
THE CONSTITUTION (129TH AMENDMENT) BILL, 2024 – A CRITICAL ANALYSIS OF ITS IMPACT ON FEDERALISM AND THE BASIC STRUCTURE

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ABSTRACT

The Constitution (129th Amendment) Bill, 2024, also referred to as the ONOE Bill, aims at synchronizing the electoral timeline of all the Vidhan Sabha elections with that of the Lok Sabha election, intending to reduce the election expenditure. The ONOE bill, introduced in the Lok Sabha in December 2024, seeks to attain the simultaneity by amending some crucial provisions of the Indian Constitution. Despite the anticipated advantages of simultaneous elections, the proposed amendments increase the dominance of the Union Government and grant wider discretion to the President and the Election Commission of India, thereby overreaching the federal structure. If implemented, they could even erode the autonomy of states in the long run. Hence this paper aims at addressing the Constitutional challenges in implementing the ‘One Nation One Election’ bill, also providing a comprehensive study on the past trials, present situations and future complications of simultaneous elections in India. Taking references from the Constituent Assembly debates and some landmark judicial precedents, the author attempts to provide an in-depth critical analysis on the said bill and its impact on federalism and parliamentary democracy, further advocating the need for widening the scope of the Basic structure doctrine.

Keywords: Simultaneous elections, Federalism, State Autonomy, Parliamentary democracy, Basic structure.

INTRODUCTION

India, the largest democracy in the world, holds its elections at multiple stages - Central, State, and Local - ensuring a balanced distribution of power among various elected representatives. Being the bedrock of Indian Democracy, elections reflect the country's diverse and pluralist nature, representing a wide range of cultures, languages and regional issues. The concept of "One Nation, One Election" (ONOE) proposes synchronizing these diverse and multiple elections, with the object of reducing their frequency and minimizing the humongous electoral expenditure spent every year. In a simultaneous election, both the General Election and the State Assembly Elections would happen on the same day or within a specified time frame, ensuring socio-economic stability. While the concept has been debated for decades, it has recently gained momentum with the passage of 129th Constitutional Amendment Bill in December 2024. Quoted as the first phase of synchronizing elections in India, the bill provides a draft legal framework for implementing a structured cycle of simultaneous elections. Though the proponents of the bill contend that it would strengthen the democratic process and curtail the disruptions caused by frequent elections, critics argue that it poses a substantial threat to federalism and democratic principles, paving the way for a drastic shift towards centralisation.

HISTORICAL PERSPECTIVE:

Though not a conscious choice, 'One Nation One Election' was originally a practice in India when the country held its first-ever parliamentary elections in 1951-52¹. The pollings for both the Lok Sabha and the Vidhan Sabha elections happened at the same time, across the country. However, with the formation and re-organization of states and Union territories, the electoral cycle witnessed a gradual desynchronization in the coming years. Kerala was one of the first states to deviate from this traditional cycle, when the first elected Communist government led by EMS Namboodiripad was prematurely dissolved by the President in 1959². Newly formed entities like Puducherry and Nagaland also had deferred election timings. Despite a few hits and misses, around 60-70% of states were holding simultaneous elections for three consecutive terms, until a political earthquake struck off the cycle in 1967.

¹ Anubhuti Vishnoi, 'One Nation One Election' through decades, ET (Jan. 30, 2024, 11:57 AM), <https://m.economictimes.com/news/politics-and-nation/one-nation-one-election-through-the-decades/articleshow/103294184.cms>.

² A.E. Shefi, *Vimochana Samaram and First Communist Ministry in Kerala: A Historical Analysis*, 80 PIHC 1150, 1155-56 (2019).

The year 1967 is often regarded as a landmark year in the history of Indian electoral politics, when, for the first time, the country witnessed such a tremendous political instability. The popular phrase “Aaya Ram, Gaya Ram”, which refers to the post-election switching of parties by the elected legislators, originated in this year³. Out of 3500 members elected to the State legislative Assemblies, around 550 defected from their original parties after the election. The frequent defections in 1968-69 churned up political turmoil in multiple states, resulting in premature dissolution of the assemblies in states like Haryana, Punjab, Bihar and West Bengal. This, in turn, made them hold mid-term elections, severely disrupting the aligned electoral cycle. The desynchronization was further intensified in the year 1971, when the Congress Party split into two fractions and the Lok Sabha was dissolved earlier for the very first time. With the evolution of regional parties and multi-party coalitions, dissolutions became more frequent and staggered elections have become a norm. As of now, except for Andhra Pradesh, Odisha, Arunachal Pradesh and Sikkim, no other states hold their elections simultaneous with the General elections⁴. Despite its past trials and the merits it has, implementing simultaneous elections in the current scenario would require elaborate constitutional amendments and political discussions, since India’s federal structure now accommodates diverse and independent electoral timelines for its states and the Union.

THE HIGH-LEVEL COMMITTEE ON ONOE, 2024:

In order to analyse the feasibility of bringing back concurrent elections for all the three tiers of the Government, a High-Level Committee (HLC) on Simultaneous Elections was constituted by the Government of India on September 2, 2023⁵. Chaired by the former President Shri Ram Nath Kovind, the Committee had engaged in consultations with 47 political parties and several legal experts including retired judges and former election commissioners, where majority of them extended their support for the initiative. Moreover, about 21000 citizens were surveyed for this purpose, of which 81% favoured simultaneous elections⁶.

³ Paras Diwan, *Aya Ram Gaya Ram: The Politics of Defection*, 21 JILI 291, 291-292 (1979).

⁴ Debanish Achom, *Assembly Elections in Andhra, Arunachal, Sikkim and Odisha from April 19*, NDTV (Mar 16, 2024, 16:14 PM), <https://www.ndtv.com/india-news/andhra-to-vote-on-may-13-arunachal-and-sikkim-on-april-19-odisha-on-may-13-and-may-20-5250068>.

⁵ PIB Delhi, *High Level Committee submits its report on One Nation, One Election – Simultaneous Elections core to Aspirational India*, PIB, Mar 14 2024. <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2014497>.

⁶ Sandeep Phukan, *81% of citizen responses have affirmed simultaneous polls: Law Ministry*, THE HINDU (Jan 22, 2024, 06:35 AM), <https://www.thehindu.com/news/national/81-of-citizen-responses-have-affirmed-simultaneous-polls-law-ministry/article67763360.ece>.

- Recommendations: On 14th March, 2024, the HLC submitted an 18,626 pages comprehensive report to the Hon'ble President of India, Smt. Droupadi Murmu⁷. The report recommended implementing the idea of 'One Nation One Election' in two phases:
 1. First phase: Shifting to a simultaneous election system for the union and the state legislatures, where fresh mid-term elections will be held only for the remainder of the term, if the existing Lok Sabha or any legislative Assembly dissolves before its term expires. As per the report, this bill does not require state ratification.
 2. Second phase: Synchronizing local body elections with the aforesaid cycle, by holding them within 100 days of phase 1 elections. It further provides for the establishment of a Single Electoral Roll across the country. Since the local body elections come under the purview of State list in the Seventh Schedule, their provisions cannot be amended by a simple majority. Hence the delay in synchronizing the local body elections is attributed to the need for its ratification by at least half of the states in India.

129th CONSTITUTIONAL AMENDMENT BILL:

Incorporating the recommendations of the High-level Committee, the government introduced two Bills in the Lok Sabha to facilitate simultaneous elections:

- The Constitution (129th Amendment) Bill and
- The Union Territories Laws (Amendment) Bill.

The former focuses on aligning the terms of the Lok Sabha and the State Assemblies, whereas the latter aims to extend the provisions of the aforementioned bill to the Union Territories and the National Capital Territory of Delhi.

⁷ *Id.*

PROPOSED AMENDMENTS:

A new provision to implement simultaneous elections, read as Article 82A, is proposed to be inserted next to the delimitation provision of Article 82⁸.

Article 82A:

- 82A (1) (Date of Implementation): The provision of Article 82A shall come into force on the ‘appointed date’ publicly notified by the President, which shall mark the date of first sitting of the Lok Sabha following the general elections.
- 82A (2) (Curtailed Tenures): The terms of the State Assemblies shall be curtailed in accordance with the full-term of the Lok Sabha, though they may have been elected after the ‘appointed date’.
- 82A (3) (ECI’s role): The Election Commission of India (ECI) is responsible for conducting general elections to the Lok Sabha and all the Legislative Assemblies simultaneously.
- 82A (4) (Definition of Simultaneous Elections): Simultaneous elections are defined as “general elections held for constituting the House of the People and all the Legislative Assemblies together.”
- 82A (5) (Exception Clause): The ECI has the discretion to recommend postponement of election to a particular assembly, if it finds it unfeasible to hold the election simultaneously. The President is then empowered to issue an order for deferring those elections.
- 82A (6) (Alignment of Deferred Elections): In the case of deferred election to a legislative assembly, the term of office of the Assembly shall still end with the completion of the full-term of the Lok Sabha.

Certain amendments have also been proposed to three exiting Articles⁹, namely,

⁸ Constitution (129th Amendment) Bill, 2024.

⁹ *Id.*

1. Article 83 (duration of Houses of Parliament),
2. Article 172 (duration of the state legislatures), and
3. Article 327 (power of Parliament to make provisions with respect to elections to Legislatures).

Amendments to Article 83 (Tenure truncation):

- Full-Term: Article 83 provides for a fixed five-year term, which shall be referred to as the ‘Full-term’ of the Lok Sabha.
- Unexpired Term: If there is a premature dissolution of the Lok Sabha, the reconstituted house will only serve the remainder of its term. This remainder period is referred to as the ‘unexpired term’ of the dissolved house. Example: If the Lok Sabha is dissolved after 4 years, the succeeding house will only serve the remaining 1 year.

Amendments to Article 172 (Tenure truncation for State Legislatures):

Similar to that of the Lok Sabha, the terms of the State legislatures shall also align with the “unexpired term” provision. If a Legislative Assembly dissolves prior to the expiration of its full-term, the mid-term election shall be held only for the remainder of its term.

Amendments to Article 327 (Conduct of Simultaneous Elections):

Article 327 empowers the Parliament to enact laws on electoral matters such as preparation of electoral rolls and delimitation of constituencies. The bill proposes to insert “conduct of simultaneous elections” to this list.

IMPACT ON FEDERALISM – A CRITICAL ANALYSIS:

Federalism is a mode of governance where the power is divided between a central authority and its constituent political units, often referred to as states or provinces. In the Indian context, federalism is a part of the basic structure of the Constitution, as it was held in the case of *Kesavananda Bharati v. State of Kerala*¹⁰. To the contrary, India is defined as a Union of States

¹⁰ 1973 AIR 1461.

under Article 1 of the Constitution. Hence the country embraces a quasi-federal structure¹¹, which combines the features of both federal and unitary systems. Though the Constitution clearly demarcates the powers of the Union and the states, the Central government always has an upper hand in legislative and financial matters, which often undermines the federal structure of India. One such instance is the introduction of the Constitution (129th Amendment) Bill, proposing to implement simultaneous elections in India, the provisions of which could impact federalism in the following ways:

1. Truncation of the 5-year term:

Article 83 of the Constitution prescribes the tenure of the Parliament's two houses, the Lok Sabha and the Rajya Sabha. In particular, Article 83(2) stipulates that the Lok Sabha shall continue for five years from the date appointed for its first meeting, except in case of a premature dissolution. Under Article 172(1), a similar tenure is guaranteed to the State Legislative Assemblies as well. The aforesaid provisions are mandatory in nature, since the word "shall" is used as an imperative command to stipulate the same. In *State of Haryana & Anr v. Raghbir Dayal*¹², the court has observed that the word 'shall' is ordinarily construed as mandatory unless the intention of the legislature demands otherwise. Referring to the Constituent Assembly debates, it can be inferred that the legislative intent behind enacting these provisions is to uphold the principles of democracy. The fixation of this five-year term struck the right balance between efficient governance and electoral accountability, preserving the democratic values of the country. If the use of the word 'shall' in the said provisions is alternatively construed as directory, the core object of the enactment itself would be defeated. Hence the five-year term should be recognized as a Constitutional right of the Lok Sabha and the State Legislatures, except in the cases of Constitutionally valid premature dissolutions.

The newly proposed Article 82A provides for compulsory premature dissolution of various legislative assemblies, curtailing their tenures to align them with the full-term of the Lok Sabha. The Constitutional validity of such a premature dissolution remains a big question, since it has direct and serious implications for federalism and the rights of the elected legislatures. According to Article 174(2), the power to prematurely dissolve a state

¹¹ Dr. K.C.WHEARE, FEDERAL GOVERNMENT 53 (4th ed. 1964).

¹² (1995) 1 SCC 133.

legislative assembly is vested in the hands of the Governor. However, the Governor cannot discretionarily exercise this power without consulting the council of ministers, as stipulated in Article 163. The dissolving power of the Governor is subject to the aid and advice of the cabinet, except when there is a loss of majority. It was reinstated in the case of *Nabam Rebia and Bamang Felix v. Deputy speaker*¹³, where the Supreme Court observed that the Governor cannot have an overriding authority over the elected representatives, since it would go against the democratic principles enshrined in the Constitution. Hence the state legislatures retain the right to enjoy the full-term of 5 years, unless there is a loss of majority or a failure of the constitutional machinery. Therefore, the compulsory truncation of their tenure as proposed in Article 82A would be ultra vires to the Constitution.

Furthermore, the tenure truncation proposed in the aforesaid provision is not intended as a mere one-time measure to align the elections. According to the proposed amendments in Article 83 and Article 172, if the Lok Sabha or any legislative assembly is dissolved before the end of its full term, the mid-term elections will be held only for the period of its 'unexpired term'. This means that if the Lok Sabha is dissolved after three years of its tenure, the subsequently elected Lok Sabha will function only for the remaining two years. Hence the democratically elected legislatures will not have the constitutionally mandated term of five-years, which is a blatant violation of the federal and democratic principles set out in the Constitution. When a similar amendment was moved by Prof. K.T. Shah in the Constituent Assembly, it was elaborately discussed and outrightly rejected by the other members. Mr. R.K. Sidhwa, a prominent member of the assembly, contended that the subsequent house should be allowed to serve its full-term and the rights of the newly elected members should not be abrogated for the wrongs committed by the previous members¹⁴. Dr. B.R. Ambedkar seconded his contention by saying that holding elections for a shorter period would involve enormous costs and it would be unfair to both the Government and the public¹⁵. Further, if such an amendment is implemented, the term limits can be deliberately tweaked by the Governments to consolidate power, resulting in an authoritarian regime. Allowing the Parliament to curtail the tenure of an elected State

¹³ AIR 2016 SC 3209.

¹⁴ CONSTITUENT ASSEMBLY DEBATES, May 18, 1949 *speech by* DR. R.K. SIDHWA 87, available at <https://www.constitutionofindia.net/debates/18-may-1949/>

¹⁵ CONSTITUENT ASSEMBLY DEBATES, May 18, 1949 *speech by* DR. B.R. AMBEDKAR 88, available at <https://www.constitutionofindia.net/debates/18-may-1949/>

legislature, therefore, is an assault on the basic structure of the Constitution.

2. Possible misuse of Article 356:

Article 356 of the Indian Constitution has always been a matter of debate since its inception. Under the disguise of President's rule, it empowers the Union Government to impose its direct rule in any state and take over the executive and legislative authority of the state. Dr. BR Ambedkar believed that the said article would be used only in extremely unavoidable circumstances and he wanted it to remain a dead letter. However, the succeeding governments in the Centre excessively misused the provision for their own political gains. According to the Sarkaria Commission report of 1988, at least one-third of all the President's rule impositions in our country (until then) had some ulterior motives¹⁶. Even the destabilization of the aligned electoral cycle in the 1960's majorly resulted from the outrageous misuse of Article 356 by the ruling parties in the Centre.

The alarming rise of the misuse threatened the autonomy of states and the federal structure of our country, until it was restricted by the Supreme Court in the landmark case of *SR Bommai v. Union of India*¹⁷. The court held that the power to impose President's rule should be exercised cautiously and is subject to judicial review. It was further reinstated that the use of Article 356 is allowed only in case of a breakdown of constitutional machinery, and not that of administrative machinery. However, the proposed amendments in the ONOE bill retrieve the chances of misuse by leaving out some critical gaps in the truncation provision. For instance, if the Lok Sabha or any legislative assembly is dissolved after four years of its term for any reason whatsoever, holding a mid-term election to fill up the remainder term of 1 year would needlessly double the expenditure, contradicting the core intention of the bill. Such an arduous situation would obviously demand the imposition of President's rule in the state, even when mid-term elections are feasible. This is not a mere imagination of a hypothetical situation, but the same was suggested by the Election Commission of India in the 79th Parliamentary standing committee report on personnel, public grievances, law and justice. The ECI had suggested the imposition of President's rule until the expiration of the full-term, when a legislative assembly is prematurely

¹⁶ SARKARIA COMMISSION, *Report on Centre-State relations*, 174-177 (Jan 1988).

¹⁷ AIR 1977 SC 1361.

dissolved and its unexpired term is relatively shorter¹⁸. If the same is implemented, it would go against the words of our Constitution framers and the guidelines framed in *SR Bommai v. UOI*, which allow the use of Article 356 only when there is no other option left. Furthermore, in such a complex scenario of premature dissolution, President's rule could often override mid-term elections, thereby undermining the principles of parliamentary democracy. In simple words, Article 356 would become a rule rather than an exception.

3. Excessive discretion to the ECI:

Free and fair elections are considered to be basic features of the Constitution¹⁹. Article 324 of the Indian Constitution empowers the Election Commission of India (ECI) to ensure free and fair elections by exercising "superintendence, direction, and control" over the electoral process. One of the most significant powers of the ECI is its ability to defer or reschedule elections, especially when the circumstances demand, such as in cases of natural calamities, law and order situations, or other exceptional scenarios. However, misuse of this power would erode the spirit of federalism by manipulating the fairness of elections, disrupting the state autonomy and centralizing the authority. In order to prevent such a misuse, the Supreme Court in the case of *Mohinder Singh Gill v. Chief Election Commissioner*²⁰ (1978) held that the plenary powers given to the ECI under Article 324 should be exercised judiciously, and not arbitrarily.

Now adding fuel to the fire, the proposed Article 82A (5) vests the Election Commission of India with an even vaguer discretionary power. According to this Article, if the ECI is of the opinion that elections to any Assembly cannot be conducted at the time of the General Elections, it may make a recommendation to the President, who may then declare by an order that election to such Assembly may be deferred to a later date. There is no mention of any fixed grounds on which the opinion of the ECI should rely on, which in turn increases the risk of biased interpretations. This proposal not only gives the ECI wider discretion to interfere with the Assembly elections, but could also intensify the potential for misuse, leaving the final call to defer elections in the hands of the President. Since the President

¹⁸ Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, *Feasibility of Holding Simultaneous Elections to the House of People (Lok Sabha) and State Legislative Assemblies*, Report No.79, 5 (Dec 17, 2015).

¹⁹ *Kihoto Hollohan v. Zachillhu & Ors.*, AIR 1993 SC 4120.

²⁰ *Mohinder Singh Gill v. Chief Election Commissioner*, AIR 1978 SC 851.

acts on the aid and advice of the Union Cabinet, there are high chances of federal overreach. Further, the concerned state would have no say if the ECI forms a discretionary opinion, and hence the said Article could be arbitrarily used by the Union Government for various political reasons, gravely encroaching upon the state autonomy.

CONCLUSION:

The Basic structure doctrine exemplifies transformative Constitutionalism in the best possible way²¹. It strengthens our Constitution by limiting the amending powers of the Parliament. Hence the federal characteristics of the Constitution, opined as a part of the basic structure in several landmark cases, cannot be amended whatsoever. As the proponents of the ONOE bill argue, our federal system is not new to the concept of 'One Nation One Election'. Till the year 1967, elections in post-independent India were fully synchronized across the country. Though the concept of simultaneous elections in itself is not anti-federal, the Constitutional amendments proposed for its implementation undermine federalism and democracy to a larger extent. Bringing about such an idea in the current multi-party system could disrupt the federal balance by centralizing electoral processes, diluting state-specific concerns, and reducing the autonomy of state governments. A delicate balance between national unity and regional diversity is of utmost importance for any federal state, and a shift towards simultaneous elections must cautiously consider the interests and concerns of state governments.

²¹ Justice B.V. Nagarathna, Judge, Supreme Court of India, Chief Justice K.K. Usha Memorial Lecture: Transformative Constitutionalism (Mar 11, 2023).