting Machine (EVM). This, indeed, is an evaluating moment, representing an incredible configuration of the human mind (the most powerful computer with which a human being is endowed by Nature!). It instantly, as if mysteriously, 'reveals' to the voter, how to reconcile the local or regional interests with the national interests in the choice his candidates, guided by the preambulatory principle of the Constitution, namely 'assuring the dignity of the individual and the unity and integrity of the Nation!' Herein lies the value of the 'little man' in democratic elections, which is eulogised by Justice Krishna Iyer while quoting the matchless words of Sir Winston Churchill: 'At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper - no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.'[70]

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elucidate the practice of turn-coating, or switching parties in the context of a legislative body in Haryana when the Member of the Legislative Assembly Gaya Lal shifted his party allegiances thrice within a short spell of just two weeks! Lal's behaviour eventually resulted in the imposition of President's rule in Haryana later that year. Further pressure resulted in the passage of an anti-defection law in 1985.

[69] See Editorial, *Election footage - ECI's tough stand on election footage strikes discordant note*, THE TRIBUNE (Jun. 23, 2025). The ECI has directed its state electoral officers across the country to destroy CCTV, webcasting and video footage of the election process after 45 days of the declaration of the result. Seemingly, this has been done in the name of preserving secrecy and security of the electorates, which are indeed of paramount consideration are non-negotiable. However, editorially, the cryptic comment is even while preserving and protecting both secrecy and security of the voters, 'measures that arouse suspicion are detrimental to the democratic process.' The suggested way out is 'to take strict action against individuals and political parties who misuse recordings, not to restrict access or destroy valuable evidence prematurely.'

[70] See, *Mohinder Singh Gill* v. *Chief Election Commissioner*, (Civil Appeal No. 1297 of 1977) AIR 1978 SC 851: 1978(1) SCC 405, *per* V.R. Krishna Iyer, J. (for himself and M.H. Beg, C.J.I., P.N. Bhagwati, P.K. Goswami, and P.N. Shinghal, JJ.), para 2.