

डॉ० न्यायमूर्ति बलबीर सिंह चौहान
पूर्व न्यायाधीश, सर्वोच्च न्यायालय
अध्यक्ष
भारत का विधि आयोग
विधि एवं न्याय मंत्रालय
भारत सरकार



Dr. Justice B. S. Chauhan
Former Judge, Supreme Court of India
Chairman
Law Commission of India
Ministry of Law & Justice
Government of India

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17 April 2018

Public Notice

Subject: Simultaneous Elections – Constitutional and Legal Perspectives

A draft Working Paper on “Simultaneous Elections – Constitutional and Legal Perspectives”, prepared by the Law Commission of India, was considered in the Fourteenth Meeting of the Commission held today i.e., the 17 April 2018 and it was unanimously resolved that before finalising and forwarding its Report to the Government of India, the Law Commission should seek the opinion of all the stakeholders including Constitutional Experts, Academia, Political Parties, Bureaucrats, students, etc., on the subject, or any other allied issues that may be deemed appropriate. Accordingly, a summary of the draft working paper is enclosed herewith.

The suggestions / opinion should reach the Member-Secretary, Law Commission of India, 4th Floor, Lok Nayak Bhawan, Khan Market, New Delhi - 110003, either by hand or by post; or by email at lci-dla@nic.in [to be read as LCI-DLA@NIC.IN], latest by 8th May 2018.

BS Chauhan
[Dr. Justice B S Chauhan]
Chairman

Simultaneous Elections – Constitutional and Legal Perspectives (A Summary to the Draft Working Paper of the Law Commission of India)

1. The need to have simultaneous elections to Lok Sabha and State Legislative Assemblies is under discussion for quite some time now. Simultaneous elections were held in the country during the first two decades of independence, i.e., up to 1967. The dissolution of certain State Assemblies in 1968 and 1969 followed by dissolution of the Lok Sabha in 1970 lead to disruption of the conduct of simultaneous elections.
2. Though the term ‘simultaneous elections’ would imply elections taking place for all three tiers of governments in a synchronised manner, the elections to the local bodies has not been dealt with here, being a State subject. More so the number of local bodies is too big to be dealt with under this scheme. Here, an attempt is made to explore the roadblocks that may come in the way of implementation of simultaneous elections and to suggest the possible remedies for the same.
3. The idea of simultaneous elections came up in the first Annual Report of the Election Commission of India published in the year 1983. This idea was furthered by the Law Commission’s Report No.170 in 1999 and the 79th Report of Parliamentary Standing Committee, 2015. NITI Aayog also prepared a working paper titled “Analysis of Simultaneous Elections: The What Why and How” in January 2017. It is worthwhile to mention that the founding fathers of our Constitution foresaw that the elections to the legislatures of various states and the Centre will not always be concurrent.
4. On a study of the international scenario, the Commission comprehends that such a system does exist in countries like South Africa, Sweden, Belgium, et al.
5. The Constitution deals with the tenure of Lok Sabha and the State Legislative Assemblies under Articles 83(2) and 172(1) respectively. It provides for a five-year term for legislatures, unless sooner dissolved by the President or the Governor of the State, as the case may be. Thus, premature dissolution of the Lok Sabha or the Legislative Assembly will disturb the conduct of simultaneous elections.
6. No-confidence motion, if passed, will curtail the term of the Lok Sabha/ State Assembly abruptly. In the case of the States, the Governor of the State, using his discretion, can invite a person who stakes a claim to form a government, to prove his majority on the floor of the house. It is only when all the efforts fail, Article 356 of the Constitution can be invoked, and President’s rule, on the recommendation of the Governor will be imposed. Such safeguard for saving the Lok Sabha from getting dissolved is not available.
7. The Constitution, however, does not mention about a confidence motion or a no-confidence motion. Article 75 enshrines that the Council of

Ministers is collectively responsible to the House of the People, thus implying that the Prime Minister must enjoy the support from the majority of the Members of Lok Sabha to continue in the office. An alternative to tide over the premature dissolution of the House of People could be that the Members while moving a no-confidence motion, may also put forward an option for forming an alternative government. This could hold good for Lok Sabha as well as State Assemblies. This system is prevalent in Germany.

8. The 170th Report of the Law Commission suggested a new Rule, i.e., Rule 198-A to be added to Rules of Procedure and Conduct of Business in Lok Sabha and similar amendment to such rules in the State Legislatures. The Report suggested introduction of motion of no-confidence in the incumbent Government along with a motion of confidence in the alternative government.

9. When no single political party or alliance secures a majority to stake the claim to form a government, the situation of Hung Parliament / Assembly arises, leading to a stalemate. To avoid the premature dissolution of the House/State Assembly and to advance the idea of simultaneous elections, the Members of the House may sit together and decide on the leader of the House can form a Government. This can be made workable if an exception to the applicability of the Tenth Schedule to the Constitution is carved out. Can the rigour of Schedule X to the Constitution be diluted only for formation of a stable Government?

10. Further, in case of a hung Lok Sabha / Assembly, a Member of the House may seek support from other political parties to form Government. However, if a Whip has been issued by the respective political parties, and if the Members go against that Whip, it would render them disqualified as per Tenth Schedule to the Constitution and anti-defection law. The issue here is, how to tide over the situation by carving out an exception in such cases, to maintain continuity of the House.

11. In order to start synchronisation of the elections, the option of holding the elections in phases, as a one-time measure may be viable. In this regard, the Standing Committee of Parliament has made certain recommendations. In the first Phase, elections to the State Legislatures which are scheduled to go for polls synchronous with Lok Sabha, in 2019 (Certain States which are having scheduled elections in near future) can be held together. The rest of the States (those States which will be going to elections in proximity with Lok Sabha elections of 2024) can be synchronised with 2024 General Elections, appropriately extending the terms of the respective Assemblies. Thereafter, simultaneous elections can be held every five years. Another option is to hold the General Elections 2019 along with the elections to Assemblies of the former group of States and after 30 months, hold elections with the latter group of States. Thereafter, elections could be held every two-and-a-half years. The measures suggested above will require amendment to the Constitution as well as the Representation of the People Act, 1951. As an abundant caution and in order to avoid a challenge to the amendments on the ground of not having obtained ratification by majority of the States, such ratification could be obtained for the proposed amendments. Is

extension of the term of State Assemblies / Lok Sabha, as a one-time measure, to synchronise the elections, permissible under law? Will dissolution of the house before a term of five years, just to hold the elections, violate any constitutional provision? Will simultaneous elections, by any means, violate the concept of Federalism or any other basic feature of the Constitution?

Possible Recommendations of the Commission:

- a) Simultaneous elections may be restored in the nation by amending the Constitution, the Representation of the People Act 1951 and Rules of Procedure of Lok Sabha and those of the State Legislative Assemblies.
- b) A definition of ‘simultaneous elections’ may be added to section 2 of the 1951 Act.
- c) The ‘no-confidence motion’ be replaced with ‘constructive vote of no-confidence’ by amending the Rules of Procedure and Conduct of Business of Lok Sabha and a new Rule in the form of Rule 198-A, be added. A similar amendment is required in Rule of Procedure and conduct of business of the State Assemblies.
- d) In order to prevent a stalemate in the Lok Sabha / Assembly in the case of Hung Parliament/Assembly the rigour of ‘Anti-Defection law’ laid down under paragraph 2(1) (b) of the Tenth Schedule be removed as an exception.
- e) Articles 83 and 172 of the Constitution along with section 14 and 15 of the 1951 Act, be appropriately amended to incorporate the provision regarding remainder of the term, i.e., post mid-term elections, the new Lok Sabha and/or Assembly so constituted shall be only for the remainder of the term of the previous Lok Sabha or Assembly and not for a fresh term of five years.
- f) Statutory limit of six months for the issuance of notification of general elections be appropriately extended by way of amendments to sections 14 and 15 of the 1951 Act. This would provide the flexibility required to position States either in one group or the other, as one time measure.
- g) The Government may seek ratification by majority of the States to the proposed Constitution amendments so as to avoid challenge to the amendments on the ground of not having obtained ratification by majority of the states, as the changes incorporated may be viewed to directly affecting the States under Article 328..
- h) Analogous to the election of Speaker of the House of People by consensus, Leader of the majority party, i.e., the Prime Minister/Chief Minister may be elected to lead the Lok Sabha/Assembly, by the full House like electing the Speaker of the Lok Sabha. This will potentially provide stability to the Government and in turn to the Lok Sabha/Assembly.
