SIMULTANEOUS ELECTIONS VIS-À-VIS DEMOCRACY, BASIC STRUCTURE AND FEDERALISM

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Recently, the Law Commission of India suggested a roadmap for conducting simultaneous elections for Union Legislature and Legislative Assemblies of the States, which includes proposed changes to the Constitution of India for holding simultaneous elections, before a high-level committee on One Nation, One Election. Since then, the socio-political environment is all charged up with the views in favour and against of holding simultaneous elections. Thus, the author of this research paper has undertaken the task of examining the benefits as well as shortcomings of holding simultaneous elections vis-à-vis democracy, basic structure and federalism by reviewing various publications on the aforesaid subject.

INTRODUCTION

In popular sense of the term, "simultaneous elections" entails elections to all the three tiers of the Constitutional institutions i.e. House of the People (Lok Sabha), State Assemblies (Vidhan Sabha) and Local bodies taking place in a synchronized manner. What this effectively means is that a voter casts his or her vote for electing members to all the tiers of the Government on the same day[1]. So far as the „third-tier" institutions are concerned, their number is too large and conduct of election to the same is primarily a State subject. As per the Constitution, the elections to the third- tier institutions are directed and controlled by their respective State Election Commissions. Therefore, it would be extremely challenging, if not impossible, to synchronize and align election schedules of third-tier with that of the House of the People and State Legislative Assemblies[2].

[1] Bibek Debroy and Kishore Desai, "Analysis of simultaneous elections: The „What", „Why" And „How" available at: http://niti.gov.in/writereaddata/files/document_publication/Note%20on%20Simultaneous%20Elections.pdf.

[2] The total number of Gram Panchayats, Block Panchayats and District Panchayats in the country is estimated to be about 2.51 lakhs. Statistics available at:

The need for having synchronized elections to the House of the People and State Legislative Assemblies has been debated for long. The issue gained momentum with the matter coming into the limelight at various forums of the Government. If the history of elections in India is looked at, one finds that during the first two decades after independence, general elections for the House of the People and the State Legislative Assemblies were held simultaneously, i.e., during the years 1951-52, 1957, 1962 and 1967. However, due to dissolution of certain State Assemblies in 1968 and 1969 followed by the dissolution of House of the People in 1970 and subsequent general elections in 1971, the cycle of simultaneous elections was disrupted.

The main reason behind the synchronized elections till 1967 was the dominance and rule by one national political party and the regional parties were not powerful and influential. The indiscriminate use of Article 356 of the Constitution also contributed to disruptions of simultaneous elections. However, with the change in Indian polity, the regional political parties not only have increased in number, but have also marked their presence in the elections to the concerned State Assemblies.

At present, the scenario is that at least one part of the country is witnessing an election throughout any given year. Here, the example of Delhi is relevant, which witnessed two Assembly elections and one general election between 2013 and 2015. Similarly, in a span of three years (2014- 2016) the country witnessed one general election and 15 State Assembly elections. This means that the country is continuously in an election mode and the time has arrived to highlight the need for simultaneous elections as against the fragmented and staggered election cycle prevalent currently, which continuously engages the attention of lawmakers and the public alike.

Therefore, it has become necessary to look into the feasibility of holding simultaneous elections in the country. There have been a range of opinions regarding the feasibility and desirability of simultaneous elections. One of the arguments raised against simultaneous elections has been that it goes against the Principles of Democracy and Federalism enshrined in the Constitution. In order to know whether simultaneous elections actually violate the principles of democracy, tinkers with the basic structure of the Constitution or its federal structure, it is necessary to examine these issues analytically.

A. DEMOCRACY

The democratic set-up of the country has always been recognised as a basic feature of the Constitution, along with other features like Supremacy of the Constitution, Rule of law, Separation of powers,

Power of Judicial Review under Articles 32, 226 and 227 etc.[3] In a democratic republic it is the will of the people which is paramount and forms the basis of the authority of the Government. The will is expressed in periodic elections based on universal adult suffrage where the voter expresses his choice of, or preference for a candidate. Thus, the executive has a primary responsibility to serve the nation and enlighten the citizens to further strengthen a democratic state.

Free and fair elections would alone guarantee the growth of healthy democracy in the country. The fair denotes equal opportunity to all people. "Voting is formal expression of will or opinion by the person entitled to exercise the right on the subject or issue"[4].

In a democracy all citizens have equal political rights. Democracy means "actual, active and effective exercise of power by the people i.e., political participation of the people in running the administration of the Government. It conveys the state of affairs in which each citizen is assured of the right of equal participation in the polity.[5]

In Kihoto Hollohan v. Zachilhu, AIR 1993 SC 412, the Supreme Court reiterated its views on Democracy and Elections in the following words:

> "Democracy is a part of the basic structure of our Constitution; and rule of law and free and fair elections are basic features of democracy. One of the postulates of free and fair elections is provision for resolution of election disputes as also adjudication of disputes

[3] Vide: Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461; Minerva Mills Ltd. v. Union of India, AIR1980 SC 1789; P.V Narsimha Rao v. State(CBI/SPE), AIR 1998 SC 2120; Union of India v. Association for Democratic Reforms, AIR 2002 SC 2112; and In the matter of Special Reference No. 1 of 2002(Gujarat Assembly Election Matter), AIR 2003 SC 87.

[4] Schedule Caste and Schedule Tribe officers Welfare Council v. State of UP,AIR 1997 SC 1451 and State of Punjab v. G.S Gill AIR 1997 SC 2324; Peoples Union for Civil Liberties v. Union of India (2013) 10 SCC 1.

[5] R.C. Poudyal v. Union of India, AIR 1993 SC 1804.

> relating to subsequent disqualifications by an independent authority.[6]"

In Kuldip Nayar v. Union of India and others, AIR 2006 SC 3127, the Supreme court, while dealing with the question of political party system vis-à-vis democracy observed that:-

> "parliamentary democracy and multi-party system are an inherent part of the basic structure of Indian Constitution. It is political parties that set up candidates at an election who are predominantly elected as Members of the State Legislatures."

Further, the Court, placing reliance on Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461 observed that:-

> "A Parliamentary Democracy like ours functions on the basis of the party system. The mechanics of operation of the party system as well as the system of Cabinet Government are such that the people as a whole can have little control in the matter of detailed law- making".

From the above said discussion it can be inferred that political party system is an inherent part of democracy and in democracy all the citizens have equal political rights with actual, active and effective exercise of power. Here, the will of the people is paramount and provides for the authority of the Government. The will of people is expressed in periodic elections based on universal adult suffrage through secret ballot. The Constitution declares in the preamble amongst other things, India to be a democratic republic. The democracy is a part of the Basic Structure.

B. DOCTRINE OF BASIC STRUCTURE

The concept of basic structure gives coherence and durability to a Constitution as it has a certain intrinsic force in it. In India, "Basic Structure" is a judicial innovation. The term was used for the first time in the case of Kesavananda Bharati & others v. State of Kerala & another, AIR 1973 SC 1461, wherein the Supreme Court held that the basic structure of the Constitution is not a "vague concept". It includes:

[6] See also: Union of India v. Association for Democratic Reforms, AIR 2002 SC 2112; and People's Union for Civil Liberties v. Union of India, (2013)10 SCC 1.

I. The supremacy of the Constitution.

II. Republican and Democratic form of Government and sovereignty of the country.

III. Secular and federal character of the Constitution.

IV. Demarcation of power between the legislature, the executive and the judiciary.

V. The dignity of the individual (secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.

VI. The unity and the integrity of the nation.

In order to understand the doctrine of basic structure one has to examine the German Constitution. The doctrine is enshrined in Articles 1 to 19 of the German Basic Law – German Constitution 1949. These principles are based on the premise that democracy is not only a form of government but also a philosophy of life based on the appreciation of dignity, value and the inalienable rights of each human being. The Basic Law provides, inter alia, that human dignity, human rights and freedom of faith and conscience are inviolable. They also provide for right to life and physical integrity; equality before law; right to personal honour and privacy; occupational freedom; inviolability of the home; right to property and inheritance. The essence of basic rights could, under no circumstance, be affected. Article 20 provides that Germany is a democratic and a Social Federal State. State authority is derived from the people through elections. All Germans have right to resist anyone seeking to abolish the constitutional order, if no other remedy is available. Article 79 lays down the procedure to amend the Basic Law by supplementing a particular provision or expressly amending the same. However, amendments to the Basic Law affecting the principles laid down in Articles 1 and 20 or affecting the division of federation i.e. participation of Centre and State in the legislative process are inadmissible.

The provisions under the German Constitution deal with rights, which are not mere values, rather, they are justiciable and capable of interpretation. Thus, those values impose a positive duty on the State to ensure their attainment as far as practicable. The State must facilitate the rights, liberties and freedoms of the individuals.

The Supreme Court of Pakistan, in Fazlul Quader Chowdhry & others v. Muhammad Abdul Haque PLD 1963 SC 486, while considering a Presidential Order under Article 224 of the

Constitution dealing with elections, observed:

> "The aspect of the franchise, and of the form of Government are fundamental features of a Constitution, and to alter them, in limine in order to placate or secure the support of a few persons, would appear to be equivalent not to bringing the given Constitution into force, but to bringing into effect an altered or different Constitution."

Coming back to the Indian scenario, the Supreme Court, in Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845 observed that:-

> "the Constitution formulated a solemn and dignified preamble which appears to be an epitome of the basic features of the Constitution. Can it not be said that these are indicia of the intention of the Constituent Assembly to give a permanency to the basic features of the Constitution?"

In Minerva Mills Ltd. & others v. Union of India & others., AIR 1980 SC 1789, the Apex Court held that:-

> "the fundamental rights occupy a unique place in the lives of civilized societies and have been variously described in our Judgments as 'transcendental', 'inalienable' and 'primordial'….The features or elements which constitute the basic structure or framework of the Constitution or which, if damaged or destroyed, would rob the Constitution of its identity so that it would cease to be the existing Constitution but would become a different Constitution…. Therefore, in every case where the question arises as to whether a particular feature of the Constitution is a part of its basic structure, it would have to be determined on consideration of various factors such as the place of the particular feature in the scheme of the Constitution, its object and purpose and the consequence of its denial on the integrity of the Constitution as a fundamental instrument of country's governance."

Whether a particular feature forms part of the basic structure has to be necessarily determined on the basis of that provision of the Constitution. Further, so far as the power to amend the Constitution under Article 368 is concerned, "one cannot legally use the Constitution to destroy itself", as the doctrine of constitutional identity requires. "The Constitution is a precious heritage and, therefore, you cannot destroy its identity." The theory of basic structure is based

on the principle that a change in the thing does not involve its destruction, and destruction of a thing is a matter of substance and not of form[7].

In Smt. Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299, the Supreme Court noted that the principle of free and fair elections is an essential postulate of democracy, and which, in turn, is a part of the basic structure of the Constitution. The Bench expressed their opinion on the issue differently, i.e. democracy was an essential feature forming part of the basic structure and struck down Clause (4) of Article 329A which provided for special provision as to elections to Parliament in the case of Prime Minister and Speaker, on the ground that it damaged the democratic structure of the Constitution; that there were four unamendable features which formed part of the basic structure, namely,

"(i) India is a sovereign democratic republic;

(ii) Equality of status and opportunity shall be secured to all its citizens;

(iii) The State shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion and

(iv) The nation shall be governed by a government of laws, not of men."

These, according to them, were "the pillars of our constitutional philosophy, the pillars, therefore, of the basic structure of the Constitution." In fact, the said clause(4) had taken away the power of judicial review of the courts as it abolished the forum without providing for another forum for going into the dispute relating to the validity of election of the Prime Minister. It extinguished the right and the remedy to challenge the validity of such an election. The complaints of improprieties, malpractices and unfair means have to be dealt with as the principle of free and fair elections in a democracy is a basic feature of the Constitution, and thus, clause (4) was declared to be impermissible piece of constitutional amendment. However, it was also observed:

> "The concept of a basic structure, as brooding omnipresence in the sky, apart from

[7] See also: Vaman Rao v. Union of India, AIR 1981 SC 271; SubCommittee on Judicial Accountability v. Union of India, AIR 1992 SC 320; Raghunath Rao v. Union of India, AIR 1993 SC 1267; and Justice K S Puttaswamy v. Union of India, AIR 2017 SC 4161.

> specific provisions of the Constitution, is too vague and indefinite to provide a yardstick to determine the validity of an ordinary law. (emphasis added)"

In S.R. Bommai v. Union of India, AIR 1994 SC 1918, the Supreme Court explained the concept of basic structure of the constitution, while dealing with the issue of exercise of the power by the Central Government under Article 356 of the Constitution and held that secularism was an essential feature of the Constitution and part of its basic structure.

In M. Nagraj & others v. Union of India & others AIR 2007 SC 71, the Constitution Bench of the Supreme Court dealing with the issue of basic structure observed that:-

> "axioms like secularism, democracy, reasonableness, social justice, etc. are overarching principles which provide linking factor for principles of fundamental rights like Articles 14, 19 and 21. These principles are beyond the amending power of Parliament. They pervade all enacted laws and they stand at the pinnacle of the hierarchy of constitutional values.

Such rights have to be respected and cannot be taken away." The framers of the Constitution have built a wall around the fundamental rights, which has to remain forever, limiting the ability of the majority to intrude upon them. That wall is a part of basic structure[8]. Thus, for a constitutional principle to qualify as an essential feature, it must be established that the said principle is a part of the constitutional law binding on the legislature. Only thereafter, the second step is to be taken, namely, whether the principle is so fundamental as to bind even the amending power of Parliament i.e. to form a part of the basic structure.[9]"

For instance, Parliament, in exercise of its amending power under Article 368, can make additions in the three legislative lists contained in the Seventh Schedule of the Constitution, but it cannot abrogate all the lists as that would abrogate the federal structure, which is one of the basic features of the Constitution. To qualify to be a basic structure it must be a "terrestrial concept having its habitat within the four corners of the Constitution." What constitutes basic structure is not like "a twinkling star up above the Constitution." It does not consist of any abstract ideals to be found outside the provisions of the Constitution. The Preamble no doubt

[8] I.R. Coelho (dead) by L.R.s v. State of Tamil Nadu, AIR 2007 SC 861; See also Kesavananda Bharati & others v. State of Kerala & another, AIR 1973 SC 1461.
[9] M. Nagaraj, Supra.

enumerates great concepts embodying the ideological aspirations of the people but these concepts are particularized and their essential features delineated in the various provisions of the Constitution. It is these specific provisions in the body of the Constitution which determine the type of democracy which the founders of that instrument established; the quality and nature of justice, political, social and economic which they aimed to realize, the content of liberty of thought and expression which they entrenched in that document and the scope of equality of status and of opportunity which they enshrined in it. These specific provisions enacted in the Constitution alone can determine the basic structure of the Constitution. These specific provisions, either separately or in combination, determine the content of the great concepts set out in the Preamble. It is impossible to spin out any concrete concept of basic structure out of the gossamer concepts set out in the Preamble. The specific provisions of the Constitution forms the yarn from which the basic structure has to be woven.

In Supreme Court Advocates on Record Association v. Union of India, AIR 2016 SC 117, the Supreme Court held that there are declared limitations on the amending power conferred on Parliament which cannot be breached. Breach of a single provision of the Constitution is sufficient to render the entire legislation ultra vires the Constitution. The Court held that the basic structure of the Constitution includes supremacy of the Constitution, the republican and democratic form of Government, the federal character of distribution of powers, secularism, separation of powers between the Legislatures, Executive and the Judiciary, and independence of the Judiciary[10].

Thus, "Basic" means the base of a thing on which it stands and on the failure of which it falls. Hence, the essence of the "basic structure of the Constitution" lies in such of its features, which if amended would amend the very identity of the Constitution itself, ceasing its current existence. It, as noted above is, not a "vague concept" or "abstract ideals found to be outside the provisions of the Constitution". Therefore, the meaning/extent of "basic structure" needs to be construed in view of the specific provision(s) under consideration, its object and purpose, and the consequences of its denial on the integrity of the Constitution as a fundamental instrument of governance of the country.

[10] See also: Samsher Singh v. State of Punjab, AIR 1974 SC 2192; Union of India v. Sankalchand Himatlal Sheth, (1977) 4 SCC 193; and Naval Kishore Mishra v. High Court of Judicature at Allahabad, AIR 2015 SC 1332.

I. Right of the people qua the elections

Democracy is governance by the people. It is a continual participative operation, not a cataclysmic, periodic exercise. India has adult franchise and general elections as constitutional compulsions. "The right of election is the very essence of the Constitution". The heart of the Parliamentary system is free and fair elections periodically held, based on adult franchise, although social and economic democracy may demand much more[11].

A democracy runs smooth on the wheels of periodic and pure elections. Elections are the barometer of democracy and the contestants the lifeline of the Parliamentary system and its set up[12].

In a democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens. Democracy based on "free and fair elections" is regarded as a basic feature of the Constitution[13].

II. Right to vote and Right to elect (Right to caste vote)

Article 326 provides for "elections to House of the People and the Legislative Assemblies of States to be on the basis of adult suffrage", thus securing the right to vote to an Indian citizen, who is not less than eighteen years of age, subject to certain conditions. The Apex Court had consistently held that right to vote, though fundamental to democracy, is, anomalously enough, not a Fundamental right but a Constitutional right, a Common Law right or a Civil right. It is only a statutory right; so is the right to be elected; so is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Thus, these statutory creations are subject to statutory limitation[14].

Highlighting the distinction between the right to vote and making a choice of a certain candidate via that vote, the Apex Court in Kuldip Nayar (supra), held that the casting of vote

[11] Mohinder Singh Gill & others v. The Chief Election Commissioner & others, AIR 1978 SC 851.
[12] See: Chanda Singh v. Choudhary Shiv Ram Verma & others., AIR 1975 SC 403; and S.R. Chaudhuri v. State of Punjab & others, AIR 2001 SC2707.
[13] Vide: Kesavananda Bharati v. Union of India, AIR 1973 SC 1461; and Kuldip Nayar & others v. Union of India & others, AIR 2006 SC 3127.
[14] Vide: N. P. Poonuswami v. Returning Officer, Namakkal Constituency, AIR 1952 SC 64; Kabul Singh v. Kundan Singh & others, AIR 1970 SC 340; Jyoti Basu & others v. Debi Ghosal & others, AIR 1982 SC 983; Rama Kant Pandey v. Union of India, AIR 1993 SC 1766, Mohan Lal Tripathi v. Distt Magistrate Rae Bareilly, AIR 1993 SC 2042; Thampanoor Ravi v. Charupara Ravi & others AIR 1999 SC 3309; and People's Union for Civil Liberties v. Union of India, AIR 2003 SC2363.

in favour of one or the other candidate tantamount to expression of opinion and preference, and that the final stage in the exercise of voting right marks the accomplishment of freedom of expression of the voter; and, that is where Article 19(1)(a) is attracted. The Court further held that the right to vote originates from the Constitution and in accordance with the constitutional mandate contained in Article 326, the right has been shaped by the statute, i.e. the Representation of People Act, 1951. The right to vote, therefore though not a fundamental right is certainly a constitutional right.

Further, in Desiya Murpokku Dravida Kazhagam (DMDK) & another v. Election Commission of India, (2012) 7 SCC 340 the Court held that:-

> "...every citizen of this country has a constitutional right both to elect and also be elected to any one of the legislative bodies created by the Constitution ....".

Thus, The right to participate in electoral process, either as a voter or as a candidate is a constitutional right. Reiterating the above in Rajbala & others v. State of Haryana & others AIR 2016 SC 33, the Supreme Court held the "right to vote" if not a fundamental right is certainly a "constitutional right", and "it is not very accurate to describe it as a statutory right, pure and simple", Further, the freedom of voting i.e. choosing a candidate to vote for, as distinct from the right to vote, is a facet of the fundamental right enshrined in Article 19(1)(a).

In Government of NCT of Delhi v. Union of India & another, (2018) 8 SCALE 72, the Supreme Court has categorically held that:-

> “Though this right to vote is not a fundamental right, yet it is a right that lies at the heart of democratic form of government. The right to vote is the most cherished value of democracy as it inculcates in the people a sense of belonging. [Emphasis added]”

Thus, in view of the above it can be concluded that the right to vote or contest elections is not a fundamental right, it is at most a Constitutional right. The freedom of voting i.e. choosing a candidate to vote for, however, amounts to freedom of expression and thus, comes under the ambit of Article 19(1)(a) of the Constitution.

III. Right to contest elections

With respect to the right to contest in Panchayat elections, the Supreme Court in Javed & others

v. State of Haryana & others, AIR 2003 SC 3057 held that in view of Part IX of the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right i.e. a right originating from the Constitution and given shape by statute. The Court further noted that "right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute."

In K. Krishna Murthy (Dr.) & others v. Union of India & another, (2010) 7 SCC 202, the Constitution Bench of the Supreme Court recorded that "it is a well-settled principle in Indian Law, that the right to vote and contest elections does not have the status of fundamental rights. Instead, they are in the nature of legal rights. "

In Rajbala (supra), the Supreme Court clarified that an examination of the scheme of the Constitution indicates that every person who is entitled to be a voter by virtue of the declaration contained in Article 326 is not automatically entitled to contest in those elections. Certain further restrictions are imposed on a voter's right to contest elections. These various provisions, by implication, create a constitutional right to contest elections to these various constitutional offices and bodies. Such a conclusion is irresistible since there would be no requirement to prescribe constitutional limitations on a non-existent constitutional right.

Subsequently, the same bench of the Apex Court in Alagaapuram R. Mohanraj & others v. Tamil Nadu Legislative Assembly & others, AIR 2016 SCC 867, unequivocally held that the right to contest an election to the legislative bodies established by the Constitution was not a fundamental right. Acquisition of the membership depends on the decision of the electorate and is conferred by a process established by law. Even after election, the tenure is limited. Fundamental rights do not come into existence upon the volition of others. They inhere in the citizens and are capable of being exercised independently without the need for any action or approval of others subject only to the restrictions imposed by law.

Thus, in view of the above judicial pronouncements, it stands clarified that the right to vote and the right to contest election are not fundamental rights. These are the rights germinating from the Constitution, and are, therefore, constitutional rights, given further shape by the Representation of People Act, 1951, thereby also making them statutory rights. The foregoing discussion leads to the further conclusion that given their placement in the Constitutional scheme and their objects and purposes; these rights are not included in the "basic structure" of

the Constitution.

C. FEDERALISM

In a federal system of government there is a division of power between the Central (Federal) Government and State Governments, in contrast to the unitary system of Government. The Constitution of United States is one such example which is federal in nature. In case of the United States the separate and independent States first formed a Confederation (1781) and then transformed into a Federation (1789). The States have their own Constitutions, the federal Constitution is the supreme law and binding on all the States. Any amendment to the American Constitution is required to be ratified by three-fourths of the States.

Dicey calls it a political contrivance for a body of States which desires a Union but not unity[15]. Federalism, therefore, is a concept which unites separate States into a Union without sacrificing their own fundamental political integrity[16].

The Indian Constitution provides for a dual system of government consisting of a Union government and a number of State Governments duly created by the Union through various State Reorganisation Acts; and distributes powers between them. Further, the Constitution is supreme, and the said Governments derive their powers from it. This supremacy of the Constitution is guarded by the Superior Courts. The power to interpret the Constitution and declare any act of the Union or State Governments which violates the provisions of the Constitution as null and void is vested in the Supreme Court and the High Courts. The foundation for the federal setup of India was laid down in the Government of India Act, 1935, providing for distribution of legislative powers between the Union and the States, which was subsequently adopted in the Constitution of India as three lists under the Seventh Schedule. Indian federalism is not territory related rather it provides systematic and structural principles connecting various provisions of the Constitution[17].

[15] A. V. Dicey, Law of the Constitution (London, 1927).
[16] See: S.R Bommai v. Union of India , AIR 1994 SC 1918.
[17] Automobile Transport (Rajasthan Limited) v. State of Rajasthan, AIR 1962 SC 1406; ITC Limited v. Agricultural Produce Market Committee, AIR 2002 SC 852; State of West Bengal v. Union of India, AIR 1963 SC 1241; State of Rajasthan v. Union of India, AIR 1977 SC 1361; and Kuldip Nayar v. Union of India, AIR 2006 SC 3127.

In the Constituent Assembly, while moving a Draft Constitution[18], Dr. B R Ambedkar said:

> "The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation and that the Federation not being the result of an agreement, no State has the right to secede from it. The federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source."

Dr. Ambedkar, while moving draft of Article 277A in the Constituent Assembly, stated that even though the Centre has been given powers to override the provinces, our Constitution is federal in nature. However, he further explained the limitation of the federalism envisaged in the Constitution by stating that:-

> "when we say that the Constitution is a Federal Constitution it means this, that the Provinces are as sovereign in their field which is left to them by the Constitution as the Centre is in the field which is assigned to it."

Shri K M Munshi, while speaking on the superintendence, direction and control of elections (i.e., Art. 289 of the draft Constitution) in the Constituent Assembly, stated as below:

> "The Centre should have a larger measure of control over the affairs which affect the national existence as a whole. Even in America in which it was not a question of the Centre decentralising itself, but thirteen, independent States coming together first in a sort of confederacy, and then in a federation, what do we find? After the depression of 1929, agriculture, education, industry, unemployment, insecurity, all passed gradually by various means under the control or influence of the Centre. There, the Constitution is watertight and they had to go round and round in order to achieve this result. There cannot be smaller units than a nation today; even a nation is a small unit in the light of the international situation. This idea that provincial autonomy is the inherent right of the Provinces, is illusory. Charles Merriam one of the leading political thinkers in America in his book called "The Need for Constitutional Reform", with reference to

[18] Motion re. Draft Constitution, 4th November 1948; Constituent Assembly Debates Official Report, Vol. VII Reprinted by Lok Sabha Secretariat, New Delhi, Sixth Reprint, 2014.

the States of U.S.A., says, " Most State do not now correspond to economic and social unities and their position as units of organisation and representation may be and has been seriously challenged." In our country the situation is different. From the Councils Act of 1833 till the Government of India Act of 1935, there has been central control over the provinces and it has proved wholesome. The strength, the power and the unity of public life which India has developed during the last one hundred years is mainly due to centralized administration of the country. I would warn the Members how are still harping on the same subject to remember one supreme fact in Indian history that the glorious days of India were only the days, whether under the Mauryas or the Moghuls, when there was a strong central authority in the country, and the most tragic days were those when the central authority was dismembered by the provinces trying to resist it. We do not want to repeat that fatal mistake. We want that the provincial sphere should be kept intact, that they should enjoy a large measure of autonomy but only subject to national power. When national danger, comes, we must realize that the Centre alone can step in and safeguard against the chaos which would otherwise follow. I therefore submit that this argument about Provincial Autonomy has no a priori theoretical validity. We have to judge every subject or matter from the point of view of what the existing conditions are and how best we can adjust the controls, either Central or Provincial, to secure maximum national efficiency[19].”

I. Supreme Court on Indian Federalism

The Supreme Court has consistently held that federalism is one of the basic structures of the Indian Constitution; though it presents the combination of a federal structure with unitary features, yet India is not a Federal State in the traditional sense of the term. The Court further observed that it does contain some traditional characteristics of the federal system, namely supremacy of Constitution, Division of Power between the Union and the States and existence of an Independent Judiciary[20].

[19] Constituent Assembly Debates, 16 June 1949, Vol. VIII, 2014, Sixth Reprint, Lok Sabha Secretariat, New Delhi.

[20] Vide: Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461; Satpal v. State of Punjab & others, AIR 1981 SC 2230; Pradeep Jain v. Union of India, AIR 1984SC 1420; Ganga Ram Moolchandani v. State of Rajasthan, AIR 2001 SC 2616; and ITC Ltd. v. Agricultural Produce Market Committee, AIR 2002 SC 852.

In Re. Berubari Union and Exchange of Enclaves, Reference under Article 143(1) of the Constitution of India, AIR 1960 SC 845, the Supreme Court observed:

> "Unlike other federations, the Federation embodied in the said Act was not the result of a pact or Union between separate and independent communities of States who came together to certain common purposes and surrendered a part of their sovereignty. The constituent units of the federation were deliberately created and it is significant that they, unlike the units of other federations, had no organic roots in the past. Hence, in the Indian Constitution, by contrast with other Federal Constitutions, the emphasis on the preservation of the territorial integrity of the constituent States is absent."

In State of West Bengal v. Union of India, AIR 1963 SC 1241, the Supreme Court held that the Indian Constitution did not propound a principle of absolute federalism. Though the authority was decentralized, this was mainly due to the arduous task of governing the large territory. The court outlined the characteristics, which highlight the fact that the Indian Constitution is not a "Traditional Federal Constitution". Firstly, there is no separate Constitution for each State as is required in a traditional federal setup. The Constitution is the supreme document, which governs all the States. Secondly, the Constitution can be altered by the Union Parliament alone and the constituent States have no power to alter it.

In Union of India v. H.S. Dhillon, AIR 1972 SC 1061, the Court took note of the fact that, under the Government of India Act, 1935, the residuary power was not given either to the Union Legislature or to the Provincial Legislatures; but under the Constitution, by virtue of Article 248, read with Entry 97 in List I of the Seventh Schedule, the residuary power has been conferred on the Union. This arrangement substantially differs from the scheme of distribution of powers in the Constitution of United States of America where the residual powers are with the States.

In State of Karnataka v. Union of India, AIR 1978 SC 68, the Supreme Court observed that the Constitution has, in it, not only features of a "pragmatic federalism" which, while distributing legislative powers and indicating the spheres of governmental powers of State and Central Governments, is overlaid by strongly "unitary" features. This is particularly exhibited by lodging in Parliament the residuary legislative powers, and in the Central Government the executive power of appointing certain constitutional functionaries including High Court and

Supreme Court Judges. The Central Government is empowered to issue appropriate directions to the State Governments and even displace the State Legislatures and the Governments in emergency situations, vide Articles 352 to 360 of the Constitution. The expression "federation" or "federal form of government" has no definite meaning. It broadly indicates a division of powers between a Central (federal) Government and the units (States) comprised therein. The Court also observed that the Constitution is not of a federal character where separate, independent and sovereign States could be said to have joined to form a nation as in the case of United States of America or in some other countries of the world[21]. Indian Constitution is not true to any traditional pattern of federalism. The model is broadly based on federal form of government but with a tilt towards the Union. In Kuldip Nayar & others v. Union of India, AIR 2006 SC 3127, the Supreme Court observed:

> "The Indian Union has been described as the "holding together" of different areas by the Constitution-framers, unlike the "coming together" of constituent units as in the case of USA and the confederation of Canada. Hence, the Rajya Sabha was vested with a contingency-based power over the State Legislatures under Article 249, which contributes to the "quasi-federal" nature of the Government of the Indian Union."

The political sovereignty is distributed between the Union and the States with greater weightage in favor of the Union. Another reason which mitigates the theory of the supremacy of States is that there is no dual citizenship in India. Thus, the Court concluded that the structure of the Indian Union as provided by the Constitution is centralized, with the States occupying a secondary position vis-à-vis the Centre; hence, the Centre possesses the requisite powers to acquire properties belonging to States.

II. Indian Constitution: Unitary or Federal ?

According to Constitutional experts, the Constitution provides for a quasi-federal structure, which is federal in form but unitary in spirit. During a debate on the supremacy of the House of the People with regard to passage of Bills, Shri Brajeshwar Prasad, one of the Members of the Constituent Assembly, stated that our country adopted federalism to tide over the challenge of two-nation theory and to persuade the Indian Princes to surrender part of their sovereignty.

[21] See also: State of Rajasthan v. Union of India, AIR 1977 SC 1361.

He said that the Constitution is "partly federal and partly unitary, and more unitary than federal in character[22].

In light of the argument placed time and again that the Indian Constitution is federal in nature and simultaneous elections will affect Federalism, thereby affecting the basic structure, the researcher deems it proper to analyse the issue.

It is evident that the Indian Constitution is not federal in a strict legal sense. The term "Federalism" is being used in liberal sense as the Constitution provides for division of legislative powers. Thus, it is called "quasi-federalism", "pragmatic federalism", "collaborative federalism" or "cooperative federalism". The States have been carved out for administrative convenience. The Central Government on assessment of the situation can either move either on the federal or unitary basis. The Indian Union is federal, but the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically coordinated, and socially uplifted. In such a system, the States cannot stand in the way of legitimately and comprehensively planned development of the country in the manner directed by the Central Government. The Constitution of India creates a Central Government which is "amphibian", in the sense that it can move either on the federal or unitary plane according to the needs of the situation and circumstances of the case. An assessment of the "situation" in which the Union Government should move either on the federal or unitary plane is a matter for the Union Government itself to decide and no one else. A conspectus of the provisions of our Constitution is more unitary than federal[23].

A similar view has been reiterated by the Supreme Court in Shamsher Singh v. State of Punjab, AIR 1974 SC 2192, observing that the Parliamentary system of "quasi-federalism" was accepted, rejecting the substance of Presidential style of Executive. The Constitution is both unitary as well as federal depending on the need of the circumstances.

CONCLUSION

The polity and the democratic set up in any country is prone to continuous change. This is

[22] Constituent Assembly Debates, 20 May 1949, Vol. VIII, 2014, Sixth Reprint, Lok Sabha Secretariat, New Delhi.
[23] State of Rajasthan v. Union of India, AIR 1977 SC 1361.

specifically true in the case of India, which is uniquely placed, owing to its unity in diversity. In order to develop into a mature and a vibrant democracy, the quest for increasingly productive and positive changes in the overall set up of the country are inevitable. The observation of Supreme Court in Tamil Nadu Education Department Ministerial and General Subordinate Services

Association & others v. State of Tamil Nadu & others; AIR 1980 SC 379, is relevant in this context. The Court while dealing with the issue of seniority of teachers stated:

> "The wisdom of yesterday may obsolesce into the folly of today, even as the science of old may sour into the superstition now, and vice versa….Once the principle is found to be rational the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy. Every cause claims a martyr and however unhappy we be to see the seniors of yesterday becoming the juniors of today, this is an area where, absent arbitrariness and irrationality, the court has to adopt a hands-off policy."

Similarly, in State of Karnataka & another v. Dr. Praveen Bhai Togadia, AIR 2004 SC 2081, the Court observed:

> "Welfare of the People is the ultimate goal of all laws and State action and above all, the Constitution. They have one common object that is to promote well-being and larger interest of the society as a whole and not of any individual or particular groups carrying any brand names."

In view of the foregoing discussions, the researcher is convinced that there exists a viable environment necessitating the holding of simultaneous elections to the House of the People and the State Legislatures. Simultaneous elections can be seen as a solution to prevent the country from being in constant election mode. Thus, reducing government expenditure substantially, not diverting the already short numbered security forces, and above all, without causing harm to the constitutional and democratic set up of the country.

The issues of democracy, basic structure, federalism, etc. have been appropriately addressed. It has also been examined as to whether the rights of the citizens are compromised in any manner while holding simultaneous elections . Free and fair election is an essential part of a

democracy. Even today, premature dissolution of House(s) and mid-term polls are frequent in the country. Thus, holding simultaneous elections, by no means, affect democratic set up of India. The right vote or contest elections are statutory / constitutional rights and in no manner could be fundamental rights. Thus, even by stretch of imagination, it cannot be argued that holding simultaneous elections would adversely interfere with basic structure of the Constitution. Similarly, as the process of simultaneous elections does not alter any of the Entries in the three Lists contained in Seventh Schedule of the Constitution, and it does not interfere with legislative competence of the Centre or the States, the contention that it would tinker with the concept of federalism is devoid of any merit. Therefore, the researcher comes to the inescapable conclusion that restoring simultaneous elections will, in no way, affect the basic structure of the Constitution, democracy and the quasi-federal nature of the Constitution.