

To  
The Member-Secretary,  
Law Commission of India,  
4<sup>th</sup> Floor, Lok Nayak Bhawan, Khan Market,  
New Delhi – 110003.

May 8, 2018

**Subject: Suggestions in response to the Law Commission's draft recommendations regarding "Simultaneous Elections – Constitutional and Legal Perspectives"**

Dear Sir,

The NUJS Law Review is the flagship journal of the National University of Juridical Sciences, Kolkata. The Law Review was launched as a realization of the fact that Universities, especially law universities, have responsibilities towards the society in which they exist and must be a source of information and guidance for the same. Over the years, the NUJS Law Review has provided legal analysis and commentary on a range of issues, and in doing so has invited prolific academics, policy makers, law students, practitioners, and those interested in legal studies to contribute towards the success of the Journal. Our articles are widely cited and relied upon in academic and policymaking discourses, notably in recent times by the Economic Survey 2017-2018, the National Judicial Academy, etc.

The collaborative response paper enclosed herewith has been prepared by select editors and members of the NUJS Law Review, in response to the Law Commission of India's notice on April 17, 2018 inviting comments from stakeholders, regarding the summary of its draft working paper pertaining to "Simultaneous Elections – Constitutional and Legal Perspectives". This paper seeks to holistically address the issues raised in this sphere by the Law Commission, as well as to suggest key modalities concerning the 'possible recommendations' delineated in the notice.

We appreciate the opportunity to provide these suggestions, and are happy for them to be published. Should you have any questions or wish to discuss any aspect of our response paper further, please feel free to contact us at [njslr@gmail.com](mailto:njslr@gmail.com).

Yours sincerely,  
Select Editors (*Aratrika Choudhuri, Amrita Ghosh*) and Members (*Aashesh Singh, Anirudh Krishnaa, Devashri Mishra*)  
o.b.o. The NUJS Law Review

**LAW COMMISSION SUMMARY OF**  
**DRAFT WORKING PAPER ON**  
**SIMULTANEOUS ELECTIONS –**  
**CONSTITUTIONAL AND LEGAL**  
**PERSPECTIVES**

***RESPONSE PAPER AND RECOMMENDATIONS BY  
SELECT EDITORS\* AND MEMBERS# OF THE NUJS  
LAW REVIEW***

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## **INTRODUCTION**

### ***A. APPROACH AND OBJECTIVES***

The proposition of simultaneous elections which is being considered for implementation as early as 2019, is both daunting and intriguing for a nation like India where elections play a significant role in the democratic life of the country. It is a known fact that elections, at the Parliamentary level and the state level take up a large amount of time and engage resources of the nation for this prolonged period. The current system of electoral process followed across India suffers from various inadequacies which require immediate remedy in order to preserve the democratic ethos of India. Simultaneous elections have emerged as a potential remedial step in this respect.

Suggested as a viable alternative to the current model of frequent and staggered elections, simultaneous elections have been endorsed as a possible solution to the existing issues concerning the electoral cycle by the incumbent Union government as well as the NITI Aayog. The feasibility of simultaneous elections being introduced in India has been deliberated by the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice and the Election Commission of India. The Draft Working Paper being prepared by the Law Commission on the matter of simultaneous elections holds immense potential in suggesting structural changes which can contribute to improving the electoral health of India.

The contemporary public discourse on simultaneous elections evinces an ostensibly intractable divide between the two sides of the binary – the proposals staunchly favouring or opposing Simultaneous Elections (‘SE’). Hence, our endeavour has been to adopt a pragmatic approach and to proffer realistic solutions keeping in mind the draft recommendations of the Law Commission in its notice on April 17, 2018 – using insights from normative and policy frameworks, empirical data, legal tenability and administrative feasibility studies of simultaneous elections. Thus, we have consciously sought to eschew an *a priori* bias in favour of either side, and have sought to objectively assess the spectrum of justifications afforded for and against simultaneous elections, so that

- the policy-makers can evaluate and assess which option they would like to pursue;
- noting the benefits and demerits of each proposal promulgated;
- concomitantly proffering legislative and administrative models that can be realistically implemented to operationalize simultaneous elections and bridge the aforementioned intractable divide; and
- incorporating appropriate qualifiers and riders in our model designs, that would holistically tackle the criticisms levied against simultaneous elections as well.

## ***B. STRUCTURE OF THE PAPER - OVERVIEW***

The response paper is structured with a focus on the following key areas: -

Part I evaluates the key justifications and rebuttals afforded thereto, with regard to simultaneous elections. Without strong normative, empirical, policy, economic and/or administrative justifications for simultaneous elections, it will be indeed difficult to rationalize such a wide-ranging governance reform, portending momentous constitutional, legal and political implications. Hence, this analysis foregrounds the key reasons afforded for conducting simultaneous elections, evaluates the common rebuttals to the same, and affords a balanced perspective on the justifications for conducting simultaneous elections. The endeavour is to provide analytical and empirical interpretation of existing ideas and data so as to appositely bolster the system of simultaneous elections sought to be recommended by the Law Commission.

Part II evaluates the key modalities proposed for operationalizing simultaneous elections, with a view to narrowing down on the most feasible model of conducting simultaneous elections. Here, the plethora of simultaneous elections models suggested across different reports – 1-phase model (i.e. conducting Lok Sabha and State Legislatures’ elections together); 2-phase model (the Niti Aayog Model recognized by the Law Commission, wherein half of the States undergo simultaneous elections with the Lok Sabha, and the rest go for elections 2.5 years later) – as well as the proposal to exclude local body elections completely from the purview of simultaneous elections, are critically assessed. We propose a unique model to account for the concerns posited w.r.t. the different models of simultaneous elections, and delineate its modalities.

Part III considers the key issue concerning the possible impact of simultaneous elections on voter behaviour, possibly biasing it in favour of national parties. We utilize the experience of foreign jurisdictions conducting simultaneous elections (with attendant riders regarding transplanting experiences of foreign jurisdictions to the experiences of the Indian polity), as well as scrutinize in detail the key Indian studies cited for demonstrating voter bias heralded through simultaneous elections. Our empirical analysis of the Indian Election Commission statistics for the simultaneous elections conducted in India in the past reveals a more nuanced picture than what has been generally depicted in critical academic and policymaking discourses

Part IV assesses the constitutional and legal implications of simultaneous elections with respect to tenure and dissolution of the Lok Sabha and State Legislatures, as well as attendant issues of no-confidence motion, Constructive Vote of No-Confidence (‘CVNC’), stability of the government, deleterious impacts on federalism envisaged in the constitutional structure etc. The issues in relation to non-completion of full term of national and state legislative assemblies and premature dissolution are thus considered in view of the proposed introduction of CVNC. The proposed amendments are delineated.

Part V focuses on the normative comport, constitutional appositeness and legal feasibility of carving out of an exception in the Anti-Defection Law (‘ADL’) to facilitate the system of simultaneous elections. The Law Commission’s summary draft recommendations clearly evince the deep concerns regarding relaxation of ADL to actuate CVNC and consequently, the simultaneous elections. It is imperative to therefore assess whether such

relaxation should be normatively permitted, and empirically, in which circumstances. The proposed amendment is also delineated.

Part VI deals with the normative and procedural compatibility of the wide-ranging constitutional amendments required to operationalize simultaneous elections, with the Basic Structure Doctrine ('BSD'). While the Law Commission has suggested in its draft working paper certain measures like seeking states' ratification for such amendments, this still deals only with the *procedural* aspect of passing the BSD tests; the *normative* alignment of such pervasive constitutional amendments portending significant impacts on the federal structure of the Indian polity (recognized as a part of the basic structure of the constitution in numerous judgments), with the BSD tests firmly entrenched in Indian constitutional jurisprudence, needs to be examined.

Part VII considers certain allied criticisms typically afforded against simultaneous elections and provides rebuttals to these arguments, wherever appropriate; whilst also emphasizing on certain justified objections to simultaneous elections to evolve a balanced policy perspective.

Part VIII suggests concomitant electoral reforms which must be necessarily implemented in conjunction with simultaneous elections to mitigate its oft-criticized deleterious impacts on federalism, and to eschew anticipated harms that may be wrought by its advent. The proposed amendments are delineated.

Annexure I lists key cases that have ensconced important jurisprudential edicts relevant to the conduct of Simultaneous Elections and their impact on the tenure and dissolution of national and state legislative assemblies, gubernatorial and presidential powers in these spheres, etc.



## I. EVALUATING JUSTIFICATIONS FOR SIMULTANEOUS ELECTIONS

The key arguments cited in favour of simultaneous elections, major rebuttals proffered and possible counterarguments to these, are presented below:-

### A. *CONSTITUTIONAL LEGACY AND HISTORICAL EXPERIENCE*

The constitutional architecture and spirit promulgated by the founding fathers envisaged a stable representative democracy in India, with similar electoral system-designs for both national and state legislative assemblies; constitutionally entrenched uniform five-year tenure for these bodies; and the Election Commission acting as the common watchdog, safeguarding one of the most significant reaffirmations of this democratic nature of the Indian polity.<sup>1</sup> Article 83(2) of the Constitution provides for a term of five years for Lok Sabha, from the date of its first sitting unless dissolved earlier. Similar provisions under Article 172 (1) provides for five-year tenure for State Legislative Assembly from the date of its first sitting. This clearly evinces that the intention of the founding fathers was to harmonize the temporal aspect of elections of both Lok Sabha and State Legislative Assemblies –**simultaneous elections was envisaged to be the norm, and separate elections only the exception** (under constitutionally specified conditions of dissolution, or failure of a state's constitutional machinery under Article 356).

The **historical experience of successful conduct of simultaneous elections from 1951 to 1967** has often been dismissed by critics as mere products of historical accident or coincidence, not constitutional design.<sup>2</sup> Arguably, the constitutional architecture argument discussed above strongly countervails this assertion. The lack of explicit delineation of simultaneous elections in the constitutional text does not deter strong inferences that the constitutional architecture and the spirit, interpreted together, do support simultaneous elections. The rise of the coalitional government and multiparty democracy after 1967, whilst indubitably engendering decentralization and accountability, does not imply that these would have been impossible to achieve without disrupting simultaneous elections conducted till then. The correlation drawn between dismantling of simultaneous elections and growth of multiparty democracy, and concomitantly, the suggestion that conducting simultaneous elections boosts authoritarianism of the Centre,<sup>3</sup> must be attested by empirical evidence, instead of mere political rhetoric.

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<sup>1</sup> Bhairon Shekhawat, *Frequent Elections Impacting Governance*, OUTLOOK, available at <https://www.outlookindia.com/website/story/frequent-elections-impacting-governance/220697> (Last visited on May 5, 2018).

<sup>2</sup> Praveen Chakravarty, *The one-election idea is a farce*, available at <http://www.thehindu.com/opinion/op-ed/the-one-election-idea-is-a-farce/article21261615.ece> (Last visited on May 5, 2018).

<sup>3</sup> Oft-cited as a criticism of SE. See e.g. Suhas Palshikar, *Designing to Distort: Simultaneous Elections*, 53(11) EPW (2018); Yamini Aiyar, *Why Simultaneous Elections are bad for India's Democracy*, HINDUSTAN TIMES, available at <https://www.hindustantimes.com/columns/why-simultaneous-elections-are-bad-for-india-s-democracy/story-2iRW7VIoNL59X2162NvCQL.html> (Last visited on May 5, 2018).

## **B. REDUCING ELECTORAL COSTS FOR THE GOVERNMENT AND POLITICAL PARTIES**

**The rising rates of electoral costs both for the government** – with a significant jump in 2014 (Rs. 3426 crores) of 131% over expenses incurred in 2009 (Rs. 1483 crores) – **as well as for political parties** (nearly Rs. 714 crores for the BJP in 2014, Rs 516 crores for the INC in the same year)<sup>4</sup> indicate a strong rationale for looking at holistic solutions to implement simultaneous elections that would ideally cut down substantially on such operational, logistic and other attendant electoral costs. While simultaneous elections would thus help reduce the burden on the State exchequer, a compelling argument is the reduction of gargantuan expenses involved in separate elections, through conduct of simultaneous elections, would also materially diminish the problems of black money and corruption attendant upon such fund-collection.<sup>5</sup> The concerns of political parties regarding recovery of substantial costs are inextricably interconnected with festering of non-transparency in securing and spending funds and systemic corruption. While in Part IX of this paper, we offer certain suggestions to remedy the malaise of non-transparency in political funding which should be implemented in conjunction with simultaneous elections, it must be recognized that the *economic* costs argument cannot be dismissed summarily as *constitutionally/legally* irrelevant, as certain criticisms have been wont to do,<sup>6</sup> and must be given due credence in the cost-benefit analysis of conducting simultaneous elections.

## **C. INCREASED VOTER TURNOUT**

Voter turnout is considered to be the hallmark of representative democracy, since it evinces the vibrancy and rates of political citizenship and civic spirit. Shackel & Dandoy show that the **simultaneity effect** indeed has a significant positive impact on voter turnout, owing to greater stakes for the political agents, actors and participants, more focused campaigns centred on tackling a diversity of issues at multi-planar levels, as well as increased press coverage for all tiers of elections, rendering electoral campaigning more accessible both for contestants and voters.<sup>7</sup> From the cost-benefit analytical perspective of the voter, going to the poll booth is a fixed cost which he can spread across the tiers of elections in the event of holding elections on the same date.<sup>8</sup>

Beneficially, furthermore, voters' access to information owing to increased press coverage is also enhanced and enriched, enabling them to arrive at a far more informed political and electoral choice. Where critics have been studiously vocal that voters are not astute to adjudge differences between national and regional issues whilst voting in simultaneous elections, we not only dismantle these arguments both empirically and normatively in Part III of this paper, but also argue that where the present system of staggered elections has not served to increase voter information but simultaneous elections do, then the

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<sup>4</sup> Full data available on Election commission website. See Swadesh Singh & Sushant, *A Case for Simultaneous Elections*, available at <http://www.indiafoundation.in/a-case-for-simultaneous-elections/> (Last visited on May 5, 2018).

<sup>5</sup> Discussed in detail in Part VIII.

<sup>6</sup> Rinchen Wangchuk, *Are Simultaneous Lok Sabha, State elections really such a good idea?*, available at <https://www.thebetterindia.com/128740/simultaneous-lok-sabha-state-elections/> (Last visited on May 5, 2018).

<sup>7</sup> Arjan H. Schakel & Régis Dandoy, *Electoral Cycles and Turnout in Multilevel Electoral Systems*, *West European Politics*, 37:3, 605-623 (2014).

<sup>8</sup> *Id.*

proposal to conduct simultaneous elections should be doubly bolstered given its positive effect on representative democracy.

This is supported by Csaba Nikolenyi's study,<sup>9</sup> which deploys the Riker-Ordeshook Model<sup>10</sup> to demonstrate that simultaneous elections indeed lead to increased voter turnout. The formula for the model is as follows:

$$pB+D > C$$

where 'p' = probability that the act of the individual's vote will decide the outcome of the election;

'B' = benefit of the voter's favoured candidate being elected;

'D' = stands for any other benefit from voting, such as the sense of fulfilling a particular duty; and

'c' = the cost of voting.<sup>11</sup>

Utilizing statistics of voter turnouts from both simultaneous elections and staggered elections in India, Nikolenyi adduced evidence of the simultaneity effect highlighted by Shackel & Dandoy. While there is no denying the imperative of protecting decentralization for engendering federalism in a democracy such as India, he cited the historical experience argument discussed above to show that the unique nature of Indian federalism as envisaged in the Indian Constitution, both in terms of its text and practical experience, clearly contemplated simultaneous elections.<sup>12</sup> Citing the voter fatigue hypothesis that suggest reduced voter turnout for staggered elections conducted separately, owing to voter fatigue and less chance of spreading fixed cost across elections, it thus helps to further assert that staggered elections have indeed diminished voter turnout.<sup>13</sup>

This is established by the fact that although 2014 general elections witnessed high voter turnout, when compared to voter turnout during simultaneous elections conducted in 1967, the levels are not significantly different. With a multiplication in the registered voter base of nearly 4 times from 1967 to 2014, it is clearly concerning that voter turnout has increased only by a marginal 5% during the conduct of staggered elections.<sup>14</sup>

Furthermore, simultaneous elections has led to increased voter turnout in 1999, for Karnataka, Maharashtra and Andhra Pradesh, by nearly 11.5%.<sup>15</sup> In 1977, the simultaneous elections in Kerala with national elections augmented voter turnout by nearly 20 percent.<sup>16</sup> Similarly, simultaneous elections in north-eastern states with national elections, have been empirically shown to boost voter turnout by 21% in Arunachal Pradesh and 17% in Assam

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<sup>9</sup> Csaba Nikolenyi, *Concurrent Elections and Voter Turnout: The Effect of Delinking of State Elections on Electoral Participation in India's Parliamentary Polls, 1971-2004*, 58(1) POLITICAL STUDIES ASSOCIATION 2010.

<sup>10</sup> W. Riker and P. Ordeshook, *A Theory of the Calculus of Voting*, 62(1) AMERICAN POLITICAL SCIENCE REVIEW 25-42 (1968).

<sup>11</sup> *Id.*

<sup>12</sup> Csaba Nikolenyi, *Concurrent Elections and Voter Turnout: The Effect of Delinking of State Elections on Electoral Participation in India's Parliamentary Polls, 1971-2004*, 58(1) POLITICAL STUDIES ASSOCIATION 2010.

<sup>13</sup> *Id.*

<sup>14</sup> Sai Manish, *One Nation, One Election: Why Modi govt wants to go for simultaneous polls*, BUSINESS STANDARD, available at [http://www.business-standard.com/article/current-affairs/one-nation-one-election-why-modi-govt-wants-to-go-for-simultaneous-polls-118012500184\\_1.html](http://www.business-standard.com/article/current-affairs/one-nation-one-election-why-modi-govt-wants-to-go-for-simultaneous-polls-118012500184_1.html) (Last visited on May 8, 2018).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

respectively.<sup>17</sup> Manipur and Meghalaya each witnessed approximately 20% rise in voter turnout owing to the same reason.<sup>18</sup> **Evidently, simultaneous elections incentivize voter turnout across states, even in the relatively geographically remote states.**

#### ***D. SHORTENED MODEL CODE OF CONDUCT EMBARGOES ON TRANSFORMATIVE POLICYMAKING***

**The policy paralysis wrought by the Model Code of Conduct (MCC)** has been cited as an important impeding factor to transformative governance and smooth continuous flow of State developmental projects. While some argue that the embargo is only on new developmental projects evolved with an eye to grant sops to voters, and not on extant schemes, in reality, the embargo introduced by the Model Code of Conduct is indeed wide enough to halt critical developmental works. As the Niti Aayog study adduces, in the most recent 2014 general elections, “*governance and developmental activities due to imposition of Model Code remained largely suspended for about 7 months: 3 months across the country and about 2 months in Jharkhand & J&K and another 2 months in Maharashtra and Haryana.*”<sup>19</sup> The inefficacy wrought in terms of standstill of governmental machinery, as well as reluctance of political parties to promulgate genuine public welfare schemes for fear of violating the MCC, are strong arguments in favour of simultaneous elections which would substantially reduce the temporal facet of this embargo.

#### ***E. LOGISTICAL CONSIDERATIONS***

The **substantial deployment of security forces for protracted periods**, especially the Central Armed Police Forces (CAPF)—nearly 1349 companies of CAPF and continued protraction of service owing to frequency of staggered elections every six months<sup>20</sup>—also demonstrates the need for cutting down on deployment periods through conduct of simultaneous elections. Nevertheless, on the other side of the coin, we find arguments that logistically, it may be difficult to deploy the significant numbers required to monitor simultaneous elections at a go. Hence the balance between the temporal aspect of staggered elections and quantitative aspect of simultaneous elections w.r.t. deployment of security forces need to be weighed and measured holistically, before arriving at a hasty proposal in favour of either side.

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Niti Aayog (Bibek Debroy and Kishore Desai), *Analysis of Simultaneous elections: The “What”, “Why” and “How”*: A discussion Paper, available at [http://niti.gov.in/writereaddata/files/document\\_publication/Note%20on%20Simultaneous%20Elections.pdf](http://niti.gov.in/writereaddata/files/document_publication/Note%20on%20Simultaneous%20Elections.pdf) (Last visited on May 5, 2018).

<sup>20</sup> Niti Aayog (Bibek Debroy and Kishore Desai), *Analysis of Simultaneous elections: The “What”, “Why” and “How”*: A discussion Paper, ¶3.5, available at [http://niti.gov.in/writereaddata/files/document\\_publication/Note%20on%20Simultaneous%20Elections.pdf](http://niti.gov.in/writereaddata/files/document_publication/Note%20on%20Simultaneous%20Elections.pdf) (Last visited on May 5, 2018).

***F. EASE OF GOVERNANCE AND FOCUS ON DEVELOPMENT RATHER THAN ELECTION CAMPAIGNING***

**Transparency and ease of governance** stemming from less disruptions of public life, shifting focus from narrow parochialism to pressing governance issues, increased focus on development rather than election campaigning (due to greater availability of both time and money to do so), have also been cited in favour of simultaneous elections.<sup>21</sup> Praveen Chakravarty rebuts that these appear to be arguments against the conduct of elections themselves, not necessarily staggered elections.<sup>22</sup> However, it is also true that where simultaneous elections have the significant potential to reduce these costs, it should not be dismissed summarily. Hurdles in implementation should not be a bar to exploring alternative options that have beneficial impacts on governance and electoral structures, especially if they are normatively justified.

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<sup>21</sup>*Id.*, ¶3.27.

<sup>22</sup>Praveen Chakravarty, *The one-election idea is a farce*, available at <http://www.thehindu.com/opinion/op-ed/the-one-election-idea-is-a-farce/article21261615.ece> (Last visited on May 5, 2018).

## **II. SUGGESTED MODEL OF SIMULTANEOUS ELECTIONS**

Various models of conducting simultaneous elections have been considered with a view to reach the optimum model. In this part, we seek to harmonise these models to suggest an alternative which can contribute to the proper conducting of simultaneous elections as envisioned.

### ***A. COMPLETE SHIFT TO ONE PHASED MODEL OF SIMULTANEOUS ELECTIONS WILL BE PREMATURE***

Attempting to shift to a one phased model of simultaneous elections where the Parliament and all state assemblies as well as local self-governments go to poll at the same time,<sup>23</sup> while it may appear to be a revolutionary step is in fact quite a premature consideration. While it is true that India has had experience of simultaneous elections at the Centre and State levels in the initial years following independence, the feasibility of reversing the current system in order to go back into the past is low. The complex nature of electoral politics in today's India along with the relatively complicated nature of the process that marks Indian elections makes it unreasonable to consider an attempt to shift from the current system to another at once. This is not to rule out the possibility of conducting synchronized elections at all three levels of Indian governance together in one phase sometime in the near future. It is argued however that the vision to implement such a system is too farfetched in the current scenario.

The model of simultaneous elections set forth in the NITI Aayog Report<sup>24</sup> suggesting the casting of votes by voters on the same day across the country for both Parliament and state assembly could potentially result in the same adverse impacts of the current electoral process that it seeks to avoid. One of the major issues involved in such a plan is the massive expenditure that shall be incurred by the State as well as political parties while attempting to balance the conducting of elections at both the Centre and state simultaneously. Further, given the lack of experience of conducting such elections in present electoral times, the teething problems involved are likely to be high. It is therefore, recommended that the Election Commission should be permitted to carry out the electoral cycle in a two phased manner with a potential of shifting to an entirely synchronised two phased model on successful conduct of the first version in recent times. Similar to the massive expenditure which shall be incurred, it is also likely that simultaneously holding elections at both levels of governance will involve deployment of massive security forces to ensure safety of candidates and voters alike. Hence, it is suggested that a complete overhaul of the current system in favour of one phased elections should be avoided at least at the preliminary stage although it should serve as the ultimate objective which is sought to be achieved.

### ***B. TWO PHASED SIMULTANEOUS ELECTIONS AS HAS BEEN SUGGESTED IS NOT PRACTICAL***

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<sup>23</sup> See Parliament of India, Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, *Seventy Ninth Report: Feasibility of Holding Simultaneous Elections to the House of People (Lok Sabha) and State Legislative Assemblies* (December 2015).

<sup>24</sup> Bibek Debroy & Kishore Desai, *Analysis Of Simultaneous Election: The "What", "Why" And "How": A Discussion Paper*, NITI Aayog (January 2017).

As noted by the NITI Aayog, a push for one phased simultaneous elections alongside the 2019 Lok Sabha elections shall result in the premature dissolution of several state assemblies.<sup>25</sup> At the same time, such a model shall be feasible only if there is also a simultaneous extension of the tenure of several other state assemblies.<sup>26</sup> As a result, a phased synchronisation of Parliamentary and state elections has been suggested as an alternative to the one phased system which may produce undesirable results for various stakeholders involved in electoral politics. The Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 79<sup>th</sup> Report has suggested a two phased approach wherein some state assemblies are put to election at the midterm of the Lok Sabha's tenure, some others have elections towards the end of the Lok Sabha's tenure while yet others go to poll alongside the Lok Sabha.<sup>27</sup> Building upon the foundational argument provided by the Parliamentary Standing Committee, the NITI Aayog has suggested the holding of simultaneous elections in two phases with some assemblies going to vote with the Lok Sabha in Phase I and the rest of the state assemblies undergoing elections at the midterm of the Lok Sabha. In this model, the NITI Aayog further suggests the holding of elections every 2.5 years in India, till the time the entire electoral cycle of the Parliament and all state assemblies becomes synchronized.

While the NITI Aayog seeks to reach a practical conclusion through its model of simultaneous elections, we believe that the proposition of holding elections every 2.5 years is problematic since it involves costs which are otherwise avoidable. We therefore, suggest an alternative model which can help to implement the policy of simultaneous elections more easily with a better model of synchronization than suggested. It is acknowledged that certain compromises would have to be accommodated in an effort to implement the idea of simultaneous elections, however, we believe that such alterations in the existing system would be in the interest of improving the electoral system in India.

### ***C. AN ALTERNATIVE MODEL OF TWO PHASED SIMULTANEOUS ELECTIONS IS SUGGESTED***

As an alternative in the interim, we suggest a two phased model of simultaneous elections that be initiated as suggested by NITI Aayog<sup>28</sup> at least for the first attempt at reintroducing simultaneous elections within Indian polity. In this model, we suggest two phases of the electoral cycle where in the first phase would entail election at the parliamentary level, half of the state assemblies and at the local self-government level. While state assembly elections may individually entail expenditure of less money and dedication of lesser resources as compared to parliamentary elections, nevertheless taken together, an endeavour to carry out elections simultaneously across all state assemblies in India would involve huge expenditure and dedication of resources. The resultant situation may be one of chaos, both from an organisational perspective and an administrative viewpoint. As a result, it

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<sup>25</sup> As per the NITI Aayog, the conducting of synchronized elections of this nature will require curtailment of the tenure of state assemblies in Haryana, Jharkhand, Maharashtra and Delhi if the elections are scheduled to be held in April-May 2019.

<sup>26</sup> Scheduling simultaneous elections of the Parliament and states during April and May 2019 will require the extension of the term of state assemblies in Chattisgarh, Karnataka, Madhya Pradesh, Mizoram and Rajasthan according to the NITI Aayog.

<sup>27</sup> Parliament of India, Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, *Seventy Ninth Report: Feasibility of Holding Simultaneous Elections to the House of People (Lok Sabha) and State Legislative Assemblies* (December 2015), ¶17.2.

<sup>28</sup> *Id.*

would be more practical to begin the exercise of simultaneous elections with half of the state assemblies going to vote at the same time as the Parliament. Although this too is likely to be a herculean task for the Election Commission to handle, it is far more likely to be successful than a haphazard system where all governments in the country go to vote at the same time.

**We suggest that in depth estimation is made as to the amount of resources which have been dedicated in state assembly elections in their two immediately preceding electoral cycles in order to gauge the relatively less expense-intensive states for conducting elections.** The Election Commission's annual audit reports and expenditure reports can be used as the basic empirical yardstick for the same. **Based on an evaluation of the data so collated, half of the state assemblies can be chosen for the first phase of simultaneous elections. The other half of Indian states which are relatively costlier in terms of electoral expenses can then be subjected to assembly elections in the second phase.** It is however important to ensure that the gap between the two phases is kept as minimal as possible so as to not only reduce the time dedicated to the entire electoral exercise in India but also to reduce chances of extending unfair advantage to certain states in comparison to others which have to suffer through premature elections in the interest of implementing simultaneous elections.

In order to avoid covert discrimination in this respect, it may also be considered by the Law Commission that the half of the states which do not go on elections, be also made subject to the Model Code of Conduct with the other half of states undergoing elections, once the first phase of simultaneous elections commences. This will ensure that the governments in the states with intact assemblies only act as caretaker governments and are not able to take unfair advantage of the two phased model which is suggested to be implemented. Appropriate amendments in this regard for the temporary synchronization may be appositely considered.

#### ***D. SYNCHRONISATION OF LOCAL GOVERNMENT ELECTIONS IN THE MODEL***

**It is necessary to note that the model suggested by us does not seek to exclude the elections at local government level.** This is because it is unfair to disregard the importance of these governance structures in the constitutional framework of federalism and democracy followed in India. Following the 73rd and 74th Amendments to the Indian Constitution, panchayats and municipalities have been playing a significant role in grassroots governance in India.<sup>29</sup> Panchayats and municipalities are no longer just local structures with little legal validity.<sup>30</sup> After the introduction of the aforementioned amendments, these bodies have gained constitutional recognition, giving legal legitimacy to these local organised forums of governance.<sup>31</sup> They play an equally important role in governing the nation as the Parliament and the state assemblies, by reaching out to the common citizenry.<sup>32</sup> **In light of the position of local self-governments in Indian democratic life, excluding them from an exercise of electoral restructuring would be largely unfair.**

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<sup>29</sup> D Rajasekhar, *Local Self-Government in India: An Overview*, 6(1) MANAGEMENT REVIEW, (2012); K. Madhav, *Panchayati Raj: Towards Good Governance*, 5(11) INTERNATIONAL JOURNAL OF HUMANITIES AND SOCIAL SCIENCE INVENTION 57-59, (2016); Dr. Soumen Roy, *The 73rd Constitution Amendment and Good Governance in West Bengal*, 23(1) IOSR JOURNAL OF HUMANITIES AND SOCIAL SCIENCE 34-37, (2018)

<sup>30</sup> Second Administrative Reforms Commission, *Sixth Report: Local Governance—An inspiring journey into the future* (October 2007).

<sup>31</sup> United Nations Development Programme, *Decentralisation in India: Challenges & Opportunities*, (2000).

<sup>32</sup> See Government of India, Planning Commission and Ministry of Panchayati Raj, *Report of the Working Group on "Panchayati Raj Institutions and Rural Governance"* (2011).



In our model as stated previously **we suggest the conducting of elections of local self-governments alongside the parliamentary elections and elections in half of the Indian states.** This is in view of the fact that continuity of local governmental structures will not only be of immediate benefit to the general public but also involve much lesser expenditure as compared to state assembly elections. **In the alternative, it is suggested that the first phase may involve the conducting of elections at the local government level in those half of states in which state assembly elections are scheduled to be held in that phase.** Adopting such a model may help ensure balance in the tough times of change that simultaneous elections will invariably bring forth.

#### ***E. CONSTRUCTIVE NO-CONFIDENCE MOTION AND RELAXATION OF ANTI-DEFECTION LAW IN PURSUANCE OF SIMULTANEOUS ELECTIONS***

In pursuance of the two phased model suggested in this response paper, it is recommended that **the policy of introducing constructive no-confidence motion and concomitant relaxation of anti-defection laws be largely limited to the Parliament with only partial extension to the states.** Complete repeal of anti-defection law as embodied by the Tenth Schedule of the Indian Constitution will be a serious blow on the stability of party politics in India as the era of *Aaya Ram, Gaya Ram*<sup>33</sup> may potentially return. Instead, as suggested by the Law Commission in its draft paper, a limited exception should be carved out in the existing anti-defection law to reduce occurrences of hung parliament where the lack of a viable alternative government will potentially mandate re-election, thereby defeating the entire exercise of simultaneous elections. As has been rightly considered by the Law Commission, the exception to the anti-defection law will complement and strengthen the effectiveness of introducing the system of constructive no-confidence motion. This combination of bringing forth an exception in the anti-defection law and introducing a motion of constructive no-confidence should however be applicable as a whole only in respect to the Lok Sabha.

#### ***F. DIFFERENCE IN MODEL IMPLEMENTATION AT PARLIAMENTARY AND STATE LEVEL***

The difference suggested in model implementation Part II.E above is because **while the potential risk of horse trading at the parliamentary level will have to be borne in light of the lack of other viable alternative, the availability of alternative options at the state level provides an opportunity to retain the rigour of anti-defection law while continuing to forward the objective of simultaneous elections.**<sup>34</sup> In the case of the Parliament, if the Central government loses confidence of the House during its term and no other party is able to form a majority in combination with other parties due to the constitutional provision relating to anti-defection, the Parliament will be dissolved and a re-election will have to be held prematurely in light of the absence of President's Rule at the

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<sup>33</sup> Sukhbir Siwach, 'Aaya Ram Gaya Ram' Haryana's gift to national politics, Times of India, December 21, 2011, available at <https://timesofindia.indiatimes.com/city/chandigarh/amp39Aaya-Ram-Gaya-Ramamp39-Haryanaamp39s-gift-to-national-politics/articleshow/11188018.cms> (Last visited on May 12, 2018).

<sup>34</sup> Please refer to Part IV.F of this paper for the justification.

Central level. The anti-defection law as it stands encourages such a situation and is therefore against the policy of simultaneous elections in the Parliament.

However, since President's Rule may be imposed at the state level in order to prevent re-election prior to the requisite term of the state assembly, simultaneous elections may be sustained in states without the dual combination of constructive no-confidence and relaxation of anti-defection law being wholly imposed in the context of state assemblies. However, in light of the judicial understanding<sup>35</sup> and practical experience relating to President's Rule in states,<sup>36</sup> in our model, we seek to keep President's Rule as the last resort. **For the state assemblies, we suggest that if the state government loses confidence within the first two years of being elected, constructive no-confidence in sync with a relaxed anti-defection law specific to that circumstance can be used to salvage the governmental structure and prevent re-election. If a new government is not formed in such a case or if the loss of confidence occurs in between the third or fourth year after the completion of simultaneous elections, it is suggested that the state assembly should be deemed as dissolved and re-election should be organised with a shorter term so that the state assemblies can go to vote with the Parliament and local governments in the next simultaneous election as envisioned initially.** Sufficient restrictions on the length of the electoral cycle and the expenditure permitted should be introduced in order to avoid unnecessary wastage of resources. Finally, if the government loses confidence within the last 1.5 years prior to the next scheduled simultaneous election, President's Rule should be declared in the State to sustain governance till the elections as scheduled take place.

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<sup>35</sup> Please refer to Annexure I of this paper.

<sup>36</sup> Puncchi Commission on Centre-State Relations Report, Vol. II, June 6, 2002, available at <http://interstatecouncil.nic.in/report-of-the-commission-on-centre-state-relations/> (Last visited on May 12, 2018).

### **III. DO SIMULTANEOUS ELECTIONS LEAD TO VOTER BIAS FOR NATIONAL PARTIES? : EVALUATING THE EVIDENCE AND DISPELLING MISCONCEPTIONS**

Part III evaluates the evidence in three parts – testing reliability of empirical studies attesting negative impact of simultaneous elections on voter behaviour in India; contradistinctions in voter bias effect in foreign jurisdictions; and seeking to normatively justify the dissonances in the empirical evidence, whilst deconstructing the voter bias effect attributed to simultaneous elections. Our study clearly shows that the vote congruence effect cannot be directly, causally and only attributed to simultaneous elections – factors such as voter information, political context, the electoral issues that gain predominance, are far more powerful in determining the actuation of such effect.

#### **A. *THE INDIAN SCENARIO***

##### **1. Objectives**

The present analysis aims at ascertaining the effect of conduction of Simultaneous Elections on the voting behaviour. Various Think Tanks and Authors in Opinion Pieces have opined that conduction of simultaneous election will blur the difference between National and Regional issues which will lead to trivialisation of regional issues and, conversely, nationalisation of elections.<sup>37</sup> Such conclusion rests on the assumption that Voters, while voting in a simultaneous elections for two tiers, will not be able to distinguish national issues from regional issues (or vice versa) and more often than not, the voters will end up voting for the same party at both the tiers (provided that such an option is available to them).<sup>38</sup> This analysis, hence, tries to answer following three research questions:-

- i. Do voters Vote for the Same Party during Simultaneous Elections?
- ii. Do Simultaneous Elections prejudice regional issues and regional parties in the favour of national issues and national parties?
- iii. Will the voters vote differently if the elections are not held simultaneously?

##### **2. Methodology**

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<sup>37</sup> See, e.g., Louise Tillin, *Is holding Simultaneous Elections for Lok Sabha and State Assemblies necessarily a Good Idea?*, July 18, 2016, available at <https://scroll.in/article/810995/is-holding-simultaneous-elections-for-lok-sabha-and-state-assemblies-necessarily-a-good-idea> (Last Visited on May 5, 2018); HINDUSTAN TIMES, *Why Simultaneous Elections are Bad for India's Democracy*, March 16, 2018, <https://www.hindustantimes.com/columns/why-simultaneous-elections-are-bad-for-india-s-democracy/story-2iRW7VioNL59X2162NvCQL.html> available at (Last visited on May 5, 2018).

<sup>38</sup> See Praveen Chakravarty (IDFC Institute), *Nudging the Voter in One Direction?*, September 08, 2016, available at <http://www.thehindu.com/opinion/op-ed/state-assembly-elections-nudging-the-voter-in-one-direction/article8438114.ece> (Last visited on May 5, 2018).

The analysis uses the widely cited Chhokar-Kumar study<sup>39</sup> ('Study') as the base material. Like the Study, Simultaneous Elections held during and post 1989 are analysed using the most reliable data available *i.e.*, the election statistics released by the Election Commission of India.<sup>40</sup> In the analysis, we have compared the share of votes of the top two parties in terms of vote share in Lok Sabha elections with their respective shares in the State Assembly elections during simultaneous elections. For the purpose of this analysis, vote share in total valid votes polled has been considered instead of votes share in the votes polled at seats contested for the sake of more reasonable comparison.<sup>41</sup> A threshold of 10% difference in vote percentage polled has been taken as the reasonable criteria for classifying variations as 'significant change in voting behaviour'.<sup>42</sup>

### 3. **Empirical Study Tables**

KEY TO COLOUR CODES, SYMBOLS & OTHER ABBREVIATIONS	
LS	Lok Sabha
SA	State Assembly
SE	Simultaneous Election
NSE	Non-Simultaneous Elections/ Staggered Elections
$\Delta$	Absolute value of variation in vote percentage
	Variation of more than 6% but less than 10%
	Variation of more than 10%
	Simultaneous Elections not held

<sup>39</sup> Jagdeep Chhokar & Sanjay Kumar (CSDS), The Case against Simultaneous polls, November 1, 2016, available at <http://www.thehindu.com/opinion/lead/The-case-against-simultaneous-polls/article15000825.ece> (Last visited on May 5, 2018).

<sup>40</sup> The Database can be accessed here, [http://eci.nic.in/eci\\_main1/electionstatistics.aspx](http://eci.nic.in/eci_main1/electionstatistics.aspx).

<sup>41</sup> There are instances when a party has contested almost all the seats of the State in Lok Sabha elections while contesting half or less than half in State Assembly elections. *See* footnote X

<sup>42</sup> However, variations of more than 6% have also been represented in the analysis.

KEY TO ABBREVIATED PARTY NAMES	
AC	Arunachal Congress
ADK(JL)	All India Anna Dravida Munnetra Kazhagam (Jayalalita Group)
AGP	Asom Gana Parishad
AITC	All India Trinamool Congress
BJD	Biju Janata Dal
BJP	Bharatiya Janata Party
CPM	Communist Party of India (Marxist)
DMK	Dravida Munnetra Kazhagam
INC	Indian National Congress
INLD	Indian National Lok Dal
JD	Janata Dal
JP	Janata Party
NCP	Nationalist Congress Party
SDF	Sikkim Democratic Front
SKM	Sikkim Krantikari Morcha
SHS	Shivsena
SSP	Sikkim Sangram Parishad
TDP	Telugu Desam Party
TMC (M)	Tamil Maanila Congress
TRS	Telangana Rashtra Samithi
UDP	United Democratic Party
YSRCP	Yuvajana Sramika Rythu Congress Party

TABLE 1												
tate	1989				1999				2004			
	Two Largest Parties In LS	LS Vote Share	SA Vote Share	Δ	Two Largest Parties In LS	LS	SA	Δ	Two Largest Parties In LS	LS Vote Share	SA Vote Share	Δ
Andhra Pradesh	INC	51%	47.1%	3.9%	INC	42.7%	35.6%	7.1%	INC	41.5%	38.5%	2%
	TDP	42.4%	36.5%	5.9%	TDP	39.8%	39.9%	0.1%	TDP	33.1%	37.5%	4.4%
Karnataka	INC	48.9%	43.8%	5.1%	INC	45.4%	40.8%	4.6%	INC	36.8%	35.3%	1.5%
	JD	28.3%	27.8%	0.5%	BJP	27.2%	20.7%	6.5%	BJP	34.8%	28.3%	6.5%
Odisha									INC	40.4%	34.8%	5.8%
									BJD	30.0%	27.4%	2.6%
Arunachal Pradesh <sup>43</sup>					INC	56.9%	51.8%	5.1%				
					AC	16.6%	16.7%	0.1%				
Sikkim <sup>44</sup>					SDF	56.6%	52.3%	4.3%	SDF	69.8%	71.1%	1.3%
					SSP	42.2%	41.9%	0.3%	INC	27.4%	26.1%	1.3%
Telangana												
Maharashtra					INC	29.7%	27.2%	2.5%				
					NCP	21.6%	22.6%	1.0%				

TABLE 1.1								
State	2009				2014			
	Two Largest Parties In LS	LS Vote share	SA Vote share	Δ	Two Largest Parties In LS	LS Vote Share	SA Vote Share	Δ
Andhra Pradesh	INC	38.9%	36.5%	2.4%	TDP	29.1%	32.5%	3.4%
	TDP	24.9%	28.1%	3.2%	YSRCP	28.9%	27.9%	1%
Karnataka								
Odisha	INC	32.7%	29.1%	3.6%	INC	26.4%	25.7%	0.7%
	BJD	37.2%	38.9%	2.7%	BJD	44.8%	43.4%	1.4%
Arunachal Pradesh	INC	51.1%	50.4%	0.7%	BJP	46.6%	31.0%	15.6%
	BJP	37.1%	05.2%	31.9%	INC	41.7%	49.5%	7.8%
Sikkim	SDF	63.3%	65.9%	2.6%	SDF	53.7%	55.0%	2.3%
	INC	29.5%	27.6%	1.9%	SKM	40.0%	40.8%	0.8%
Telangana					TRS	39.0%	34%	5.0%
					INC	20.5%	25%	4.5%
Maharashtra								

<sup>43</sup> Arunachal Pradesh Simultaneous election of 1999 was not included in the Chhokar-Kumar Study.

<sup>44</sup> Sikkim Simultaneous Election of 1999 and 2004 was not included in the Chhokar-Kumar Study.

TABLE 2												
	1989				1991				1996			
State	Two Largest Parties In LS	LS Vote Share	SA Vote Share	Δ	Two Largest Parties in LS	LS Vote Share	SA Vote Share	Δ	Two Largest Parties in LS	LS Vote Share	SA Vote Share	Δ
Tamil Nadu	INC	39.8%	19.8%	20%	INC	42.6%	15.2%	27.4%	TMC	27.0%	9.3%	17.7%
	DMK	26.6%	33.2%	6.6%	DMK	22.7%	22.5%	0.2%	DMK	25.6%	42.1%	16.5%
Uttar Pradesh	INC	31.7%	27.9%	3.8%	BJP	32.8%	31.4%	1.4%				
	JD	35.9%	29.7%	6.2%	JD	21.3%	18.8%	2.5%				
Haryana					INC	37.2%	33.7%	3.5%	INC	22.6%	20.8%	1.8%
					JP	25.4%	22.0%	3.4%	BJP	19.7%	8.9%	10.8%
Kerala <sup>45</sup>					INC	38.7%	32.1%	6.6%	INC	38.0%	30.4%	7.6%
					CPM	20.7%	21.7%	1.0%	CPM	21.1%	21.6%	0.5%
West Bengal					INC	34.8%	35.1%	0.3%	INC	40.1%	39.5%	0.6%
					CPM	35.2%	36.9%	1.7%	CPM	36.7%	37.9%	1.2%
Assam					INC	28.5%	29.3%	0.8%	INC	31.6%	30.5%	1.1%
					AGP	17.6%	17.9%	0.3%	AGP	27.1%	29.7%	2.6%

TABLE 3				
1998				
States <sup>46</sup>	Top Two Parties in LS	LS Vote Share	SA Vote Share	Δ
Meghalaya	INC	47.6%	35.0%	12.6%
	UDP	25.5%	27.0%	1.5%
Nagaland	INC	86.7%	50.7%	30.0%
	<sup>47</sup>			
Tripura	CPM	48.8%	45.5%	3.3%
	INC	42.1%	34.0%	8.1%
Gujarat	BJP	48.3%	44.8%	3.5%
	INC	36.5%	34.8%	2.7%
Himachal	BJP	51.4%	39.0%	12.4%
	INC	41.9%	43.5%	1.6%

#### 4. Inferences & Observations

<sup>45</sup> The Chhokar-Kumar study had only identified 31 instances of Simultaneous Elections out of which Kerala, 1989 is not being included in this study as no simultaneous elections took place in Kerala that year.

<sup>46</sup> The Simultaneous elections of 1998 were not included in the Chhokar-Kumar Study.

<sup>47</sup> There was no recognized party that contested election that year. The Contest was against Independent Candidates.

- Total Number of Simultaneous Elections Since 1989: 38<sup>48</sup>
- Number of Simultaneous election in which the vote percentage polled by a party in Lok Sabha Election varied with a difference of 6% to 10% when compared to the votes polled in the corresponding State Assembly elections: 6 (15.8% of the total number of simultaneous elections since 1989)<sup>49, 50</sup>
- Number of Simultaneous election in which the vote percentage polled by a party in Lok Sabha Election varied with a difference of more than 10% when compared to the votes polled in the corresponding State Assembly elections: 9 (23.6% of the total number of simultaneous elections Since 1989)<sup>51</sup>
- Number of Simultaneous election in which the vote percentage polled by a party in Lok Sabha Election varied more than 6% when compared to the votes polled in the corresponding State Assembly elections: 15 (39.5% of the total number of simultaneous elections since 1989)
- Over the course of time, the variation in votes polled in Lok Sabha and State Assembly has itself fallen.
- Stark variation in percentage of votes polled may also be accounted for by the fall in the number of seats contested.
- Stark variation of more than 10% is usually seen in States with low population<sup>52</sup> or Strong Regional Parties/Independent Candidates.<sup>53</sup>

## 5. **Do voters vote for the Same Party during Simultaneous Elections?**

The overwhelming pattern that has emerged in this analysis is that whenever elections are held simultaneously, the voters mostly vote for the same party. If we consider variation of above 10% to be an indicator of ‘significant’ change in voting behaviour then voter behaviour has remained same in 76.6% cases. Now, if we bring down the aforementioned threshold to 6%, even then 60.5% of the voters voted similarly.

Further, the variation cannot be solely attributed to the change in voting behaviour, as variation in some cases was also in part because of pre-poll alliances whereby a party abstained from contesting all the seats which resulted into significantly lower vote share in such election. For example, in the 1991 Simultaneous Election, while INC contested all the LS constituencies in Tamil Nadu, it contested only 65 out of total 234 seats and as result its percentage of votes polled fell from 42.6% in LS elections to 15.2% in SA Elections. Similarly, in the 1996 Simultaneous Election, there was a pre-poll alliance between DMK and TMC (M) under which the TMC contested 51% of the Lok Sabha seats and only 17% of the State Assembly Seats. This resulted into the fall in TMC’s vote share from 27.0% in Lok Sabha elections to 9.3% in the State Assembly elections. Thus, only in 7 out of total 9 instances of significant variation and of 38 recorded instances of Simultaneous Elections, the

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<sup>48</sup> The Chhokar-Kumar study had only identified 31 instances of Simultaneous Elections out of which Kerala, 1989 is not being included in this study as no simultaneous elections took place in Kerala that year.

<sup>49</sup> The Chhokar-Kumar study does not reveal the criteria it adopted to categorise elections as the case of significant variation in the votes polled.

<sup>50</sup> The 7.8% variation in votes polled by INC in 2014 Simultaneous Election of Arunachal Pradesh is being counted in the more than 10% category

<sup>51</sup> The Chhokar-Kumar Study had identified 7 such instances. This analysis does not consider Andhra Pradesh 2014 SE to be a constituent of category of elections where significant variations was observed and yet identifies 3 extra instances of significant variation. (Meghalaya)

<sup>52</sup> Himachal Pradesh, Arunachal Pradesh, Meghalaya & Nagaland

<sup>53</sup> For example, Tamil Nadu (DMK, AIADMK etc.), Arunachal Pradesh (Arunachal Congress).



variation has been purely because of voting behaviour (18.5% of the total number of Simultaneous elections).

Moreover, over the years, the variation in votes during simultaneous elections has itself decreased. With the exception of Arunachal Pradesh, the variation in percentage of votes polled in LS and SA elections has remained below 5% in Simultaneous Elections of 2009 and 2014. Thus, during a simultaneous election, the general voting behaviour is that the voter will vote for the same parties at both the tiers.

## **6. Are simultaneous elections detrimental to regional parties and issues?**

SEs should be considered detrimental to regional parties and the issues if:

- i. The tendency to vote for the same party works only in favour of the national parties.
- ii. The national parties gain vote percentage at the cost of regional parties in a simultaneous election.

The present analysis clearly shows that none of the above effects exist.

Firstly, the tendency to vote in the favour of same party works equally in the favour of regional parties too. For example, the average variation between LS and SA votes in all the simultaneous elections after 1989, for TDP – the regional party of Andhra Pradesh – is lower than that of INC, the dominant National Party.<sup>54</sup> Similar results are also achieved in the case of Odisha where BJD – a regional party – can be seen to be involved in the power tussle with INC, the dominant National Party.<sup>55</sup>

Secondly, in cases where there have been significant variations between LS and SA election vote percentage, this analysis observes that it is the regional parties who reap benefit at the cost of the vote percentage of the national parties rather than it being the other way around. Out of 9 instances of significant variation in LS and SA votes, the aforementioned proposition can be observed in following 8 cases:

- The 10.8% decrease in BJP's LS vote share in 1998 SA election translated into the high vote percentage of the regional party HVP's (Haryana Vikas Parishad) higher vote share in SA election.<sup>56</sup>
- In the 1998 simultaneous elections, certain regional parties from Meghalaya like United Democratic Party (UDP) and People's Democratic movement saw increment in their SA election vote shares from the LS elections while the vote share of INC fell from 47.6 % in LS to 35.0% in SA.
- In the 1998 simultaneous election, in Himachal Pradesh, the decrease in BJP's vote share of 51.4% in LS to 39.0% in SA was accompanied by increase in the vote share of a regional party, HVC (Himachal Vikas Congress) from 3.6% to 9.6%.

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<sup>54</sup> Average variation between LS and SA votes in Andhra Pradesh from 1989 to 2009, for TDP is 3.4%, whereas for INC it is 3.85%.

<sup>55</sup> Average variation between LS and SA votes in Odisha from 2004 to 2014, for BJD is 2.23%, whereas for INC it is 3.37%.

<sup>56</sup> HVP's Lok Sabha vote share of 15.2% rose to 22.7% in State Assembly.

- In the 1989 simultaneous elections in Tamil Nadu, the vote share of INC fell from 39.9% in LS to 19.8% in SA, while ADMK which had 17.22% vote share in LS saw an increase to 30.34%.<sup>57</sup>
- In 1998 SE, in Nagaland, the vote shares of INC fell from 86.7% in LS to 50.7% in SA while the vote share of the independent candidates went up from 13.30 in LS to 49.27% in SA.
- The decrease in BJP's 37.1% LS vote share to 5.2% in SA saw corresponding increase in the regional All India Trinamool congress whose vote share rose up to 15%.
- Similarly, under the effect of the pre-poll agreements the change in INC's share in 1991 and TMC (M)'s share in 1996 was allotted to ADMK and DMK respectively both of which are regional parties who saw increase in their respective SA vote share from LS shares.<sup>58</sup>

The SE in Arunachal Pradesh<sup>59</sup> in 2014 is the only instance out of the 9 recorded instances of significant variations, wherein the increase or decrease in the share of one national party was achieved at the cost/to the benefit of the other national party. However, few analyses identify a result contrary to the one present here. One such analysis published in the Quint predicts that it is national parties who stand to gain the most if the elections are made simultaneous.<sup>60</sup> However, the methodology of the analysis was not sound as it evaluated the performance of the coalition rather than the individual performances of the national and the regional parties. For example, in the analysis of the simultaneous election of 2014 held in Andhra Pradesh, the analysis attributes the victory to the NDA coalition led by BJP without actually analysing the individual performances. Had the study analysed the individual performances, it would have identified that it was regional parties like TDP and YSRCP which dominated both the Assembly as well as the Lok Sabha Elections.<sup>61</sup>

This analysis clearly shows that **even if voters decide to vote differently in a simultaneous election, in most cases (here 8 out of 9) the regional parties benefit from such deviation from the general rule of similar voting.** Thus, on the basis of the aforementioned empirical evidence, it can be concluded that irrespective of the voting pattern (voting for same party/different party) the **regional parties will not necessarily suffer from decrease in their vote share during simultaneous elections.**

## 7. **Will the voters vote differently if the elections are not held Simultaneously?**

When commentators adjudge the tendency of voting for the same party for the Centre and the State to be problematic, the inherent assumption is that if the elections are held separately, the voters will/may vote for different party. However, an analysis of voting trends since 1998/99 presents evidence to the contrary. In this analysis several proximate separate elections are analysed to ascertain whether the voters will vote differently if the

<sup>57</sup> ADK's increased share is combined of both the Jaya Lalitha and the Jankai Ramchandran factions.

<sup>58</sup> See discussion under heading C.

<sup>59</sup> BJP's decrease from 46.6% in LS to 31.0% in SA saw a corresponding Increase in INC, another national party, which vote share rose from in 41.6% in LS to 49.50% in SA.

<sup>60</sup> Rakesh Dubbudu, *Simultaneous Elections: Who Stands to Benefit the Most?*, THE QUINT, October 6, 2017, available at <https://www.thequint.com/news/politics/simultaneous-elections-who-stands-to-benefit-the-most> (Last visited on May 12, 2018)

<sup>61</sup> Table 1.1

elections are held separately. The separate election so analysed involves elections in which Lok Sabha and State Assembly elections were held in the same year (Maharashtra 2004-14, Haryana 2009/2014 & Jharkhand 2009/2014), elections in which the Assembly election preceded the Lok Sabha Election by one year (Rajasthan 1998-2014 & Karnataka 2008-2014) and elections in which Lok Sabha Elections preceded Assembly election by one year (Haryana 1999-2005, Jharkhand 2004/2005 & Bihar 1999-2015).

In the analysis, **the pattern of the voting behaviour that comes to fore is that voters, more or less, tend to vote similarly even if the elections are held separately.**<sup>62</sup>

Out of 21 elections analysed, parties maintained a similar vote percentage in 16 cases (76.2% of the total instances). The vote share varied significantly in 5 cases only (23.8% of the total instances). Above 6 % variation accounts for 12 instances (57% of the total). If Rajasthan is excluded, then these numbers come down to 2 instances where more than 10% of variation is recorded (9.5% of the total instances) and 8 instances where more than 6% of variation is recorded (38.1% of the total instances). Thus, we see that in separate election the variation is comparatively more than in simultaneous elections but it is still below the level beyond which it can be said that voters voted differently in both the elections.

TABLE 4				
Maharashtra				
Year	Top Two Parties in LS	LS Vote Share	SA Vote Share	Δ
LA/SA 2004 (NSE)	INC + NCP	42.1%	39.8%	2.3%
	BJP + SHS	42.7%	33.6%	9.1%
LA/SA 2009 (NSE)	INC + NCP	38.9%	37.4%	1.5%
	BJP + SHS	35.2%	30.3%	4.9%
LA/SA 2014 (NSE)	BJP	27.6%	27.8%	0.2%
	SHS	20.8%	19.8%	1.0%

TABLE 5				
Karnataka				
Year	Top Two Parties in LS	LS Vote Share	SA Vote Share	Δ
LS 2009/ SA 2008 (NSE)	INC	41.6%	34.8%	6.8%
	BJP	37.7%	33.9%	3.8%
LS 2014/SA 2013 (NSE)	BJP	41.5%	19.9%	21.6%
	SHS	43.4%	36.6%	6.8%

<sup>62</sup> As long as there is no significant change in the circumstances during the intervening period. Examples of significant changes would be declaration of war, financial crisis, political scandal etc.

TABLE 6				
Haryana				
Year	Top Two Parties in LS	LS Vote Share	SA Vote Share	Δ
LA 1999/ SA 2000 (NSE)	INC	34.9%	31.2%	3.7%
	INLD	28.7%	29.6%	0.9%
LA 2004/ SA 2005 (NSE)	INC	42.1%	42.5%	0.4%
	INLD	22.4%	26.8%	4.4%
LA/SA 2009 (NSE)	INC	41.8%	35.1%	6.7%
	INLD	15.7%	25.8%	10.1%
LA/SA 2014 (NSE)	INC	23.0%	20.6%	2.4%
	BJP	34.8%	33.2%	1.6%

TABLE 7				
Rajasthan				
Year	Top Two Parties in LS	LS Vote Share	SA Vote Share	Δ
LA 1999/ SA 1998 (NSE)	BJP	47.2%	33.2%	14.0%
	INC	45.1%	45.0%	0.1%
LA 2004/ SA 2003 Feb	BJP	49.1%	39.2%	9.9%
	INC	41.4%	35.7%	5.7%
LA 2009/SA 2008 (NSE)	BJP	36.6%	34.3%	2.3%
	INC	47.1%	37.0%	10.1%
LA 2014/SA 2013 (NSE)	BJP	55.6%	45.1%	10.5%
	INC	30.7%	33.0%	2.3%

TABLE 8				
Bihar				
Year	Top Two Parties in LS	LS Vote Share	SA Vote Share	Δ
LA 1999/ SA 2000 (NSE)	BJP	23.0%	28.9%	5.9%
	RJD	28.3%	31.3%	3.0%
LA 2004/ SA 2005 Feb	JDU	22.4%	14.6%	7.8%
	RJD	30.7%	25.1%	5.6%
LA 2004/ SA 2005 Oct (NSE)	JDU	22.4%	20.5%	1.9%
	RJD	30.7%	23.5%	7.2%
LA 2009/SA 2010 (NSE)	JDU	24.0%	22.6%	1.4%
	RJD	19.3%	18.8%	0.5%
LA 2014/SA 2015 (NSE)	BJP	29.9%	24.4%	5.4%
	RJD	20.4%	18.4%	2.0%

TABLE 9				
Jharkhand				
Year	Top Two Parties in LS	LS Vote Share	SA Vote Share	Δ
LA 2004/ SA 2005 (NSE)	INC	21.4%	12.1%	9.3%
	BJP	33.1%	23.6%	9.5%
LA/SA 2009 (NSE)	INC	15.0%	16.2%	1.2%
	BJP	27.5%	20.2%	7.3%
LA/SA 2014 (NSE)	INC	13.5%	10.5%	3.0%
	BJP	40.7%	31.3%	9.4%

## 8. **Conclusion**

On the basis of the aforementioned analysis and the empirical evidence, the research questions have been as follows:

- i. **Question:** Do voters Vote for the Same Party during Simultaneous Elections?  
**Answer:** Generally, Yes.
- ii. **Question:** Do Simultaneous Elections prejudice regional issues and regional parties in the favour of national issues and national parties?  
**Answer:** It is highly improbable that a regional party will suffer detriment solely because of the election being conducted simultaneously.
- iii. **Question:** Will the voters vote differently if the elections are not held simultaneously?  
**Answer:** The voter's choice is dependent on variety of factors, but the concurrence or non-concurrence of Central and State elections does not seem to be one of them. If all other circumstances remain similar, the voting behaviour during non-concurrent elections is very similar to the voting behaviour during concurrent elections.

## **B. ANALYSIS OF THE VOTER BEHAVIOUR DURING SIMULTANEOUS ELECTIONS IN FOREIGN JURISDICTIONS**

One of the concerns of holding simultaneous elections in India is that it would affect the behaviour of voters. It has been propounded by many that it would cause uninformed voters to confuse national issues with state issues thereby causing them to vote on the basis of national issues for state elections which would inevitably lead to a situation where they vote for the same political party.<sup>63</sup> This is feared to harm the federal structure of Indian democracy.<sup>64</sup> In this regard, existing models of simultaneous elections in a few jurisdictions are analysed to better understand what factors influence voter behaviour and how much of a role vertical simultaneous elections play.

It is proposed that in foreign jurisdictions where simultaneous elections are being conducted, the behaviour of voters (subjectively) is not, to a great extent, affected by this model of elections.

### **1. South Africa**

**TABLE 10- SOUTH AFRICA<sup>65</sup>**

Province	2014				
	Three Largest Parties at the National Level	National Vote Share	Provincial Vote Share	Absolute Percentage Difference	Vote
Eastern Cape	African National Congress (ANC)	62.15%	70.09%	7.94	
	Democratic Alliance (DA)	22.23%	16.20%	6.03	
	Economic Freedom Fighters (EFF)	6.35%	3.48%	2.87	
Free State	African National Congress (ANC)	62.15%	69.85%	7.7	

<sup>63</sup> NITI AAYOG, BIBEK DEBROY & KISHORE DESAI, *Analysis of Simultaneous Elections: The “What”, “Why” and “How”* ¶4.4(b).

<sup>64</sup> *Id.*, at ¶4.11.

<sup>65</sup> Election Commission of South Africa, *National and Provincial Election Results*, May 10, 2014, available at <http://www.elections.org.za/content/Elections/Election-results/> (Last visited on May 12, 2018).

Province	2014				
	Three Largest Parties at the National Level	National Vote Share	Provincial Vote Share	Absolute Percentage Difference	Vote
	Democratic Alliance (DA)	22.23%	16.23%	6	
	Economic Freedom Fighters (EFF)	6.35%	8.15%	1.8	
Gautenberg	African National Congress (ANC)	62.15%	53.59%	8.56	
	Democratic Alliance (DA)	22.23%	30.78%	8.55	
	Economic Freedom Fighters (EFF)	6.35%	10.30%	3.95	
KwaZulu-Natal	African National Congress (ANC)	62.15%	64.52%	2.37	
	Democratic Alliance (DA)	22.23%	12.76%	9.47	
	Economic Freedom Fighters (EFF)	6.35%	1.85%	4.5	
Limpopo	African National Congress (ANC)	62.15%	78.60%	16.45	
	Democratic Alliance (DA)	22.23%	6.48%	15.75	
	Economic Freedom Fighters (EFF)	6.35%	10.74%	4.39	
Mpumalanga	African National Congress (ANC)	62.15%	78.23%	16.08	
	Democratic Alliance (DA)	22.23%	10.40%	11.83	
	Economic Freedom Fighters (EFF)	6.35%	6.26%	0.9	
North West	African National Congress (ANC)	62.15%	67.39%	5.24	
	Democratic Alliance (DA)	22.23%	13.21%	9.02	
	Economic Freedom Fighters (EFF)	6.35%	12.73%	6.38	
Northern Cape	African National Congress (ANC)	62.15%	64.40%	2.25	
	Democratic Alliance (DA)	22.23%	23.89%	1.66	

Province	2014			
	Three Largest Parties at the National Level	National Vote Share	Provincial Vote Share	Absolute Percentage Difference
	Economic Freedom Fighters (EFF)	6.35%	4.96%	1.39
Western Cape	African National Congress (ANC)	62.15%	32.89%	29.26
	Democratic Alliance (DA)	22.23%	59.38%	37.15
	Economic Freedom Fighters (EFF)	6.35%	2.11%	4.24

South Africa conducts its Democratic National and Provincial Elections on a day wherein voters simultaneously vote candidates into the National and Provincial Legislatures.<sup>66</sup> The process entails a closed-list proportional representation system, which has had a perceptible impact on voting patterns in the nation. A brief overview of the vote shares, in 2014, of the three largest national parties indicates that they enjoy similarly strong support at the provincial levels, thus effectively shunning any other parties, especially regional parties, from establishing their dominance in the political arena.<sup>67</sup> The analysis of the 1994 elections in South Africa, which were also simultaneous on the national and provincial levels of its democracy, is based primarily on post-liberation credentials.<sup>68</sup> Having established the ANC as the party in power, it is imperative to examine voter behaviour to analyse what has kept the ANC in power.

**It is observed that the ANC is vulnerable on issues that are crucial at the provincial level but manages to win these elections by impacting voter behaviour through campaigning tactics.**<sup>69</sup> Racial mobilisation continues to be one of the key strategies of major political parties in elections.<sup>70</sup> **Such strategies, which are national in character, manage to submerge regional issues and allow parties without strong regional presence**

<sup>66</sup> Helen Suzman Foundation, *The South African Electoral System*, March 20, 2014, available at <https://hsf.org.za/publications/hsf-briefs/the-south-african-electoral-system> (Last visited on May 12, 2018).

<sup>67</sup> Election Commission of South Africa, *National and Provincial Election Results*, May 10, 2014, available at <https://www.elections.org.za/resultsnpe2014/> (Last visited on May 8, 2018)

<sup>68</sup> Washington Post, *Here Are 4 Reasons That South Africa's ANC Lost Ground in This Month's Election*, August 8, 2016, available at [https://www.washingtonpost.com/news/monkey-cage/wp/2016/08/12/here-are-4-reasons-that-south-africas-african-national-congress-lost-ground-in-this-months-election/?noredirect=on&utm\\_term=.5f2f0b34335e](https://www.washingtonpost.com/news/monkey-cage/wp/2016/08/12/here-are-4-reasons-that-south-africas-african-national-congress-lost-ground-in-this-months-election/?noredirect=on&utm_term=.5f2f0b34335e) (Last visited on May 8, 2018).

<sup>69</sup> Geoffrey MacDonald, *The Emergence of Racial Politics in South Africa: Lessons for Peace-building*, Geoffrey Macdonald, Electronic Theses and Dissertations 865 (2013).

<sup>70</sup> Gavin Davis, *Proportional Representation and Racial Campaigning in South Africa*, 10(2) NATIONALISM AND ETHNIC POLITICS 297-324, (2004).



**to still win at this level.**<sup>71</sup> It is this submergence which is created by the concurrence of national and provincial elections, allowing a disproportionate benefit to the national parties, and particularly, in this jurisdiction, the ANC.<sup>72</sup>

This is further affirmed by the performance of the ANC during municipal elections, when held independently. In the 2016 Municipal elections, ANC experienced its worst performance, losing hold of the local government in the capital Pretoria, recording lowest support in an election since the end of Apartheid.<sup>73</sup> Thus, the devolution of power to the Centre allows the ruling party to mobilise on the basis of race – moreover incentivised by the electoral process – to undervalue issues of regional concern. Thus, one of the primary questions for the peace-builders in South Africa has come to be of timings of elections.<sup>74</sup> The argument of the peace-builders is that a separated election pressures leaders to distinguish between issues of national and regional importance. The distaste of the ruling party i.e. ANC towards a federal structure is well-documented and has been held accountable for the declining federal structure within South Africa, which manifests in a hegemony over politics at both levels of this multi-tier democracy.<sup>75</sup>

## 2. **Italy**

In Italy, citizens simultaneously cast their votes for the 630-member lower chamber, known as the Camera dei Deputati, and the 315 member Senate, known as the Camera del Senato.<sup>76</sup> The effect of holding these elections simultaneously has been noted to have two discernible effects on voter behaviour in Italy.<sup>77</sup> Italy has approximately hundred provinces and over 8,000 municipalities. A study of the electoral voter behaviour in West Europe shows that participation rates increase heavily in simultaneous elections but this is accompanied by a high vote congruence across the multiple tiers of democracy.<sup>78</sup> However, what is also clearly indicated, as in most jurisdictions exercising simultaneous elections, that the simultaneity permeates into the vote share of parties as well, wherein voters begin taking the national election vote as the decisive vote.<sup>79</sup>

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<sup>71</sup> Washington Post, *Here Are 4 Reasons That South Africa's ANC Lost Ground in This Month's Election*, August 8, 2016, available at [https://www.washingtonpost.com/news/monkey-cage/wp/2016/08/12/here-are-4-reasons-that-south-africas-african-national-congress-lost-ground-in-this-months-election/?noredirect=on&utm\\_term=.5f2f0b34335e](https://www.washingtonpost.com/news/monkey-cage/wp/2016/08/12/here-are-4-reasons-that-south-africas-african-national-congress-lost-ground-in-this-months-election/?noredirect=on&utm_term=.5f2f0b34335e) (Last visited on May 8, 2018).

<sup>72</sup> Geoffrey MacDonald, *The Emergence of Racial Politics in South Africa: Lessons for Peace-building*, Geoffrey Macdonald, Electronic Theses and Dissertations 865 (2013).

<sup>73</sup> Reuters, *South African's ANC Suffers Worst Election Since Taking Power*, August 6, 2016, available at <https://www.reuters.com/article/us-safrica-election/south-africans-anc-suffers-worst-election-since-taking-power-idUSKCN10G2GA> (Last visited on May 12, 2018).

<sup>74</sup> Benjamin Reilly, *Timing and Sequencing in Post-Conflict Elections* (Australia CRPD Working Paper No. 26 2015); Geoffrey MacDonald, *The Emergence of Racial Politics in South Africa: Lessons for Peace-building*, Geoffrey Macdonald, Electronic Theses and Dissertations 865 (2013).

<sup>75</sup> J. PIOMBO, INSTITUTIONS, ETHNICITY, AND POLITICAL MOBILIZATION IN SOUTH AFRICA ; BARNEY MTHOMBOTHI, THE LOST TRIBES OF SOUTH AFRICA ; (Only the Democratic Alliance has broken through this hegemony in the Western Cape, in the 2014 elections).

<sup>76</sup> Al Jazeera, *Understanding Italian Elections 2018*, March 04, 2018, available at <https://www.aljazeera.com/indepth/interactive/2018/03/understanding-italian-elections-2018-180303214146994.html> (Last visited on May 8, 2018).

<sup>77</sup> Emanuele Bracco, *Concurrent Elections And Political Accountability: Evidence From Italian Local Elections*, Working Paper, Lancaster University, Department of Economics, Lancaster (2017).

<sup>78</sup> Arjan H. Schakel & Régis Dandoy, *Electoral Cycles and Turnout in Multilevel Electoral Systems*, 37(3) WEST EUROPEAN POLITICS 605-623, (2014).

<sup>79</sup> *Id.*

Three theories are used to describe this phenomenon. The first theory accounts for the vote share congruence by using the second order theory, in support of voter bias towards nationalisation. The **second order election theory**,<sup>80</sup> explains that voters form decisions based on the information available to them at the time and thus allow the less-salient elections to play a small role in their decision, being guided by the highly salient elections. However, this theory is largely restricted to transnational elections (such as EU Parliament Elections) vis-à-vis national elections.<sup>81</sup>

On the other hand, two theories argue that vote share congruence cannot be correlated to simultaneous elections because even in the presence of simultaneity of polls, voter behaviour is explained as per the reasons theorised. These argue that when these simultaneous elections are held in provinces with distinctive territorial identities, ensuring **territorial heterogeneity**, votes are less likely to be congruent.<sup>82</sup> This theory is relevant to the Indian context, where the argument against vote share congruence at multiple levels of democracy is defeated by the theory that each state assembly election forces into focus an independent set of ethnic and territorial identities. These identities and issues will ensure the rise of regionalist parties, even as observed in West Europe (such as Sweden and Italy).<sup>83</sup> Third, it is argued that **regional authority** is a key variable in shifting voter behaviour away from taking cues from the national vote.<sup>84</sup> By vesting power in regional powers, and decentralizing it, the regional powers will also be incentivised to delineate from the national powers, thus ensuring a distinction in campaigning which will in turn affect vote shares.<sup>85</sup>

### 3. **Sweden**

**TABLE 11- SWEDEN**

Year	Two Largest Parties	General Elections	County Council Elections	Difference
2002	Social Democrats	39.85%	38.40%	1.45%
	Moderate Party	15.26%	16.60%	1.34%
2006	Social Democrats	34.99%	34.90%	0.9%
	Moderate Party	26.23%	24.60%	1.63%
2010	Social Democrats	30.66%	33%	2.34%
	Moderate Party	30.06%	27.3%	2.76%
2014	Social Democrats	31%	32.9%	1.9%
	Moderate Party	23.3%	21.5%	1.8%

<sup>80</sup> Reif, K. & Schmitt, H., *Nine Second- Order National Elections – A Conceptual Framework For The Analysis Of European Election Results*, 8 EUROPEAN JOURNAL OF POLITICAL RESEARCH 3-44, (1980).

<sup>81</sup> AH Schakel, *Congruence Between Regional and National Election*, 46(5) COMPARATIVE POLITICAL STUDIES, (2015).

<sup>82</sup> *Id.*

<sup>83</sup> Pierre Baudewyns et al., *The Success Of The Regionalist Parties In The 2014 Elections In Belgium*, 25(1) REGIONAL & FEDERAL STUDIES 91-102, (2015).

<sup>84</sup> AH Schakel, *Congruence Between Regional and National Election*, 46(5) COMPARATIVE POLITICAL STUDIES, (2015).

<sup>85</sup> Pierre Baudewyns et al., *The Success Of The Regionalist Parties In The 2014 Elections In Belgium*, 25(1) REGIONAL & FEDERAL STUDIES 91-102, (2015).

In Sweden, elections occur once every four years, simultaneously, for the allocation of seats in 'Riksdag' (the national level legislative body), the County Councils and the Municipal Assemblies.<sup>86</sup> The Swedish regional parties are not as independent or diverse as Indian parties. In Sweden, the counties enjoy a minimal level of autonomy and are entrusted with few powers so they cannot have the same kind of impact that a state party in, say, Karnataka would have.

Data has been taken for four elections that occurred between 2002 and 2014. The two major parties in Sweden are the Social Democrats ('SDs') and the Moderates ('MDs'). From 2002-2006, the Social Democrats were in office and they obtained a majority of seats in the county council elections as well.<sup>87</sup> From 2006-2010, though the Social Democrats obtained the highest percentage of votes, the coalition party 'Alliance for Sweden' (which was led by the Moderate Party and a few smaller parties) won the parliamentary elections.<sup>88</sup>

For our current proposition, the important factor is the difference between the general and county elections. With very little disparity, we can see that the pattern is largely the same. One could argue that this is the effect of simultaneous elections but there are a lot of other factors in play.

The Social Democrats had already been in power from 1998-2002; the fact that they were re-elected shows that the citizens were satisfied with the level of administration and policy changes brought in by the incumbent government.

There is very little evidence to show that this is a direct effect of holding elections simultaneously. Although, it is to be noted that in Sweden, the regional independence is quite low, the counties do not play much of a role presently. However, in 1996, the national party strengthened a few counties to make important policy decisions and this measure continued until 2002.<sup>89</sup> It could once again be argued that this played a huge role in the elections as the Social Democrats won over seats from these counties.<sup>90</sup> Looking at the regional votes, the opposition's votes grew in all Swedish regions (except Stockholm and Skane), which once again mitigates the assumption that simultaneous elections would lead to mindless voting for the national party.<sup>91</sup>

Coming to the 2006 elections, there was a shift in popularity and this was owed to the fact that the SD's response to the natural disaster (Cyclone Gudrun) that struck Sweden was subpar at best.<sup>92</sup> This was crucial to the results in the general elections as well as the regional elections as party accountability rose. The new opposition party performed worse

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<sup>86</sup> Swedish Election Authority, Elections in Sweden: The way it's done!'", available at [http://www.val.se/pdf/electionsinsweden\\_webb.pdf](http://www.val.se/pdf/electionsinsweden_webb.pdf). (Last visited on May 7, 2018)

<sup>87</sup> Swedish National Data Service, *Swedish electoral data: General elections 1973-2006*, available at <https://snd.gu.se/en/catalogue/study/snd0237> (Last visited May 7, 2018)

<sup>88</sup> *Id.*

<sup>89</sup> Valentyna Romanova, *The Principle of Cyclicity of the Second-Order Election Theory for Simultaneous Multi-level Elections*, 34(2) POLITICS 166, (2013).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*, 176.

<sup>92</sup> See, Eriksson, L. M., *Winds of Change. Voter Blame and Storm Gudrun in the 2006 Swedish Parliamentary Election*, 41 ELECTORAL STUDIES, 129-142 (2016).

in most regions but continued to perform well in cities such as Stockholm.<sup>93</sup> Once again, simultaneous elections have had little to no effect.

In the 2010 elections, the Moderate Party retained power at the national level and performed better than it had in the last 3 elections, but the SDs attracted more support in the regional elections of most regions.<sup>94</sup> If the criticism to simultaneous elections were to hold true then the MDs should have performed equally well in the regional elections but as the data suggests, this is not true. Sweden has also seen the growth of many regional parties (mostly single-issue parties) that improve what they perceive to be the failures of the national parties in power and these parties have garnered votes in the regional level.<sup>95</sup> Though the elections occur simultaneously, these regional parties that have little to no national presence manage to obtain votes and stay in power in their respective regions.<sup>96</sup>

Looking at the 2014 elections, the MDs once again lost power and the SDs became the ruling party. At the regional level as well the MDs lost a large percentage of votes and the SDs gained it. Once again, this can be attributed to the general change of leadership around that time and the dissatisfaction of the people with the incumbent government.

**Thus, the conclusion is that in Sweden, the voters are not clouded by national issues, which in turn would ostensibly affect how they vote for regional parties. Although there are similarities in voting patterns, these are largely due to the issues existing at that point in time. Since many smaller regional parties are also rising to power in their respective regions, it is safe to say that the effect of simultaneous elections on voter behaviour is minimal, at least in Sweden.** Thus, while the findings of Sweden cannot directly be applied to India, considering the difference in composition of regional politics, and differences in voter composition and priorities, it is clear that SE does not automatically lead to voter bias for national parties.

#### 4. **Belgium**

**TABLE 12- BELGIUM**

Year	Two Largest Parties	Federal Elections	Regional Elections (Flemish Parliament)	Δ	Regional Elections (Walloon Parliament)
1999	Flemish Liberals and Democrats	14.30%	22.04%	7.74%	<1%
	Christian People's Party	14.09%	22.09%	8%	<1%

<sup>93</sup> Valentyna Romanova, *The Principle of Cyclicity of the Second-Order Election Theory for Simultaneous Multi-level Elections*, 34(2) POLITICS 171, (2013). (The table made by the author is based on existing empirical data).

<sup>94</sup> *Id.*

<sup>95</sup> Linda Berg & Henrik Ekengren Oscarsson, *Sweden: From Mid-term County Council Elections to Concurrent Elections*, 20, available at [https://www.researchgate.net/publication/271700127\\_Sweden\\_From\\_Mid-term\\_County\\_Council\\_Elections\\_to\\_Concurrent\\_Elections](https://www.researchgate.net/publication/271700127_Sweden_From_Mid-term_County_Council_Elections_to_Concurrent_Elections) (Last visited on May 7, 2018).

<sup>96</sup> *Id.*

2014	New Flemish Alliance	20.26%	31.88%	11.62%	<1%
	Socialist Party	11.67%	20.48%	8.81%	30.96%

In Belgium, there have been two instances of simultaneous federal and regional elections, one in 1999 and one as recent as 2014. After 1960, Belgian politics witnessed the rise of ethno-linguistic parties, resting on the fulcrum of increasing strife between the Dutch-speaking Flemings in the north and the French-speaking Walloons in the south.

From the data obtained, it appears that parties that have obtained a large percentage of votes in the Federal Elections are the same ones that have obtained votes in the regional elections as well (w.r.t. Flemish Parliament).

In 1999, we see that the Flemish Liberals and Democrats ('VLD') gained a large percentage in the regional elections but at the same time other smaller parties such as the Flemish Block (*Vlaams Blok*) and the Living Differently (*Groen*) also grew in votes when compared to previous years.<sup>97</sup> Further, the Christian People's Party ('CVP') obtained more votes than the VLD in the regional elections. **The fact that the aforementioned regional parties grew w.r.t. vote share clearly militates against the contention of voter bias for national parties in simultaneous elections.** Similarly, in 2014 as well, though the parties that won the federal elections have obtained a large percentage of votes in the regional elections, other parties such as Christian Democratic & Flemish, Open Flemish Liberals and Democrats, Green and Workers' Party have seen a rise in votes.<sup>98</sup>

Furthermore, when compared with the Walloon Parliament elections, we see that in 1999 both the leading federal parties have performed extremely poorly. In 2014, the Socialist Party has gained a large percentage whereas the New Flemish Alliance hardly has any presence in the elections.<sup>99</sup> This is more so because of the language split in Belgium – while the Socialist Party disavows any outright linguistic affiliation, the Dutch-oriented Flemish parties have limited popularity in the French-speaking Walloon region. **Thus, the linguistic federal aspect clearly dominates over preferences for national parties, even during simultaneous elections in Belgium.**

Thus, similarly, many regional parties in Indian states represent different identities such as caste, language, religious ideologies etc. and while these exist, **the similarity in the share of votes polled should not be attributed merely to the fact that the elections were conducted simultaneously. There are clearly more nuanced factors at play in every polity with federal features.**

Nonetheless, it is to be kept in mind that the political scenario of Belgium is vastly different from India – not only in terms of electoral structure – and hence the findings from analyzing these elections can only serve as one of many possible outcomes of holding simultaneous elections in India.

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<sup>97</sup> Manuel Alvarez-Riviera, *Federal Elections in Belgium*, available at <http://electionresources.org/be/> (Last visited on May 7, 2018).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

## **A. HARMONISING THE OBSERVATIONS REGARDING VOTING BEHAVIOUR IN SIMULTANEOUS ELECTIONS: INTERLINKING NORMATIVE AND EMPIRICAL ASPECTS**

During the course of our analysis, we have analysed a diverse set of data which includes numerous Indian states along with other foreign jurisdictions which already have a system of Simultaneous elections. In the above analysis, we came across a diverse set of conclusions too. While congruent voting choice for both national and regional elections has been a dominant pattern in this analysis, it has also been observed that such congruency is not universal as voters also tend to vote differently for each tier in the same election. Similarly, while results of simultaneous elections were dominated by regional parties and regional issues in certain cases,<sup>100</sup> there were cases where the elections remained largely untouched by the regional issues.<sup>101</sup> This part attempts at harmonising various conclusions and tries to chalk out broad principles based thereon.

### **1. Explaining the Vote Congruence**

Congruency in voting is often linked with the level of information required for voting.<sup>102</sup> It is argued that each vote requires the voter to acquire a unique set of information about the candidates contesting the elections, which in turn involves voter to invest time and energy in collating information.<sup>103</sup> While performing this exercise once may be easy for a voter, its repetition comes at cost of additional time and energy required to be spent in collating information regarding such other candidate. Thus, if a voter has no extra incentive to engage in such an exercise, the voter ends up voting for the second candidate based on the information gathered for the first one.<sup>104</sup> In case of India, the electoral information is not readily available<sup>105</sup> and hence this exercise may prove to be even more burdensome to the Indian voter who will, as our analysis has shown, most probably end up voting for the same candidate at both the levels.

It has also been argued that, in light of limited electoral information or high cost of acquiring information, the congruency in votes during simultaneous elections stems from certain cues or shortcuts that the voter relies on. **Few prevalent cues that various studies have identified are political party membership,<sup>106</sup> personal likeability,<sup>107</sup> exogenous endorsement<sup>108</sup> and retrospective appraisal of incumbent's performance.<sup>109</sup> Out of this, political party membership cue is perhaps one of the most recognised (and**

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<sup>100</sup> See, e.g., Odisha, Andhra Pradesh (Table 1), Tamil Nadu (Table 2), Belgium (Table 12).

<sup>101</sup> See, e.g., South Africa, Italy (Table 9).

<sup>102</sup> David J. Anderson, *Concurrent Elections and Voter Attention: How voters search for political information in crowded campaign environments*, available on [http://www.eagleton.rutgers.edu/research/documents/Andersen\\_ConcurrentElections2011.pdf](http://www.eagleton.rutgers.edu/research/documents/Andersen_ConcurrentElections2011.pdf) (Last visited on May 7, 2018).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Ravi Duggal, *Election in India: Transparency, Accountability & Corruption, International Budget Partnership*, May 14, 2014, available on (Last visited on May 7, 2018).

<sup>106</sup> ANGUS CAMPBELL et al, *THE AMERICAN VOTER* (1960).

<sup>107</sup> PAUL SNIDERMAN et al, *EXPLORATIONS IN POLITICAL PSYCHOLOGY* (19930.)

<sup>108</sup> Arthur Lupia, *Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 1 *AMERICAN POLITICAL SCIENCE REVIEW* 88 (1994).

<sup>109</sup> MORRIS FIORINA, *RETROSPECTIVE VOTING IN AMERICAN NATIONAL ELECTIONS* (1981).

**prevalent).** Propounded by Campbell in his seminal work called ‘The American Voter’, the work posits that in case of concurrent elections the voter votes for the co-partisan contestant at one level if the voter has decided to vote for another contestant from the same party at any corresponding higher or lower level based on the information that he already has.<sup>110</sup> A study conducted by the IDFC institute on the Indian voting behaviour confirms Campbell's analysis to be true in the Indian Setting too. In the aforementioned study, it was observed that in the Assembly elections that were held simultaneously with Lok Sabha Election, 86% of the voters chose to vote for the co-partisan contestants for both the houses.<sup>111</sup> Similarly, the effect of a retrospective analysis of incumbent's performance has also been the basis of the congruent decision. In the simultaneous elections, voters tend to vote for a party at the tier of lower salience based on the performance of the party at the tier of higher salience.<sup>112</sup> A prime example of this behaviour is the performance of the Congress state units in the elections that were held in 1977. Congress at the centre was reeling from a strong wave of anti-incumbency post upliftment of emergency and the Congress-ruled states like West Bengal which went to the election in 1977 were swept out of power.<sup>113</sup>

Natural vote incongruence, though rare in simultaneous elections, is generally seen in elections where there is relatively higher electoral awareness in voters such that electoral information is made available with considerable ease.<sup>114</sup> An example of such a scenario would be where two candidates from popular in masses and who belong to different parties are contesting elections at different vertical tier. Vote Incongruence can also be created artificially. Tamil Nadu Simultaneous election of 1991 can be considered to be an example of artificial vote incongruence as the discrepancy of votes was not due to voter choice but due to lack thereof as the INC did not contest half of the Assembly Seat.<sup>115</sup>

**Thus, we see that in elections with lower electoral information dissemination and higher cost of obtaining electoral information, there will be more congruency of votes, than in elections where electoral information is readily available at a minimum expenditure of voter's time and energy.**

## **2. Explaining the Nationalisation/Regionalisation Dichotomy**

In our analyses, while the effect of vote congruence was more or less similar in all the jurisdictions, there was considerable variation in the direction in which the vote congruence worked. While in certain cases strong regionalisation effect was seen,<sup>116</sup> in

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<sup>110</sup> CAMPBELL, 192.

<sup>111</sup> Praveen Chakravarty, *Nudging the Voter in One Direction*, April 6, 2016, available at <http://www.thehindu.com/opinion/op-ed/state-assembly-elections-nudging-the-voter-in-one-direction/article8438114.ece> (Last visited on May 7, 2018).

<sup>112</sup> MORRIS FIORINA, RETROSPECTIVE VOTING IN AMERICAN NATIONAL ELECTIONS (1981).

<sup>113</sup> Desh Gupta, *India: The Weakening of the Congress Stranglehold and the Productivity Shift in India* (ASARC Working Paper Series, Paper 6, 2009).

<sup>114</sup> David J. Anderson, *Concurrent Elections and Voter Attention: How voters search for political information in crowded campaign environments*, available on [http://www.eagleton.rutgers.edu/research/documents/Andersen\\_ConcurrentElections2011.pdf](http://www.eagleton.rutgers.edu/research/documents/Andersen_ConcurrentElections2011.pdf) (Last visited on May 7, 2018); See, e.g., Sweden 2010 (Table 9).

<sup>115</sup> See Table 2.

<sup>116</sup> See, e.g., Orrisa (Table 1), Belgium (Table 9).

certain others a strong nationalisation effect was also seen.<sup>117</sup> **The theory of higher salience is used to explain the direction in which the vote congruence works.**<sup>118</sup> This theory propounds that in a concurrent election, a higher salience election will determine the outcome of the lower salience election.<sup>119</sup> Say, for example, if the voters attach more importance to the national election then the regional election will be the lower salience election, wherein the voter choice will be determined by the choice of the voter in the national elections.

**In India, it has been argued that the state is the more salient tier of governance, at least in regards to the electoral choice.**<sup>120</sup> Chibber and Kollman hold that the Indian masses hold the state more responsible than the centre for a host of public issues like health care, education *etc.*<sup>121</sup> In the study conducted by the duo, more than 60% of the respondents held the state responsible even for the issues which were outside the competence of the state to legislate on.<sup>122</sup>

Similarly, in a study conducted by Prof. Yogendra Yadav and Suhas Palshikar, wherein they analysed various elections between 2004 and 2009 and came to the conclusion that while the centre has legislative dominance, it is states which enjoys the political dominance.<sup>123</sup> In the study, it has been argued that the national electoral outcomes ‘derive from’ ‘principal’ electoral contests at the state level.<sup>124</sup>

Our analyses of voting behaviour in Indian and foreign elections are in consonance with the aforementioned studies. Since in India, the state is seen as the principal electorate, we observe that regional parties do well in Lok Sabha elections too, whenever they are held with the Assembly elections.<sup>125</sup> Since voters choose performance of party at the state level as the criteria for election, a string regionalisation effect is seen during Simultaneous Elections in India. In contrast, South Africa stands at the opposite spectrum. There issues like racism are of national importance and since during election they become the fulcrum of the campaign, we see a strong nationalisation effect in simultaneous elections there.<sup>126</sup>

**Thus, the effect of nationalisation or regionalisation in a simultaneous election is dependent on the criteria the voter chooses to base his vote on. If the criteria of voting pertain to regional issues, then a regionalisation effect will be observed and if the criteria pertain to a national issue then a nationalisation effect will be observed.**

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<sup>117</sup> See, e.g., South Africa, Italy (Table 8)

<sup>118</sup> Nine Second-Order National Elections—A Conceptual Framework for the Analysis of European Election Results, March 1980, European Journal of Political Research 8(1):3 – 44; Reif & Schmitt, 1980

<sup>119</sup> *Id.*

<sup>120</sup> PRADEEP CHIBBER & KEN KOLLMAN, THE FORMATION OF NATIONAL PARTY SYSTEM: FEDERALISM AND PARTY COMPETITION IN CANADA, GREAT BRITAIN, INDIA AND UNITED STATES 339-52 (2004).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Yogendra Yadav & Suhas Palshikar, *Principal State Level Contests and Derivative National Choices: Electoral Trends in 2004-09* 6 ECONOMIC AND POLITICAL WEEKLY 44 55-62 (2009).

<sup>124</sup> *Id.*

<sup>125</sup> See, e.g., Andhra Pradesh, Odisha & Sikkim 2014 (Table 1).

<sup>126</sup> See, Table 8.



#### **IV. CONSTRUCTIVE VOTE OF NO-CONFIDENCE: IMPACT ON TENURE AND DISSOLUTION OF LOK SABHA AND STATE LEGISLATIVE ASSEMBLIES**

##### **A. A BRIEF CONTEXTUAL BACKGROUND**

A parliamentary democracy ensures a check on the executive by the legislature, which is what lends legitimacy to the government in power. The concept of a government terminating prior to its prescribed parliamentary term is premised in this and allows the legislature to displace the government through a vote of no-confidence.<sup>127</sup> Votes of No-Confidence are classified into two, a regular vote of no-confidence, and a constructive vote of no-confidence.

This concept emanates from West Germany where it was first used; it has found application in various other jurisdictions since, including Spain, Hungary, Israel, Slovenia, Lesotho, *etc.* In the history of Germany, it has been used only twice, of which one was a successful exercise of the provision.<sup>128</sup> This provision emerged from the observed instability in the office of the Chancellor in the Weimar Republic, wherein Chancellors would keep coming to power and leaving because they did not enjoy a majority in the House but the predecessor had lost a vote of confidence.<sup>129</sup>

Constructive censure provides that a Chancellor can only be ousted from office if a prospective Chancellor has a positive majority, as determined by a secret ballot.<sup>130</sup> This means, a vote of confidence, which does not win the majority, *i.e.*, a lost motion, does not itself constitute grounds for the resignation of the Chancellor, dissolution of Parliament and the consequent formation of a new government.<sup>131</sup> This ensures that the government is never without a Chancellor, which is especially imperative in a multi-party system which may require a larger interim period to elect a new party or even a coalition.<sup>132</sup>

##### **B. IMPLEMENTATION IN FOREIGN JURISDICTIONS**

This is also being imbibed in Britain, in a certain form, which has departed from its conventional approach to the motion of no-confidence after the enforcement of the Fixed-Term Parliaments Act, 2011. The House of Commons must simultaneously vest confidence in a new government to replace the incumbent, while passing a motion of no-confidence in the existing government.<sup>133</sup> But if it fails to do so, the country may fall into early elections.

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<sup>127</sup> Daniel Diermeier et al., *A Structural Model of Government Formation*, *Econometrica*, 71(1), 27-70 (2003).

<sup>128</sup> New York Times, *Bonn Parliament Votes Out Schmidt and Elects Kohl*, February 2, 1982, available at <https://www.nytimes.com/1982/10/02/world/bonn-parliament-votes-out-schmidt-and-elects-kohl.html> (Last visited on May 7, 2018); Grundgesetz, The Constitution of the Federal Republic of Germany, 1949, Art. 67 and 68.

<sup>129</sup> Daniel Diermeier et al., *A Structural Model of Government Formation*, *Econometrica*, 71(1), 27-70 (2003).

<sup>130</sup> Reuven Y. Hazan, *Presidential Parliamentarism: Direct Popular Election of the Prime Minister, Israel's New Electoral and Political System*, *Electoral Studies* 15(1) (2005).

<sup>131</sup> Reuven Y. Hazan, *Presidential Parliamentarism: Direct Popular Election of the Prime Minister, Israel's New Electoral and Political System*, *Electoral Studies* 15(1) (2005).

<sup>132</sup> SABINE MICHALOWSKI & WOODS GERMAN, *CONSTITUTIONAL LAW: THE PROTECTION OF CIVIL LIBERTIES* 14 (1999).

<sup>133</sup> Roxan Venter, *Motions of No-confidence: Parliament's Executive Check and Checkmate*, 2014 J. S. Afr. L. 407 (2014).

It has also been examined for viable application in the United States of America.<sup>134</sup>

A brief comparison of the constructive vote of no-confidence as implemented in foreign jurisdictions is encapsulated in the table below.<sup>135</sup>

Country	Year Adopted	Introduction of the Vote	Procedure Followed
Germany <sup>136</sup>	1949	No specific provision	Expression of lack of confidence must be done, accompanied by electing a succeeding government, within 48 hours.
Spain <sup>137</sup>	1978	At least 10% of the Chamber (prohibition on initiation of another vote during same session by same MPs)	The procedure followed was translated from Germany, but allowed a 5 day timeframe.
Hungary <sup>138</sup>	1989	At least 20% of the MPs	Timeframe ranges from 3- 8 days.
Slovenia <sup>139</sup>	1991	At least 11% of the MPs	Timeframe must be at least 48 hours between the vote and election.
Poland <sup>140</sup>	1997	At least 46 Deputies – 10% (Prohibition on same vote within the following 3 months, unless an increased 115 Deputies' support is shown.)	The vote on the motion must take place within a week.

<sup>134</sup>Levinson, Sanford & Balkin, Jack M., *Constitutional Dictatorship: Its Dangers and Its Design* Min. L. Rev. 94 (2010).

<sup>135</sup>Bozek Michal, *The Origins of the Constructive Vote of No-confidence*, PREZEGLAD SEJMOWY 5(106) (2011); Arthur Lupia & Kaare Strøm, *Coalition Termination and the Strategic Timing of Parliamentary Elections*, THE AMERICAN POLITICAL SCIENCE REVIEW 3(89) (1995).

<sup>136</sup>GRUNDGESETZ, The Constitution of the Federal Republic of Germany, 1949, Art. 67 and 68.

<sup>137</sup>The Constitution of Spain, 1978, Art. 113.

<sup>138</sup>The Fundamental Law of Hungary, Art. 39A.

<sup>139</sup>The Constitution of Slovenia.

<sup>140</sup>The Constitution of the Republic of Poland, 1997, Art. 158.

### C. **PROPOSED MODEL**

A brief examination of the models of the constructive vote of no-confidence implemented in various foreign jurisdictions leads to the conclusion that a similar model implemented in India must have two objectives. First, to eliminate early elections, and second, to stabilise the incumbent government. These are two sides of the same argument.

In India, the applicability of this concept came into question after the Vajpayee government lost its place as the ruling party because of one vote in the Lok Sabha.<sup>141</sup> Two consultation papers were released after the empanelling of a Constitution Review Commission, which was intended to look into possible reforms in the Constitution of India.<sup>142</sup> The Commission suggested an amendment in the Rules of Procedure of the Legislatures to translate this provision into Indian constitutionalism. Besides mandating the Assembly to necessarily propose an alternate Government along with the no-confidence motion, it also suggested that for the motion of no-confidence to be brought about, a 20 percent of the House must be notified.

The model to be implemented in India must be nuanced so as to derive from the discrepancies present in our current procedure as well as the implementation in foreign jurisdictions. The fundamental features of the model are to be based on the German model, with a requirement of a positive vote of confidence (election or voting in of a new government by the House itself) concurrently with the passing of a motion of no-confidence.

However, the misuse of such a provision must be prevented to ensure that it does not defeat the very objective it seeks to achieve, which requires an imposition of the same restrictions that the existing vote of no-confidence is subject to.<sup>143</sup> These restrictions are suggested to be translated into the new provision for CVNC as follows:-

1. Leave for the motion to be voted on is granted if at least fifty members are in favour,
2. A simple majority is required to pass the motion, and
3. No new motion may be introduced by the same signatory in the same session.<sup>144</sup>
4. Amendments restricting Prime Minister's power to dissolve the assembly, in line with constitutional and judicial principles delineated below.

In order to efficiently allow the constructive vote to work, it is necessary that there is no time elapsing between the vote and the election (by the House) of the new government, *i.e.*, simultaneity is maintained. This prevents the conundrums arising from allowing time to elapse between the two parts of the motion, as evidenced in England.<sup>145</sup> The

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<sup>141</sup>Business Line, *Constitution Review Commission – No-confidence Motion?*, May 3, 2002, available at <https://www.thehindubusinessline.com/2002/05/03/stories/2002050300200900.htm> (Last visited on May 8, 2018).

<sup>142</sup>The Hindu, *A Dubious Case*, September 17, 2009, available at <http://www.thehindu.com/2000/09/17/stories/13170171.htm> (Last visited on May 8, 2018).

<sup>143</sup> Rules of Procedure and Conduct of Business in the Lok Sabha, 2014, Rule 198.

<sup>144</sup>PRS Legislative Research, *Parliamentary Procedures - A Primer*, July 2014, available at [http://www.prsindia.org/administrator/uploads/general/1408616558\\_Primer%20on%20Parliamentary%20Procedures.pdf](http://www.prsindia.org/administrator/uploads/general/1408616558_Primer%20on%20Parliamentary%20Procedures.pdf) (Last visited on May 8, 2018)..

<sup>145</sup>Petra Schleiter, *Did the Fixed-term Parliaments Act Fail?*, May 4, 2017, available at

motion for no-confidence, as it exists in the Lok Sabha Rules at present, allows for a 30 day period for preparation for the vote itself.<sup>146</sup> It is argued that this thirty-day period can be used for the search of an alternative government or an alternative working coalition, especially in the case of a multi-party democracy such as India. So, dissolution could previously be envisioned in two ways, dissolution by President on the advice of the Prime Minister, and on the lapse of a money bill in the Parliament.<sup>147</sup>

Simultaneity in both parts of the motion for constructive no-confidence ensures that the Prime Minister is prevented from attempting to advise the President to dissolve the House in the pendency of the alternative government coming to power, and sending the country into early election. This leads us to three questions which must be addressed –

**a) The advice of a PM heading a minority government in the interim period**

This has raised issues in the past when in 1970, Indira Gandhi attempted to dissolve the House after having lost the majority, advising the President in the capacity of the Head of a minority government.<sup>148</sup> This led to the question of whether the President would be bound by the advice of a Prime Minister who has lost the majority in the House. Ultimately, the President did dissolve the House as no other party in the Opposition offered to form a majority and thus, no alternative government was available, leading to snap polls fourteen months ahead of schedule. The question of whether the President would be bound by the minority government would not arise in this scenario as no interim period is envisioned.

**b) The advice of a PM heading a government following a failed CVNC**

The President's power to exercise discretion in the application of the aid and advice of the Council of Ministers applies where he believes that the Prime Minister's advice to dissolve cannot be accepted because he does not enjoy a majority in the House.<sup>149</sup>

Since the dissolution of the house by the President on the advice of the Prime Minister can cause mid-term elections, it can be manipulated by a government to prevent handing over of power via CVNC by calling early election through the dissolution of the house before the motion could be passed. Hence, we propose that this Power of Prime Minister to advise dissolution under Article 85 should be subject to the safeguards of floor test and other guidelines mentioned in Sarkaria and Puncchi Commission reports (discussed below) to prevent the possibility of unnecessary and mala fide dissolution of the house and mid-term elections.

**c) Failure to pass Money Bills or Public Bills in Lok Sabha**

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<https://medium.com/oxford-university/did-the-fixed-term-parliaments-act-fail-f00bdcf7f1c7> (Last visited on May 8, 2018)..

<sup>146</sup> Rules of Procedure and Conduct of Business in the Lok Sabha, 2014, Rule 198.

<sup>147</sup> Ruchi Tyagi, *The President of India: The Constitutional Head with Discretionary Powers*, INDIAN JOURNAL OF PUBLIC ADMINISTRATION 63(3) (2017).

<sup>148</sup> The Telegraph, *Whimsy & Other Reasons That Felled Governments*, August 27, 2007, available at [https://www.telegraphindia.com/1070827/asp/nation/story\\_8241456.asp](https://www.telegraphindia.com/1070827/asp/nation/story_8241456.asp) (Last visited on May 8, 2018).

<sup>149</sup> International IDEA, *Dissolution of Parliament*, 2016, available at <https://www.idea.int/sites/default/files/publications/dissolution-of-parliament-primer.pdf> (Last visited on May 8, 2018).

A Money Bill is defined as under Article 110(1) of the Constitution and the procedure for the acceptance of such a bill is covered by an extensive number of provisions. When a money bill is rejected by the legislature, it implies a lack of majority enjoyed by the executive which means that the Lok Sabha must dissolve and fresh elections must be held. Similarly, failure to pass government endorsed bills also causes the cabinet to resign. **Therefore, to prevent early elections and maintain the simultaneous election cycle, as well as give true effect to the CVNC, this provision must be amended to prevent such dissolution.**<sup>150</sup>

While deriving inspiration from the German model, it is imperative to revise the secret ballot aspect which exists in other models deriving from the German model, for e.g., South Africa.<sup>151</sup> The differentiation between such models and India is based on decisions such as *Kuldip Nayar v. Union of India*.<sup>152</sup> This lays down the essential argument that a secret ballot has been introduced in the Constitution where it was felt essential by the founding fathers, however the lack of such a provision in the existing motion of confidence implies the legislative intent, which must be honoured. Further, an allowance of secret ballot would open up the risk of backroom deals and opportunities for corruption, which would defeat the very purpose of the anti-defection law.<sup>153</sup> This leads us to the suggestion that **we must deviate from the existing models of CVNC in this respect by providing an open ballot system as followed for similar parliamentary motions, and as intended by the constituent assembly.**

#### ***D. DEADLOCK, CONSTRUCTIVE VOTE OF NO-CONFIDENCE AND ALLIED OPTIONS***

As identified before, one of the objectives of CVNC is to prevent mid-term elections. This objective can be primarily achieved by preventing the premature dissolution of the house. We have already recommended exhaustive measures to prevent such premature dissolution of the house. This part focuses on one particular scenario where premature dissolution may become necessary in case CVNC is implemented and provides a procedure for the same.

It may so happen that the incumbent government may lose the majority but the opposition does not agree on an alternative government. With CVNC implemented, the house will not get dissolved and as result, the country will be led by a minority government which will not have enough votes to pass important legislation and bills like the budget. If the opposition refuses to co-operate and the same time does not agree on an alternative, then the situation of **deadlock** may occur in the house. If the deadlock continues for a prolonged

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<sup>150</sup>International IDEA, *Dissolution of Parliament*, 2016, available at <https://www.idea.int/sites/default/files/publications/dissolution-of-parliament-primer.pdf> (Last visited on May 8, 2018).

<sup>151</sup>Daily Maverick, *A Constructive No-Confidence Vote Is Per Implication Secret*, May 15, 2017, available at <https://www.dailymaverick.co.za/opinionista/2017-05-15-a-constructive-no-confidence-vote-is-per-implication-secret/#.WvCA4dOFNo4> (Last visited on May 8, 2018).

<sup>152</sup> *Kuldip Nayar v. Union of India*, AIR 2006 SC 3127.

<sup>153</sup>PRS legislative Research, *The Anti-Defection Law – Intent and Impact Background Note for the Conference on Effective Legislatures*, November 23, 2009, available at <http://www.prsindia.org/uploads/media/Note%20on%20Anti-Defection.pdf> (Last visited on May 8, 2018).

period of time, then governance may come to stand still and re-election might be the only viable alternative. **We recommend that in this scenario only a re-election be conducted.**

However, the procedure for dissolution in case of a deadlock in House should be such that it cannot be manipulated by the government or the opposition to call for an early election by bypassing CVNC. In light of this, **we suggest the implementation of the British model of dissolution of the house where the motion for dissolution is passed only when it is supported by a special majority of 2/3<sup>rd</sup> votes.**<sup>154</sup> Special majority of the 2/3<sup>rd</sup>s vote will ensure that dissolution takes place only when there is a broad cross-party consensus on its implementation.

Further, for the sake of sustenance of the synchronised cycle of simultaneous elections, **we recommend that such re-election should take place only in case an exceptional circumstance as described above occurs within the first two years of the state assembly election.** So, in case dissolution of the house is necessitated in the third or fourth year of the election cycle, the re-election should take place to bring into power a majority government to rule the state for the remaining three years.

However, we also agree with the **Scottish model** (which is also followed in Wales and Northern Ireland) wherein **if the house gets dissolved and the timing is such that the newly elected house will have less than or equal to six months' time in the current election cycle, then such re-election be treated like General election not only for the remaining time but also for the next election cycle and the newly elected house be appointed for the term consisting of the remaining term of the current cycle (which should be less than six months) and the entire term of the next cycle.**<sup>155</sup> The proposition has merit as it will save unnecessary expenditure of public funds and human resources employed during elections which the government will have to otherwise employ in two Central elections to be held six months apart from each other. However, the Constitution of India mandates that the maximum term that a house can enjoy is of five years.<sup>156</sup> Hence an amendment will be required in the Article 83 for allowing the term to exceed the five-year limit by a maximum of six months in the exceptional situation described above.<sup>157</sup>

Additionally, a solution based on the Romanian model can also be implemented to prevent premature dissolution of the house when next scheduled elections of a fixed cycle are temporally proximate.<sup>158</sup> To promote the stability and the continuity of governance, **we recommend the Romanian model as an additional measure wherein dissolution of the house in the last six months of the term will be prohibited.**

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<sup>154</sup>Fixed Parliaments Act, 2011, §2 (1) (b).

<sup>155</sup>Political Studies Association Parliament Group, *Is the Fixed Term Parliament Act a Dead Letter?*, April 26, 2017, available at <https://parliamentsandlegislatures.wordpress.com/2017/04/26/fixed-term-parliaments-act/> (Last visited on, May 7, 2018).

<sup>156</sup>The Constitution of India, 1950, Art.83(2).

<sup>157</sup>Note, that to implement Simultaneous Elections an amendment in Article 83 will anyway be required to limit the five year term to the remaining term of the cycle in case of premature dissolution of the house.

<sup>158</sup> The Constitution of Romania, 1991, Art. 89 (The article prohibits the dissolution of the assembly if the Presidential elections are scheduled to be held in six months).

### ***E. EFFECT OF CONSTRUCTIVE VOTE OF NO-CONFIDENCE ON RELATIONSHIP BETWEEN THE EXECUTIVE AND THE LEGISLATURE: EVALUATIVE COMPARISON WITH REGULAR VOTE OF NO-CONFIDENCE***

Apart from legislative work, the Union Parliament and the State Assemblies are also entrusted with the responsibility to serve as the locus of accountability for the Executive institutions at the Centre and State respectively. Article 75(3) of the Constitution of India mandates the Council of Minister to be collectively responsible to the House of the People.<sup>159</sup> Similarly, Article 164 (2) of the Constitution mandates the State Cabinet to be collectively responsible to the Legislative Assembly of the State.<sup>160</sup>

No-Confidence motions are one of the primary mechanisms available at the disposal of Legislatures via which it can hold the Executive accountable.<sup>161</sup> The direct implication of Articles 75(3) and 164(2) is that the Central and the State Cabinets, including the Prime Minister and the Chief Minister may only hold the office as long as they enjoy the support of the Majority members of the respective legislatures i.e., the Union Parliament and the State Assemblies.<sup>162</sup>

As potent as it sounds, **No-confidence motion in India is known to be effective only in select circumstances.** A government with brute majority may remain totally undeterred from the threat of No-Confidence motions. Indira Gandhi's majority governments famously survived fifteen No-Confidence motions.<sup>163</sup> In fact, No-Confidence motions act as a credible threat only in the cases of government with a slender majority and that too when there is a faction present in the majority which wants to defect to another coalition or wants to make the government fall for the purpose of calling General Elections.<sup>164</sup> By analogy, No-Confidence motion may also act as a credible threat in case of coalition governments, but in practice, it has been observed that the parties in coalition use their numbers more as a tool for bargaining rather than for holding the governments accountable.<sup>165</sup> A study shows that in a period between 1960-2010 in the advanced parliamentary democracies, only approximately 5% of the proposed No-Confidence motions have been able to unseat the incumbent government.<sup>166</sup> **Considering the fact that No-confidence motions are supposed to be the primary tools to contain an unruly executive, its ineffectiveness has pushed the Executive-Legislature relationship in the direction of Executive supremacy instead of it being the other way around.**<sup>167</sup>

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<sup>159</sup>The Constitution of India, 1950, Art.75(3).

<sup>160</sup>The Constitution of India, 1950, Art.164(2).

<sup>161</sup>MICHAEL LAVER & KENNETH A. SHEPSLE, MAKING AND BREAKING GOVERNMENTS: CABINET AND LEGISLATURES IN PARLIAMENTARY DEMOCRACY 195 (1996).

<sup>162</sup>Shubhankar Dam, *Executive* in THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION 353 (Pratap Bhanu Mehta, Madhav Khosla et al., 1st ed., 2016).

<sup>163</sup>Times of India, *LS to Witness 26th No-Confidence Motion in its History*, August 17, 2013, available at <https://timesofindia.indiatimes.com/india/LS-to-witness-26th-no-confidence-motion-in-its-history/articleshow/134440.cms> (Last visited on May 6, 2018).

<sup>164</sup>Devesh Kapur & Pratap Bhanu Mehta, *The Indian Parliament as an Institution of Accountability* 9 (UNRISD Democracy Governance and Human Rights Programme, Paper Number 23, 2006 )

<sup>165</sup>*Id.*

<sup>166</sup>Laron K Williams, *Unsuccessful Success? Failed No-Confidence Motions, Competence Signals and Electoral Support*, 10 Comparative Political Studies 20 (2011).

<sup>167</sup>See Rajya Sabha, *Executive – Its Accountability to Parliament*, available at [https://rajyasabha.nic.in/rsnew/practice\\_procedure/naccount.asp](https://rajyasabha.nic.in/rsnew/practice_procedure/naccount.asp) (Last visited on May 6, 2018); See also Halsbury, Laws of England, 3rd Edition, Vol. 28, 1959, pp. 300-30 ("Parliament is not an executive authority,

In above context, the proposal for the implementation of the CVNC has got a section of observers and stakeholders worried, and rightly so, as this measure further skews the scales in the favour of an executive at the cost of Legislative supervision. With No-Confidence motions being difficult to pass as they are, the addition of a rider in form of an accompanying proposal of an alternative government will surely make the passage of the No-confidence motions more difficult and rare. Experience of various parliamentary democracies around the world tells us that while it is easier for parties to collaborate to bring down a government, it is much difficult for them to coordinate among themselves to get behind a single leader.<sup>168</sup> In the combined history of over 200 years of CVNC in countries of Belgium, Germany, Hungary, Poland, Slovenia and Spain, there have been only 12 proposals for CVNC out of which only four have seen success. It is obvious thus, that, adoption of CVNC will lead to decreased control of the legislature on the executive, an institution which already enjoys a great degree of autonomy in India.

On the other hand, there are few commentators who see a silver lining in the proposal of CVNC despite acknowledging its ill effects in form of decreased legislative supervision and accountability of the executive. Apart from stabilisation of the executive, the proposal also helps to rein in on 'negative' coalition, which is formed for the sole purpose of making a government fall for political benefit rather than for holding the executive accountable.<sup>169</sup> CVNC will also promote greater separation of the executive and the legislature as incumbent parties can bring in important bills budget, money bills *etc.*, without the worry of getting unseated at its failure which of course would minimise the requirement of issuance of whips and other executive disciplining procedures.<sup>170</sup> Similarly, it has been pointed out that implementation of CVNC may actually result in the improvement of the quality of the legislative process as an emboldened executive, undeterred from the consequences of the failure of its bills, may adopt more private members/opposition members bill.<sup>171</sup>

While the aforementioned propositions clearly have merit and demonstrate positive facets of increased executive autonomy as result of CVNC, most of it is conjectural in nature and will largely depend on the good-will of the ruling dispensation. On the other hand, the increased imbalance in the Executive-Legislature in the favour of the executive is an undeniable consequence of CVNC which will surely ensue its implementation. However, the bottom-line is that any attempt to implement a simultaneous election will require measures like CVNC to stabilise the executive so that the synchronisation of elections can be sustained over a long period of time. The experience from the countries with CVNC gives us incontrovertible proof that CVNC is indeed one of the most effective ways of achieving the aforementioned objective of stabilising the executive. Hence, **it is recommended that in case of implementation of Simultaneous Elections, specifically for the Lok Sabha, the**

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but either directly or indirectly it exercises a dominating control over the action of the Crown and of the executive government and the administration of the laws which it has enacted.”).

<sup>168</sup>Petr Just, *Constructive Motion of No-confidence as a Tool for Parliamentary Control of Government: the Czech Republic in a European Comparison*, 48 *Revista de Stiinte Politice* (2015).

<sup>169</sup>Wolfgang C. Müller & Ulrich Sieberer, *Procedure and Rules in Legislatures* in THE OXFORD HANDBOOK OF LEGISLATIVE STUDIES 342 (Shane Martin, Thomas Saalfeld et al, 1st ed., 2014).

<sup>170</sup>Elliot Bulmer & Eva Dominguez, *The Fall of the House of Westminster: A Proposal for a New UK Constitution*, available at [https://www.opendemocracy.net/files/constitutional\\_commission.pdf](https://www.opendemocracy.net/files/constitutional_commission.pdf) (Last visited on May 6, 2018).

<sup>171</sup>*Id.*



**procedure of No-Confidence be supplanted with the procedure of Constructive No-Confidence.**

***F. IMPLEMENTATION OF CONSTRUCTIVE VOTE OF NO-CONFIDENCE IN STATES***

As discussed above, implementation of the Constructive vote of No-Confidence will entail the possibility of rule by minority governments and stalemate in the house. Moreover, for it to succeed, a relaxation in Anti-defection laws may also be required<sup>172</sup> which entails negative consequences of its own. However, as the Law Commission rightly observed, none of it can be avoided in the case of dissolution of the Lok Sabha as then no other alternative other than re-election will be left. Reports peg the cost incurred in conducting 2014 Lok Sabha election at 4000 crores Rupees expenditure.<sup>173</sup> Obviously conducting an election for Lok Sabha is an expensive affair, unnecessary repetition of which will cost the loss of thousands of crores to the exchequer.

Dissolution of a State Assembly, on the other hand, does not suffer from the same handicaps for following two reasons:

***a) The re-election of State Assembly is relatively cheaper than the re-election of Lok Sabha***

Reports suggest that re-election of a state assembly may cost significantly lesser cost when compared to re-election to Lok Sabha. While 2014 Lok Sabha election cost has been pegged at a 4000 cr mark, election to Bihar Assembly, the fifth largest in terms of no. of seats, took less than 300 cr<sup>174</sup> which does not even amount to 1/10<sup>th</sup> of the cost incurred in Lok Sabha Election. If we look at these statistics in the light of the fact of increased stability of state assemblies post the introduction of Anti-Defection law<sup>175</sup> and *Bommai* Judgement,<sup>176</sup> it is apparent that re-election for state assemblies post 2000 is a mere possibility and hence the expenditure incurred in such one-off re-election should not be a source of financial worry for the government.

***b) In case of Dissolution of State Assembly, alternative source of governance exists***

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<sup>172</sup> Law Commission of India, Public Notice, *Simultaneous Election – Constitutional and Legal Perspectives*, April 17, 2018 ¶9-10.

<sup>173</sup> Time, *The 2014 Elections Are the Most Expensive Ever Held in India*, April 11, 2014, available at (Last visited on May 7, 2018).

<sup>174</sup> Times of India, *Bihar 2015 Polls Cost the Exchequer Rs 300 Cr*, November 7, 2015, available on (Last visited on May 7, 2018).

<sup>175</sup> DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE, Sixteenth Lok Sabha, *Feasibility of Holding Simultaneous Elections to the House of People (Lok Sabha) and State Legislative Assemblies*, Seventy Ninth Report, ¶16.2 December 15, 2015, available at <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/79.pdf> (Last visited on February 21, 2018).

<sup>176</sup> S. R. Bommai v. Union of India, AIR 1994 SC 1918.

As observed by the Law Commission, there are no alternate forms of governance in case the Lok Sabha gets dissolved.<sup>177</sup> President cannot act independently without the aid and advice of the Council of Minister who in turn cannot function if the Lok Sabha gets dissolved.<sup>178</sup> In contrast, in the case of dissolution of State Assembly, President's rule can be imposed for a maximum of three years in a state under Article 356.<sup>179</sup> Alternatively, State can also be ruled by the Centre directly by transferring the legislative functions of the state assembly to the Rajya Sabha under Article 249.<sup>180</sup>

Hence, in light of above, we are of the opinion that complete extension of the Constructive No-Confidence procedure is not required in case of states. Consequently, we are also of the opinion that Anti-Defection laws should not be relaxed in the case of states, as a general rule. It will be permitted only in case of the following circumstance delineated below.

It is also necessary to refer to the Sarkaria and Puncchi Commissions' recommendations w.r.t. floor test.

*“The Sarkaria Commission recommended that, if the Chief Minister neglects or refuses to summon the Assembly for holding a "Floor Test", the Governor should summon the Assembly for the purpose. As regards proroguing a House of Legislature, the Governor should normally act on the advice of the Chief Minister. But where the latter advises prorogation when a notice of no-confidence motion against the Ministry is pending, the Governor should not straightaway accept the advice. If he finds that the no-confidence motion represents a legitimate challenge from the Opposition, he should advise the Chief Minister to postpone prorogation and face the motion. As far as dissolution of the House is concerned, the Governor is bound by the decision taken by the Chief Minister who has majority. However, if the advice is rendered by a Chief Minister who doesn't have majority, then the Governor can try to see if an alternate government can be formed and only if that isn't possible, should the house be dissolved.”<sup>181</sup>*

Thus, exploring all possible alternatives before the dissolution of State legislative assembly is constitutionally and legally mandated. Accordingly, to insulate the synchronised cycle of the simultaneous elections, we propose the following procedure to be followed in case of dissolution of state assembly:

1. **If from the proposed date of dissolution, more than 1.5 years but less than 3 years of time is left for the next scheduled election, then regular re-elections be conducted for the appointment of state assembly for the remaining term.**
2. **If from the proposed date of the dissolution, more than 3 years of time is left for the next scheduled elections, only then the procedure of Constructive Vote of No-confidence should be employed, and Anti-Defection Law relaxed.**
3. **Alternatively, President's rule can also be imposed if the period left before the end of the full term of the state assembly is 1.5 years or less.**

<sup>177</sup> Law Commission of India, Public Notice, *Simultaneous Election – Constitutional and Legal Perspectives*, April 17, 2018 ¶6.

<sup>178</sup> U.N. R. Rao v. Smt. Indira Gandhi, 1971 Indlaw SC 148, ¶12.

<sup>179</sup> The Constitution of India, Art. 356.

<sup>180</sup> The Constitution of India, Art. 249.

<sup>181</sup> Puncchi Commission on Centre-State Relations Report, Vol. II, ¶4.5.04.

**However, in any of these cases, floor test must be the first preference, before going for dissolution of state legislative assembly.**

4. **Additionally, the Romanian model as discussed above can also be implemented to prevent the dissolution of the house in the last six months of the term for the sake of stability and continuity.**

Furthermore, we also agree with the view taken by the ECI and the Parliamentary Committee that the state governments need to be stabilised for the program to succeed.<sup>182</sup> Apart from no-confidence votes, the state assembly can also be dissolved by the centre. We are of the view that in order to provide stable governance to the citizenry of the state, the authority of the Centre to dislodge a democratically elected State government needs to be reasonably curtailed. In this regard, we propose following recommendations:

1. **The grounds for dissolution of state assembly as prescribed by the Sarkaria Commission<sup>183</sup> and endorsed by the Bommai judgement<sup>184</sup> be codified into the Constitution by way of suitable amendments in Article 356.**
2. **Article 356 should also be suitably amended to make it obligatory for the Central government/governor to provide the grounds and reasons based on which the Central government/governor prescribes the Presidents Rule in writing so that the validity of such recommendation can easily and expeditiously be reviewed by the judiciary.**

## **G. PROPOSED AMENDMENTS**

As noted by the Constitution Review Commission appointed by the Vajpayee government, the introduction of a constructive vote of no-confidence would require an amendment primarily to the Rules of Procedure and Conduct of Business in the Lok Sabha. However, the introduction of such a parliamentary motion results in an overhaul of the dissolution process. This would involve an amendment to the provisions of the Constitution of India namely, Articles 83 (2) and 172 (1) dealing with tenures of Lok Sabha and state assemblies. Further, the Representation of Peoples Act will have to be amended to introduce provisions for fixed election cycles and the introduction of a ‘fixed election day’ in pursuance of the implementation of CVNC. In addition, the money bill provision allowing for the premature dissolution of parliament would have to be similarly amended to prevent such dissolution as discussed.

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<sup>182</sup> DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE, Sixteenth Lok Sabha, *Feasibility of Holding Simultaneous Elections to the House of People (Lok Sabha) and State Legislative Assemblies*, Seventy Ninth Report, December 15, 2015, available at <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/79.pdf> (Last visited on February 21, 2018), ¶7, 14.

<sup>183</sup> COMMISSION ON CENTRE-STATE RELATIONS, *Evolution of Centre-State Relations in India*, ¶6.7.04 (June, 1983) (‘Sarkaria Commission’) (The grounds for dissolution laid out by Sarkaria Commission were as follows:

- (a) Political crises.
- (b) Internal subversion.
- (c) Physical breakdown.
- (d) Non-compliance with constitutional directions of the Union Executive).

<sup>184</sup> S. R. Bommai v. Union of India, AIR 1994 SC 1918, ¶80.

## V. POSSIBLE ROADBLOCKS POSITED BY ANTI-DEFECTION LAW TO THE CONDUCT OF SIMULTANEOUS ELECTIONS: SUGGESTED SOLUTIONS

### A. *ISSUES, ANALYSIS AND SOLUTIONS*

The concept of simultaneous elections viewed simply, involves the scheduling of elections at all three levels (as suggested in our model, local self-governments should also go to poll simultaneously with the Parliament and state legislatures) of governance in India in the interest of time and resources. The sustainability of this model is evidently in the maintenance of the scheduled timelines for holding simultaneous elections after the completion of the term of each of these bodies. Since Parliament and state legislatures both have a constitutionally mandated term of five years, following the premature dissolution of state legislatures which will potentially take place in the initial implementation of simultaneous elections, there is unlikely to be any substantial hurdle in putting them to vote after the completion of their respective terms of five years each when the next scheduled simultaneous takes place. Now, while the preservation of term of the Parliament and state legislatures would be in the interest of the process of simultaneous elections, the possibility of loss of confidence by the Central Government or state government, as the case may be, in the respective House looms large over this otherwise ideal situation.

#### *1. No-confidence motions and the prospect of constructive no-confidence vote*

Rule 198 of the Rules of Procedure and Conduct of Business on Lok Sabha provides for the passing of a motion of no-confidence against the incumbent government. Similar provisions exist in the Rules framed by the state legislatures for the conduct of their business in order to enable Members of Legislative Assembly to table such a motion in their state legislature. While the procedural requirements in relation to the introduction, deliberation and voting on a no-confidence motion are extensive in nature, what a no-confidence motion essentially seeks to do is to gauge the confidence that the House has in the incumbent government.<sup>185</sup> As an instrument, the no-confidence motion plays an essential role in ensuring that the government in power enjoys the support of the majority of the Parliament or state legislature at all points of time.<sup>186</sup>

The no-confidence motion can take place in the form of either a confidence vote or a no-confidence vote, with both having the same result from a practical point of view.<sup>187</sup> A confidence vote as the name suggests involves seeking to understand the extent of support that is garnered by the incumbent government in its favour.<sup>188</sup> On the other hand, a no-confidence vote seeks to estimate the extent to which the government has lost favour of the members of the respective House and to potentially dethrone the government based on the expression of apparent loss in support in the House which is viewed to be essential to their

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<sup>185</sup> The Hans India, *No-confidence motion* March 17, 2018, available at <http://www.thehansindia.com/home/tag/No-confidence-motion> (Last visited on May 8, 2018).

<sup>186</sup> M.R. Madhavan, *Confidence in the house*, April 4, 2018, available at <http://www.thehindu.com/opinion/op-ed/confidence-in-the-house/article23437310.ece> (Last visited on May 8, 2018).

<sup>187</sup> The Quint, *Explained: What Is A No-Confidence Motion?* available at <https://www.thequint.com/explainers/explainers-all-you-need-to-know-about-a-no-confidence-motion> (Last visited on May 8, 2018).

<sup>188</sup> M.R. Madhavan, *Rules of confidence*, July 12, 2008, available at <http://archive.indianexpress.com/news/rules-of-confidence/334634/> (Last visited on May 8, 2018).

occupying the seat of governance.<sup>189</sup> In India, no-confidence motions have been selected for application in the legislature. Regardless of the nature of proceedings involved, both types of votes bear similar consequences such that a loss of the incumbent government in a confidence vote as well as an acceptance of a no-confidence vote results in the resignation of the government.<sup>190</sup>

Unless another political party, either by itself or in coalition with other political parties is capable of constituting a majority in the relevant House of legislature, the Parliament or state assembly as the case may be is required to be dissolved and re-election has to be organised in view of the forming of a new government which enjoys the support of the majority of the Parliament or state legislature as the case may be.<sup>191</sup> While the loss of confidence midway through the term may be potentially prevented on account of the formation of a new government by existing parties and factions within the respective House, however, **the potential of premature dissolution of the Parliament or state assembly prior to the completion of their full term may pose a serious problem** to the feasibility of implementing simultaneous elections due to the staggering of the electoral cycle which shall result from such dissolution.<sup>192</sup>

As discussed in Part III of this response paper, however, **constitutional mechanisms in the nature of Presidential Rule exist in order to prevent the mandatory re-election of the state assembly** on account of its dissolution prior to the dates of the upcoming scheduled simultaneous elections, and other methods as stated in the Part may also be adopted in order to prevent the dissolution of state assemblies from adversely impacting the electoral cycle developed for the purpose of conducting simultaneous elections, the same cannot be said to be true for the Parliament where the loss of confidence of the government and the absence of a possible replacement government will mandate re-election.

In order to avoid the staggering of elections in light of the passing of no-confidence motions, the Law Commission's **suggestion of constructive no-confidence motion is appreciable**. As per this recommendation, the loss of a no-confidence motion must result in the resignation of the government only when a confidence motion favouring another alternative government is also passed.<sup>193</sup> This suggestion of non-acceptance of the no-confidence motion, while it may be in the interest of time and cost, may face challenges in respect of a government which has lost the confidence of the legislature running the country. As a solution to this, a concomitant relaxation of the law on anti-defection as provided in the Tenth Schedule is suggested so as to facilitate the implementation of the constructive vote of no-confidence.

## ***2. Anti-defection law as an impediment to simultaneous elections***

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<sup>189</sup> Kenneth J. Cooper, *Indian Government Falls After 13 Days In Power*, May 29, 1996, available at [https://www.washingtonpost.com/archive/politics/1996/05/29/indian-government-falls-after-13-days-in-power/10f84c0d-5122-4866-ba75-4fc2bf505438/?utm\\_term=.2527bec51cf8](https://www.washingtonpost.com/archive/politics/1996/05/29/indian-government-falls-after-13-days-in-power/10f84c0d-5122-4866-ba75-4fc2bf505438/?utm_term=.2527bec51cf8) (Last visited on May 8, 2018).

<sup>190</sup> Niti Aayog (Bibek Debroy and Kishore Desai), *Analysis of Simultaneous elections: The "What", "Why" and "How"*: A discussion Paper, ¶3.5, available at [http://niti.gov.in/writereaddata/files/document\\_publication/Note%20on%20Simultaneous%20Elections.pdf](http://niti.gov.in/writereaddata/files/document_publication/Note%20on%20Simultaneous%20Elections.pdf) (Last visited on May 5, 2018).

<sup>191</sup> Puncchi Commission on Centre-State Relations Report, Vol. II.

<sup>192</sup> *Id.*

<sup>193</sup> Sai Manish, *One nation, one election: Why Modi govt wants to go for simultaneous polls*, January 25, 2018, available at [http://www.business-standard.com/article/current-affairs/one-nation-one-election-why-modi-govt-wants-to-go-for-simultaneous-polls-118012500184\\_1.html](http://www.business-standard.com/article/current-affairs/one-nation-one-election-why-modi-govt-wants-to-go-for-simultaneous-polls-118012500184_1.html) (Last visited on May 8, 2018).

This would be necessary in light of the fact that a situation of a hung parliament that may result from the loss of confidence of the incumbent government may potentially be salvageable if members from different political parties are allowed to come together for the purpose of forming the new government. **The anti-defection law as it stands poses an impediment to the formation of an alternate government since it seeks to disqualify from membership any MP or MLA who acts against the party whip.**<sup>194</sup> The potential ideological difference between parties and the political desire for majority influence in the legislature may potentially prevent larger political parties from allowing their members to support alternate governments in a situation of a hung parliament.<sup>195</sup> In light of the existing anti-defection law and the potential disqualification which will emanate from an effort for individual MPs or MLAs belonging to political parties, the possibility of forming a new government in pursuance of the constructive vote of no-confidence will become minimal and hence push the legislature towards re-election.

In reflection of the issues arising from the anti-defection law in India, it is suggested that the Law Commission's recommendation regarding the **carving out of an exception in the law** for the purpose of allowing MPs to defy the party whip in exceptional circumstances of no-confidence motion in order to pass a confidence motion in favor of an alternate government potentially formed by factions of different political parties which together command a majority in the legislature. While the potential of dissolution of Parliament based on loss of confidence is quite remote based on the experience of recent decades, the existence of a mechanism to deal with such an exceptional circumstance would nevertheless be beneficial.

**Furthermore, as discussed in Part IV.E of this paper, no-confidence motion in practice has proved to be effective in select circumstances only, and has in fact proved to be a tool of entrenching Executive's hegemony. The dangers of CVNC have been empirically and normatively demonstrated to be largely exaggerated. Thus, the relaxation of Anti-Defection Law which is absolutely necessary to operationalise CVNC can be permitted wholly in Lok Sabha, without the deleterious effects cited by popular criticisms. For states, the riders mentioned in Part IV.F of this paper will apply, owing to the reason that the Constitution envisages certain alternatives for state legislative assemblies that are not available to Lok Sabha in case of imminent dissolution.**

## **B. PROPOSED AMENDMENTS**

It is suggested that a clause may be inserted in the Tenth Schedule stating that:

*“Provided that nothing contained in this Schedule shall be applicable to the action of Members of Parliament against the directions of their political party when it involves voting in favour of an alternate government in pursuance of a constructive vote of*

<sup>194</sup> See Constitution of India, 1950, Tenth Schedule, Clause 2(b)..

<sup>195</sup> Jenna Narayan, 'Defect-Shun': Understanding Schedule X to the Constitution of India, 3(1) INDIA LAW JOURNAL, available at [http://www.indialawjournal.org/archives/volume3/issue\\_1/article\\_by\\_jenna.html](http://www.indialawjournal.org/archives/volume3/issue_1/article_by_jenna.html) (Last visited on May 8, 2018).

*confidence which is mandated after the loss of confidence of the incumbent government prior to the completion of the complete term of the Parliament.*

*Provided further that nothing contained in this Schedule shall be applicable to the action of Members of Legislative Assembly against the directions of their political party when it involves voting in favour of an alternate government in pursuance of a constructive vote of confidence, which is mandated after the loss of confidence of the incumbent government that has more than 36 months left of its normal five-year tenure.*

*For the removal of doubts it is clarified that a member shall not be disqualified from the Parliament or state legislature, subject to the limitations as aforesaid for voting in expression of confidence in a government which seeks to replace the government which has lost the confidence of the House, even when such a vote is in contravention to the general directions issued by the political party to which the MP or MLA is associated.*

*Nothing contained in this provision shall result in exempting a member from the consequences provided for in this Schedule for disobedience of the directives of the party with which he or she is associated with except in the circumstances described above. ”*

## **VI. NORMATIVE COMPORT OF SIMULTANEOUS ELECTIONS WITH THE BASIC STRUCTURE OF THE CONSTITUTION: ANALYSIS AND SOLUTIONS**

The constitutionality of simultaneous elections has been called to question by critics who state that it potentially infringes on constitutional principles which form part of the basic structure doctrine. The case of *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala*<sup>196</sup> laid down that while the rest of the Constitution was amenable to change through amendment, **certain aspects which formed part of the basic structure of the Constitution could not be altered**. Thereafter, all constitutional amendments which have been found to be violative of the 'basic structure doctrine' have been struck down as unconstitutional and hence void.

A perusal of case law in relation to the basic structure sets out a range of tests which are applicable while determining the possible violation of the basic structure of the Indian Constitution by a constitutional alteration through amendment.<sup>197</sup> It is important to judge the proposed amendment in favour of introducing simultaneous elections against this threshold in order to gauge its sustainability in light of the constitutional provisions. The case of *I.R. Coelho v. State of Tamil Nadu*<sup>198</sup> laid down the currently applicable tests of judging constitutional amendments against the threshold of the basic structure of the Constitution, namely the 'rights' test and the 'impact' test and thereby requires a reference in this regard.

The '**rights**' test focuses on the protection of vital constitutional provisions which are so key to its existence that the absence or negation of such provisions would itself lead to the destruction of the constitutional order. The '**impact**' test, on the other hand, requires the Court to make a balanced assessment as to the content of law, the nature of rights it seeks to introduce, the sphere of abridgement of other legal rights including specifically Fundamental Rights in order to determine whether the constitutional amendment in question substantially and effectively contravenes the core tenets of the Indian Constitution. As per judicial interpretation, federalism is part of the basic structure of the Constitution.<sup>199</sup> **However, the mere possibility of federalism being altered in the Indian context based on exaggerated claims of critics is inadequate to sustain a case of holding the proposition potentially unconstitutional. For such a case to be sustained, it is important that such a determination results from the application of the 'rights' and 'impact' tests as prescribed by the Supreme Court of India.**

It is to be noted that the introduction of simultaneous elections would involve majorly amending the Constitution with reference to Articles 83 (dealing with the duration of Houses of Parliament), 85 (dealing with the dissolution of Lok Sabha by the President), 172 (dealing with the duration of state legislatures), 174 (dealing with the dissolution of state assemblies) and 356 (dealing with the imposition of President's Rule on a state). It is argued that while the provisions relating to the length of term of Parliament and state legislature, **Articles 83 and 172, are important from the point of view of the maintenance of stable governance, they are not so intrinsic to the Constitution as it stands as to fail the standard set by the applicable 'rights' test. This means that while it is true that**

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<sup>196</sup> (1973) 4 SCC 225.

<sup>197</sup> Aratrika Choudhuri & Shivani Kabra, *Determining The Constitutionality of Constitutional Amendments in India, Pakistan and Bangladesh: A Comparative Analysis*, 10 NUJS L. Rev. 3 (2017).

<sup>198</sup> (2007) 2 SCC 1.

<sup>199</sup> *Kuldip Nayar v. Union of India*, (2006) 7 SCC 1.



**maintenance of the full terms of Parliament and state legislatures is desirable, it is by no means absolutely necessary. The recognition of this understanding is evident in the presence of Articles 85, 174 and 356 which deal with the dissolution of the Parliament and the state legislature.** While Articles 85 and 174 provide for the dissolution of the Parliament and state legislature from time to time, Article 356 provides for the dissolution of the house in a situation of the breakdown of the constitutional machinery wherein the President is allowed to assume the powers of the state legislature himself thereby rendering the elected state legislature defunct. It is argued that while the introduction of the policy of simultaneous elections will involve alteration of the aforementioned constitutional provisions, the amendment need not be envisioned as such that will necessarily negate the core of these provisions. Nonetheless, if based on policy prerogatives, the Parliament and state legislatures together determine the need for substantially altering these constitutional provisions, it is suggested that these provisions do not form such an intrinsic part of the Constitution that the alteration in their form and substance shall lead to the destruction of the constitutional order itself, which is the standard which is provided by the ‘rights’ test.<sup>200</sup>

Similarly, in respect of the ‘impact’ test, it is argued that the amendment sought to be introduced in order to facilitate the conducting of simultaneous elections shall not substantially and effectively abrogate key tenets of the Indian Constitution.<sup>201</sup> As required under the test, it is of utmost importance to assess the content of the law, the nature of rights sought to be introduced and the nature of rights which are either possibly impacted or eroded as a consequence of the amendment.<sup>202</sup> As discussed in Part I, simultaneous elections was envisaged as the norm under the constitutional framework with staggered elections being provided only as exceptions to the rule initially.

In today’s India where administrative requirements have resulted in the shift to staggered elections at the Parliamentary and state levels, it is argued that the content of the law sought to be introduced through the proposed amendment is not entirely unknown in Indian constitutional history. Further, it is necessary to note that the model sought to be reintroduced, albeit with modifications in consonance with the changing times, has witnessed successful implementation from 1951 to 1967, thereby indicating that its introduction is not altogether in alteration of the framework envisioned by the drafters of the Constitution of India. Moreover, as discussed in the previous paragraph, the nature of impact that may potentially occur on provisions of the Constitution is likely to be facial at best, given the nature of changes that are required to be made in the interest of simultaneous elections and not be of such magnanimity to impact the core principles which are embodied by the Constitution. **It is argued that an effort for reversion to the older model of simultaneous elections would therefore not abridge constitutional tenets in a manner substantial enough to render the proposed amendment violative of the basic structure of the Constitution.**

Nevertheless, in light of the alteration in the electoral structure which is sought to be introduced through the system of simultaneous elections, which shall impact states to an equivalent extent as the Centre, **it is argued that ratification of at least half of the states should be mandated prior to the passing of the proposed Amendment Bill as recommended by the Law Commission in its draft working paper.**<sup>203</sup> While purely

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**procedural in nature, such a systematic ratification as proposed by the Law Commission of India will effectively complement the normative alignment in relation to the amendment of the Indian Constitution with a view to reviving simultaneous elections.** The ratification mandate in this respect will provide an equal platform to states to consider the viability of such a proposal and empower them to set forth their own issues concerning the system, thereby facilitating a much needed dialogue between the Centre and states regarding the nature of change in the electoral process prevalent in the Indian context.

## **VII. TACKLING ADDITIONAL CRITICISMS LEVIED UPON THE CONDUCT OF SIMULTANEOUS ELECTIONS**

The proposal of simultaneous elections has been subjected to a myriad set of criticisms in recent years. Prior to considering the implementation of simultaneous elections in India, it is necessary to dedicate some time towards understanding the grievances that people have towards the proposed system in order to identify contentious issues and address them adequately.

### ***A. FREQUENCY OF PRESIDENT'S RULE IN STATES***

It has been **argued that the idea of one nation, one poll would be defeated if polls are held again in case a government falls, and there's no alternative, pushing more and more states to President's Rule.**<sup>204</sup> This fear exists for the reason that once a ruling party is overthrown, the only alternative is to impose a presidential rule until the next cycle of elections. The concern raised in this regard can be addressed through the introduction of an electoral structure as suggested in Part II of this response paper wherein **President's Rule is used only as a last resort**, when other possible remedies are either exhausted or altogether unfeasible. A shift from the presently followed Westminster system of the vote of confidence to the American system where a vote of confidence is passed along with a vote of no-confidence, will ensure that there is a fixed term even where someone is voted out.<sup>205</sup>

### ***B. CONSTITUTIONAL COMFORT***

The **constitutionality of the proposal of simultaneous elections** has also been a further point of contention.<sup>206</sup> As demonstrated in the previous part, the argument fails since **simultaneous elections do not hit the basic structure doctrine**. In the same line, arguments made regarding the **negative impact that simultaneous elections will have on the federal and democratic character of India**<sup>207</sup> **are unsustainable** in light of the fact that simultaneous elections did occur in the initial period after independence, taking place immediately after the enactment of the Constitution of India which embodies the federal and democratic character of the nation and had to be discontinued only due to administrative unsustainability on account of the formation of new states and the integration of princely states into Indian territory, not on the ground of it being adverse to the constitutional framework.

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<sup>204</sup> Angshukanta Chakraborty, *Simultaneous elections are disastrous for India's federal democratic republic*, Jan 31, 2018, available at <https://www.dailyo.in/politics/simultaneous-polls-narendra-modi-elections-election-commission-assembly-elections-democracy/story/1/22105.html> (Last visited on May 8, 2018)..

<sup>205</sup> Hindustan Times, *Do we really need simultaneous elections?*, February 5, 2018, available at <https://www.hindustantimes.com/columns/do-we-really-need-simultaneous-elections/story-XMdaKHHHxpQnDuQJ9GvYTJ.html> (Last visited on May 8, 2018).

<sup>206</sup> K. Nageshwar, *President Ram Nath Kovind pitches for simultaneous elections: Idea is both unconstitutional and impractical*, Jan 29, 2018, available at <https://www.firstpost.com/politics/president-ram-nath-kovind-pitches-for-simultaneous-elections-idea-is-both-unconstitutional-and-impractical-4326001.html> (Last visited on May 8, 2018).

<sup>207</sup> Liz Mathew, *Simultaneous elections for Lok Sabha and Assembly: How idea came, what implementation will mean*, Jan 31, 2018, available at <http://indianexpress.com/article/explained/holding-lok-sabha-and-assembly-polls-together-how-idea-came-what-implementation-will-mean-5045403/> (Last visited on May 8, 2018).

The argument that **simultaneous elections would affect federalism<sup>208</sup> is unsubstantiated and unfounded** and it is likely that it would instead improve coordination between the State and Centre as it did in the period between 1952 and 1967 when simultaneous elections took place.<sup>209</sup> Since during this period, India remained functional with its federal integrity and democracy intact, it is argued that this criticism is without evidence. Irrespective of political differences, it is argued that the states and Centre act in unison to further constitutional principles, as and when required.

### C. **HURDLES IN IMPLEMENTATION**

Furthermore, the line of argument challenging simultaneous elections by **citing the absence of such a system as a feature of Indian elections<sup>210</sup> is highly conservative** and thereby unsustainable in light of the need for ushering in an era of electoral reforms to rectify the crumbling electoral structure in India. So also, the school of reasoning which **views simultaneous elections to be impossible due to the presence of ‘insurmountable’ practical problems<sup>211</sup> is too risk-averse** and maintaining such a stance is impractical in light of the growing need for stabilising Indian electoral cycles. Additionally, as indicated by the elaborate argumentation presented in Part III of this response paper, the argument concerning national issues taking up the field over local issues in case of simultaneous elections appears to be incorrect. On account of the proposal to amend the Constitution adequately prior to commencing simultaneous polls, the criticism on **grounds of potential misuse of constitutional provisions<sup>212</sup> is also defeated.**

### D. **JOB CREATION**

Finally, while it is admitted that frequent elections have resulted in the emergence of new means of livelihood at the grassroot level,<sup>213</sup> the same occurrence cannot sustain the rejection of the entire proposal of simultaneous elections, especially with adequate modifications being capable of remedying its faults. It is argued that **since a large amount of money is saved holding simultaneous elections, a part of it could go toward job creation.** Further, the jobs created during staggered elections are usually temporary in nature such as

<sup>208</sup> Garga Chatterjee, *Why holding simultaneous Union and state elections will be a blow to democracy and federalism*, September 26, 2016, available at <https://scroll.in/article/816366/why-holding-simultaneous-union-and-state-elections-will-be-a-blow-to-democracy-and-federalism> (Last visited on May 8, 2018).

<sup>209</sup> Niti Aayog (Bibek Debroy and Kishore Desai), *Analysis of Simultaneous elections: The “What”, “Why” and “How”*: A discussion Paper, ¶3.5, available at [http://niti.gov.in/writereaddata/files/document\\_publication/Note%20on%20Simultaneous%20Elections.pdf](http://niti.gov.in/writereaddata/files/document_publication/Note%20on%20Simultaneous%20Elections.pdf) (Last visited on May 5, 2018); The Hindu, *Breaking out of election mode*, October 3, 2016, available at <http://www.thehindu.com/opinion/op-ed/Breaking-out-of-election-mode/article15422727.ece>

<sup>210</sup> Swadesh Singh & Sushant, *A case for simultaneous elections*, available at <http://www.indiafoundation.in/a-case-for-simultaneous-elections/> (Last visited on May 8, 2018)

<sup>211</sup> P.D.T. Achary, *Simultaneous Elections to Parliament and State Assemblies is Not Good for Democracy*, May 3, 2017, available at <https://thewire.in/politics/parliament-state-assembly-simultaneous-elections-democracy> (Last visited on May 8, 2018).

<sup>212</sup> Gaurav Vivek Bhatnagar, *Constitutional Experts Decry Modi’s Call to Hold Simultaneous Polls to Parliament, Assemblies*, April 7, 2018, available at <https://thewire.in/politics/constitutional-experts-decry-narendra-modis-call-to-hold-simultaneous-polls-to-parliament-state-assemblies> (Last visited on May 8, 2018).

<sup>213</sup> S.Y. Quraishi, *Holding LS, Assembly Polls Together is Desirable but not Feasible*, September 5, 2016, available at <https://www.thequint.com/voices/opinion/holding-ls-assembly-polls-together-is-desirable-but-not-feasible> (Last visited on May 8, 2018).

painters or transporter. Such **jobs would be created during elections held every five years as well if polls are held simultaneously and thus cannot be cited as a compelling reason to not hold simultaneous elections.**

## **VIII. CONCOMITANT REFORMS**

While simultaneous elections can potentially act as an important step in improving the faults of the current electoral system, it is suggested that simultaneous elections should not be implemented as a solitary endeavour. Instead, this initiative should be paired with a set of other electoral reforms which can together contribute to reforming the electoral system in India in a holistic manner. The reforms should focus on reducing expenditure related to elections, bringing transparency in the funding of elections and the decriminalisation of politics. Additionally, innovative methods like online voting may also be considered with a view to making the electoral process more inclusive.

### ***A. STATE FUNDING OF CAMPAIGN EXPENDITURE AND NATIONAL ELECTORAL FUND***

Data indicates that the present system of placing limits on campaign expenditure induces evasion by electoral candidates and increases the preference among political parties for fielding candidates who can predominantly finance their own campaigns.<sup>214</sup> As a result of this currently flawed system, not only is there a greater tendency of flouting the limit through underhanded means but also a clear distinction between the manner in which certain candidates can afford to promote their agenda in comparison to others. **State funding of electoral campaigns** can ensure a level-playing field for all political parties and curb the menace of unaccounted money in elections. Further, it will also control the money power used during the election by political parties and their allies.

In this respect, a **National Electoral Fund can be established** whose funding can be determined through a dedicated policy. In addition to other contributions as specified, all donations made to political candidates may be routed through this Fund. In furtherance of this objective, the designated ceiling should be placed on campaign expenditure made by political parties towards Parliamentary or Assembly elections. The current system of differential limits proportionate to the considerations of the Election Commission in respect of different states may be continued with adequate revision.

It is argued that the current limit on campaign expenditure is too high to enable the State to sponsor the expenditure in this respect for each candidate. As an alternative, it is suggested that there could be **some amount of initial state funding to gauge the capacity of the State to fund elections**. If such a policy is to be implemented, the State should commence this on a trial basis with regional elections since they involve comparatively lesser expenditure in comparison to parliamentary elections. It is suggested that in light of the high ceiling limits currently provided and the lack of sustainability of a model of State sponsorship of such, the limit should be reduced by up to 50% of the existing limits. There may be another provision which may be considered allowing for additional expenditure of up to 20% of the State funding amount through private donations. The

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<sup>214</sup> M. V. Rajeev Gowda & E. Sridharan, *Reforming India's Party Financing and Election Expenditure Laws*, 11 ELECTION LAW JOURNAL 2 (2012).

Representation of the People Act and Rule 90 of The Conduct of Elections Rules, 1961 should be amended accordingly.

Evidently, there will be a **need to keep track of the utilisation** of any such amounts provided to electoral candidates and a robust mechanism for the same will have to be developed, with a view to have specific vigilance on whether the funds are being used for non-electoral expenditure. It is suggested that the use of electoral funds allotted by the National Electoral Fund can be monitored by a designated body, with candidates being required to demonstrate the nature of their expenditure and refund any excess amounts after completion of the electoral cycle. Additionally, to deter misuse of allotted electoral funds, such misuse must be made subject to criminal liability.

## **B. DECRIMINALISATION OF POLITICS**

The criminalisation of politics is an issue which has been plaguing Indian politics in recent years.<sup>215</sup> Empirical evidence collected and analysed by the Association for Democratic Reforms suggests that out of 62,800 candidates filed with the Election Commission at the time of data collection 11,030 (18%) had 27,027 pending criminal cases against them while 5,253 (8%) candidates had 13,984 serious criminal charges including murder, rape, corruption, extortion, dacoity *etc.*<sup>216</sup> A large number of these cases were related to charges of attempt to murder, culpable homicide and abetment to suicide. As per the data, an average of 9% of all candidates who were fielded by political parties had serious criminal cases pending against them with the actual figure varying from 4% to 17%. The data set further indicates that there has been a substantial proportion of winners in elections with criminal cases pending against them. The increasing criminalisation of Indian politics has sought to be curbed by Indian courts through a volley of judicial determinations.<sup>217</sup>

Further, Section 8 of the Representation of the People Act, 1951 deals with disqualification on conviction for certain offences. Under this Section, disqualification arises only on conviction and there is no disqualification prior to conviction even if a person is facing several serious charges. The Election Commission proposed in its set of proposals of 1998 and 2004 that **Section 8 of the Representation of the People Act, 1951 should be amended to disqualify those persons from contesting election who are accused of an offence punishable by an imprisonment of 5 years or more even when trial is pending, given that the Court has framed charges against the person.** To prevent misuse of the provision by the ruling party, the Commission suggested a compromise whereas only cases led prior to six months before an election would lead to disqualification of a candidate. In addition, the Commission proposed that candidates found guilty by a fast track Commission of Enquiry should stand disqualified from the electoral process. It is suggested that the **feasibility of such changes in the electoral law be considered with a view to reducing the influx of criminal elements in Indian politics and governance.**

## **C. BRINGING IN TRANSPARENCY IN POLITICAL FUNDING**

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<sup>215</sup> Trilochan Sastry, *Civil Society, Indian Elections and Democracy Today* (IIM Bangalore Working Paper No. 465, 2014).

<sup>216</sup> *Id.*

<sup>217</sup> Arundhati Kulkarni, *Decriminalisation of Politics In India: A Critical Analysis*, 4(2) International Journal of Arts and Science Research 90 - 96 (2017).

Political parties are major stakeholders in a democracy and they should be accountable to the public. As of now, political parties are not covered by the Right to Information Act and thereby not bound to disclose the source of their funding or the nature of their expenditures even against the public query.<sup>218</sup> It is suggested that **political parties be required to supply audited reports of their income and expenditure which should be mandatorily annexed to the electoral application of their party candidate**. This reform will ensure transparency and empower people to make informed decisions about electing their representatives. Sections 29C, 29D, 29E, as recommended by the Law Commission in Report 255, should be inserted in The Representation of the People Act, 1951.<sup>219</sup> Further, introducing a legislation to govern the nuances of this subject matter would make the reform potentially more efficient and reduce further evasions.

#### ***D. MISUSING RELIGION FOR ELECTORAL GAINS***

The Report of the Liberhans Ayodhya Commission of Inquiry published in 2010 provided recommendations for action by the Election Commission against the parties which misuse religious sentiments.<sup>220</sup> The proposal in this respect was to **initiate swift action against those persons who attempt to misuse religious sentiments** or making appeals to voters through the mode of their piety by holding disguised religious rallies in places of worship as political supplication and to strengthen the existing provisions in the Codes of Conduct and other election-related laws. Under the existing law *i.e.*, Sections 123(3) and (3A) of the Representation of the People Act, 1951, appeal on grounds of religion, race *etc.*, and promotions of feelings of enmity between different classes of religion constitutes corrupt practice and the same can be questioned only by way of an election petition.<sup>221</sup> Further, the same can be a **subject of enquiry before the Commission when the election is in progress**. Ironically, however, these provisions will have application only during the period of election and there is no provision to challenge the corrupt practice of the candidate who lost the election. The proposal of the Election Commission is espoused and it was proposed that for giving effect to the recommendations in the Liberhan Commission Report, the law should be amended as was proposed through the bills of 1990 and 1994 in keeping with the 2017 judgment of the Supreme Court in this regard.<sup>222</sup>

#### ***E. PROVIDING THE ELECTION COMMISSION WITH ITS OWN INDEPENDENT STAFF***

One of the key criticisms of the current electoral system is the dedication of extensive administrative resources in the election process. The administrative staff of the State is engaged extensively in election duty which takes away crucial manpower from the bureaucracy for long periods. While simultaneous elections are viewed as a possible model which can reduce the diversion of administrative resources during the election cycle, a better

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<sup>218</sup>The Wire, *Why There is An Urgent Need to Bring Political Parties Under the RTI Ambit*, February 7, 2018, available at <https://thewire.in/politics/why-there-is-an-urgent-need-to-bring-political-parties-under-the-ambit-of-rti> (Last visited on May 7, 2018).

<sup>219</sup>Law Commission of India, *Electoral Reforms*, Report No. 255, 17 (March 2015).

<sup>220</sup>Election Commission of India, *Proposed Electoral Reforms*, 31 (December 2016).

<sup>221</sup> The Representation of the People Act, 1951, §123(3); The Representation of the People Act, 1951, §123(3A).

<sup>222</sup> Abhiram Singh v. C.D. Commachen, (2017) 2 SCC 629.

option can be to empower the Election Commission with its own independent staff.<sup>223</sup> Although the Election Commission exercises *de facto* control over the government appointees working with it during the elections, **having an independent staff dedicated to electoral duties throughout the year will allow the Election Commission to carry out its tasks with greater efficiency and prevent the diversion of administrative staff away from the state machinery.**

#### **F. ONLINE VOTING**

Under S.20 A of The Representation of the People Act, 1950, allows Indian citizens who are residing abroad to be registered as ‘overseas electors’ and are allowed to vote in the native constituency. At the same time, they have been provided with no special voting facility which means they can only vote in person at the relevant polling station in the constituency in which they are enrolled.<sup>224</sup> This is irrational as an overseas voter would find it extremely difficult to vote in person. A Committee Appointed by the Election Commission suggested that the **facility of voting through electronic transmission or a proxy should be explored.**<sup>225</sup>

Thus, it is recommended that S.60 of the Representation of the People Act, 1951 which provides for a few alternative methods of voting for special persons<sup>226</sup> should be amended to include overseas voters as under S.20A and should provide a mechanism of online voting.

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<sup>223</sup> Dr. Bimal Prasad Singh, Electoral Reforms in India – Issues and Challenges, International Journal of Humanities and Social Science Invention, Volume 2 Issue 3 || March. 2013|| PP.01-05

<sup>224</sup>The Representation of the People Act, 1951, §20A.

<sup>225</sup>Election Commission of India, *Proposed Electoral Reforms*, 10 (December 2016).

<sup>226</sup>The Representation of the People Act, 1951, §60.



## **ANNEXURE 1: KEY JURISPRUDENTIAL PRINCIPLES RELEVANT TO THE CONDUCT OF SIMULTANEOUS ELECTIONS**

This Part discusses certain key cases that have ensconced important jurisprudential edicts relevant to the conduct of Simultaneous Elections and their impact on the tenure and dissolution of national and state legislative assemblies, gubernatorial and presidential powers in these spheres, etc.

No.	Topic	Case	Ratio
1		<i>M.P. Special Police Establishment v. State of M.P.</i> , (2004) 8 SCC 788	<p>The Governor is required to discharge certain functions in his "discretion" "by or under the Constitution".</p> <p>This envisages that the Governor's discretionary powers need not be express but may be necessarily implied.</p> <p>In the discharge of these functions, he is not required to seek the "aid and advice" of his Council of Ministers. Whether a function falls within his "discretion" or not, it is the Governor who decides the matter in his "discretion". The Governor's decision above is final. He is the sole and final judge whether any function is to be exercised in his discretion or on the advice of his Council of Ministers.</p> <p>The validity of anything done by the Governor is not to be called in question on the ground that "he ought or ought not to have acted in his discretion".</p> <p>In all other matters, the Governor, like the President, acts on the advice of his Council of Ministers.</p>
2		Article 163 (2) and <i>Supru Jayakar Motilal C.R. Das v. Union of India</i> , AIR 1999 Pat 221	<p>The expression "by or under" the Constitution used in Art. 163(1) has a wide import. The Constitution may not expressly provide that a particular function is to be exercised by</p>

	<i>Discretion of the Governor</i>		<p>the Governor in his discretion.</p> <p>Still, the tenor or the context of the provision may show that the function is one which the Governor is to exercise in his discretion. If any question arises whether a matter falls within the Governor's discretion or not, the decision of the Governor in his discretion is final, and the validity of anything done by the Governor in his discretion cannot be called in question on the ground that he ought or ought not to have acted in his discretion</p>
3	<i>Advice of the Council of Ministers on Governor</i>	<i>Samsher Singh v. State of Punjab, 1974 AIR 2192</i>	<p>While the Governor, like the President, usually acts on ministerial advice, the Governor is not bound to seek such advice in his discretionary area, and he discharges such functions to the best of his judgment</p>
4		<i>MP Jain, Chapter VI</i>	<p>The Constitution is silent as to when, and in what circumstances, the Governor may dissolve the House. This matter is, therefore, to be regulated by conventions which might evolve in course of time.</p> <p>The following two propositions appear to be well settled in this regard:</p> <ol style="list-style-type: none"> <li>(1) The Governor may not dissolve the House <i>suo motu</i>, without ministerial advice to that effect.</li> <li>(2) The Governor does not automatically accept the advice of his Council of Ministers to dissolve the House. The matter falls within the area of discretion of the Governor.</li> </ol>

5	<i>Power of the Governor to dissolve</i>	M.P. Jain, <i>Indian Constitutional Law</i> , Chapter VII C(c)	<p>Another bone of contention has been the question of dissolving the House. As has already been discussed, some discretion has now come to be conceded to the Governor in this area.</p> <p>He is to take a decision to dissolve or not to dissolve the House on a consideration of the totality of circumstances.</p> <p>He may refuse to accept the advice of the Ministry which has lost the majority support if in his view an alternative stable government can be formed. The Governor may, however, be bound to accept the advice for dissolution by a Ministry having a majority support.</p> <p>The discretionary element in the matter of dissolution can be reduced if, as suggested earlier, a convention is adopted to grant dissolution to a defeated Chief Minister if he had a majority earlier.</p> <p>There is however great reluctance in the public to hold frequent elections as holding of an election in India is a very costly proposition. Therefore, dissolution of the Assembly ought to be resorted to only as a last resort. This enhances the discretion of the Governor instead of reducing it. This also encourages the cult of defection of members from one party to another.</p>
6	<i>Dissolution not accepted by the Courts</i>	<i>Jeetendra Deshpabhu v. The Governor of Goa, Raj Bhavan, Goa</i>	The dissolution was set aside by a learned single judge holding that the Governor was not obliged to accept the advice of the Council of Ministers for the mere asking and should have made an enquiry whether an alternative

			<p>viable Government could be formed, the reasons for the Council of Ministers seeking dissolution and whether it was really necessary to put a heavy burden on the State Exchequer by holding another election mid-way in the life of the Assembly</p>
7	<i>Emergency Provisions</i>	<i>S.R Bommai v Union of India</i>	<p>The court cannot question the advice tendered by the CoMs to the President but it can question the material behind the satisfaction of the President. Hence, Judicial Review will involve three questions only:</p> <p><b>a. Is there any material behind the proclamation</b>  <b>b. Is the material relevant.</b>  <b>c. Was there any mala fide use of power.</b></p> <p>If there is improper use of Art. 356 then the court will provide remedy.</p> <p>Under Article 356(3) it is the limitation on the powers of the President. Hence, the president shall not take any irreversible action until the proclamation is approved by the Parliament i.e. he shall not dissolve the assembly.</p> <p>Article 356 is justified only when there is a breakdown of constitutional machinery and not administrative machinery</p> <p>The provisions in Art. 356(3) are intended to be a check on the powers of the President under Art. 356(1).</p> <p>If the Proclamation is not approved within two months by the two Houses of Parliament, it automatically lapses. This means that the President ought not to take any irreversible action till the Proclamation is approved by</p>

			<p>the Houses of Parliament. Therefore, the State Assembly ought not to be dissolved. The dissolution of the Assembly prior to the approval of the Proclamation by the Parliament under Art. 356(3) will be per se invalid. The State Legislative Assembly should be kept in suspended animation in the meantime.</p> <p>Once the Parliament has put its seal of approval on the Proclamation, the State Assembly can then be dissolved. The Assembly which was suspended will revive and get reactivated if the Proclamation is not approved by Parliament.</p> <p>Article 356 shall be used sparingly by the center, otherwise it is likely to destroy the constitutional structure between the center and the states. Even Dr. Ambedkar envisaged it to remain a 'dead letter' in the constitution.</p>
8	<i>Judicial Review and power of Governor under 361.</i>	<i>Rameshwar Prasad (VI) v. Union of India, (2006) 2 SCC 1</i>	<p>Proclamation under Article 356 is open to judicial review, but to a very limited extent. Only when the power is exercised mala fide or is based on wholly extraneous or irrelevant grounds, the power of judicial review can be exercised. Principles of judicial review which are applicable when an administrative action is challenged, cannot be applied stricto sensu.</p> <p>In terms of Article 361 Governor enjoys complete immunity. Governor is not answerable to any Court for exercise and performance of powers and duties of his office or for any act done or</p>

			<p>purporting to be done by him in the exercise of those powers and duties. However, such immunity does not take away power of the Court to examine validity of the action including on the ground of mala fides.</p>
9		<p><i>Sapru Jayakar Motilal C.R. Das v. Union of India, AIR 1999 Pat 221</i></p>	<p>After the revocation of the proclamation, the Governor invited the earlier Chief Minister Rabri Devi to form the government. The Governor, however, imposed a condition that the government must prove its majority on the floor of the House within ten days. This condition was challenged as unconstitutional.</p> <p>The Patna High Court however upheld the same saying that the Governor can impose such a condition in his discretion where there is doubt about the majority support enjoyed by the government in the House.</p> <p>The principle of collective responsibility means that the government must enjoy majority support in the House and how that majority support is to be ascertained is a matter left to the discretion of the Governor.</p>