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Source : www.thehindu.com Date : 2023-09-04

COURT'S ORDER AND THE ASI SURVEY ARE FLAWED

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

September 04, 2023 12:16 am | Updated 01:41 am IST

The Gyanvapi Mosque, in Varanasi | Photo Credit: PTI

In its judgment dated November 9, 2019, a Constitution Bench of the Supreme Court of India, comprising the Chief Justice of India (CJI), Ranjan Gogoi, and Justices S.A. Bobde, Dr. D.Y Chandrachud (as he was then), Ashok Bhushan, and S. Abdul Nazeer interpreted the Places of Worship (Special Provisions) Act, 1991 in the case of M Siddiq (Dead) Through Legal Representatives vs Mahant Suresh Das and Ors. (Ram Janmabhoomi temple case).

The Court gave a binding declaration of the law interpreting the Act, which, under the constitutional scheme, becomes the law of the land and binds all courts within the territory of India under Article 141 of the Constitution of India. Its decisions must be followed by all courts (even the top court) in subsequent cases following the Doctrines of "Precedent" and stare decisis. The rationale is that the law by which the citizens are governed should be fixed, definite, and known.

The Preamble to the Act states: "An Act to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August 1947, and for matters connected therewith or incidental thereto." The five judges who authored the judgment collectively in the Ram Janmabhoomi temple case defined the Act thus: "The law has been enacted to fulfil two purposes. First, it prohibits the conversion of any place of worship. In doing so, it speaks to the future by mandating that the character of a place of public worship shall not be altered. Second, the law seeks to impose a positive obligation to maintain the religious character of every place of worship as it existed on 15 August 1947 when India achieved independence from colonial rule."

Editorial |Incremental injustice: On the Gyanvapi mosque survey

"Place of worship" includes temple, mosque, gurudwara, church, monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called. The definition in the Act states "Conversion with its grammatical variations, includes alteration or change of whatever nature."

The Court further holds that "Section 3 enacts a bar on the conversion of a place of worship of any religious denomination or a section of it into a place of worship of a different religious denomination or of a different segment of the same religious denomination" and that "Section 4

preserves the religious character of the place of worship as it existed on 15 August 1947". The Court held that only a place of worship, "Commonly known as Ram Janam Bhumi-Babri Masjid" stood exempted. The Justices declared, "The law imposes two unwavering and mandatory norms: A bar is imposed by Section 3 on the conversion of a place of worship of any religious denomination or a section of a denomination into a place of worship either of a different section of the same religious denomination or of a distinct religious denomination. The expression 'place of worship' is defined in the broadest possible terms to cover places of public religious worship of all religions and denominations".

After noticing the intention of Parliament, the Justices emphasised that "The Places of Worship Act which was enacted in 1991 by Parliament protects and secures the fundamental values of the Constitution". They held that "In providing a guarantee for the preservation of the religious character of places of public worship as they existed on 15 August 1947 and against the conversion of places of public worship, Parliament determined that independence from colonial rule furnishes a constitutional basis for healing the injustices of the past by providing the confidence to every religious community that their places of worship will be preserved and that their character will not be altered".

The Justices added, "The law speaks to our history and to the future of the nation. Cognizant as we are of our history and of the need for the nation to confront it, Independence was a watershed moment to heal the wounds of the past. Historical wrongs cannot be remedied by the people taking the law in their own hands. In preserving the character of places of public worship, Parliament has mandated... that history and its wrongs shall not be used as instruments to oppress the present and the future."

Interestingly, the Justices empathically disapproved the judgment of Justice D.V. Sharma of the Allahabad High Court against which they were hearing the appeals in which the judge had held that the "Places of Worship (Special Provisions) Act, 1991 does not debar those cases where declaration is sought for a period prior to the Act came into force or for enforcement of right which was recognised before coming into force of the Act." The Justices held that "The above conclusion of D V Sharma, J. is directly contrary to the provisions of Section 4(2)", and that, "Section 4(2) specifically contemplates that all suits, appeals and legal proceedings existing on the day of commencement of the Places of Worships Act, with respect to the conversion of the religious character of a place of worship, existing on 15 August 1947, pending before any court, tribunal or authority shall abate, and no suit, appeal or proceeding with respect to such matter shall lie after the commencement of the Act. …Clearly, in the face of the statutory mandate, the exception which has been carved out by Justice D V Sharma runs contrary to the terms of the legislation and is therefore erroneous".

The Supreme Court's order on August 4, 2023 refusing to stay the order of the Allahabad High Court dated August 2, 2023 in the Anjuman Intezamia Masjid Committee challenging the order of the Allahabad High Court which affirmed the order of the District and Sessions Court, Varanasi dated July 21, 2023 raises serious questions about its legality, propriety and justness. The Bench comprising CJI D.Y. Chandrachud, Justice J.B. Pardiwala and Justice Manoj Misra, are, with the greatest respects, completely wrong in allowing the Archaeological Survey of India (ASI) survey on the premise that the key question for any determination under the Act of 1991 is the religious character of a place of worship as it existed on August 15, 1947. The Bench has singularly failed to follow a binding precedent to which Justice Chandrachud himself was a party in the Ram Janmabhoomi temple case. There can be no doubt in anyone's mind that the Gyanvapi mosque has been a place of public worship for centuries for Muslims and, therefore, there is an absolute and total bar on changing its character in any manner, into a place of worship of a different religious denomination.

If the nature of the mosque is untouchable since it existed on August 15, 1947, then what purpose can an ASI inquiry be directed at? And what purpose can it achieve? The Court never allows or grants futile reliefs.

The Supreme Court has completely overlooked that the obligations under the Act were upon the state as also on every citizen of the nation and those who govern the affairs of the nation at every level were bound by it.

The Supreme Court is the ultimate custodian of constitutional values and morality. Applying the spirit of the judgment of Ram Janmabhoomi temple case, the three courts ought to have been extraordinarily mindful about the rights and feelings of the minority community. At a crucial time when elections are approaching,, any majoritarian approach can create serious misgivings in the minds of sections of society.

Bigotry during parts of the Islamic period has always stood condemned; in fact that led to the rise of the powerful Marathas, Rajputs and Sikhs, resulting in overthrowing the Muslim empire.

The question now is this: how far do we go from here? Do we order such a survey for every mosque because claims will be made by people across cities and villages? Someone may even suggest that we dig up the Red Fort and the Taj Mahal. There is also a plea on the Court “praying for a scientific survey” of the Mathura mosque. The Supreme Court has opened a Pandora’s box.

We must remember that while injustice was done to the Hindus by Muslim rulers, democratic India cannot perpetuate them to undo them. One can only remember that rulers like Akbar respected Hindus and allowed religious freedom to them. The Bhakti movement which produced some of the greatest saints such as Chaitanya, Surdas, Tulsidas, Gopala Bhatt, Sankardeva, Eknath, Tukaram, Dadu, Meera Bai, and Guru Nanak raised the status of non-Brahmins, especially Dalits amongst Hindus. In that sense, religion was democratised.

When history is written in future, there should not be any reference that the Hindus of the 21st century indulged in religious bigotry. For over 5,000 years Hinduism has been a way of life and one of the greatest religions marked by Liberalism, Tolerance and Absorption. Let us hope for peace and prosperity in our beloved India.

Dushyant Dave is a Senior Advocate in the Supreme Court of India

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Source : www.thehindu.com Date : 2023-09-06

THE CASE FOR ELECTIONS IN JAMMU AND KASHMIR

Relevant for: Indian Polity | Topic: Elections, Election Commission and the Electoral Reforms in India Incl. Political Parties

September 06, 2023 12:16 am | Updated 09:01 am IST

At a polling station, in 2014 | Photo Credit: AFP

The Narendra Modi administration's recent announcement of a committee to look into simultaneous State and Union elections indicates that Jammu and Kashmir is unlikely to go to the polls anytime soon, despite assurances that the administration is ready whenever the Election Commission of India (ECI) decides. Meanwhile, the ECI remains bafflingly silent though Jammu and Kashmir's Chief Electoral Officer has stated that panchayat, municipal and Lok Sabha elections will all be held this 'financial year'. If those elections can be held, why not Assembly elections? The reason cannot be security: panchayat elections have to be conducted on a much larger scale as they involve over 30,000 posts.

In March 2023, a delegation of 13 political parties, led by Farooq Abdullah of the National Conference, met ECI officials to urge that Assembly election dates be fixed. Any further delay, their memorandum said, 'would amount to denial of fundamental and democratic rights of the people of Jammu and Kashmir and a breach of constitutional obligations'. The delegation was assured that its request would be considered, but no action has been taken to date.

Jammu and Kashmir has not held legislative elections for the past nine years. The last Assembly election was in 2014, and the last elected administration fell in June 2018. After almost a year of President's Rule, the Jammu and Kashmir Reorganisation Act, 2019 divided the State into two Union Territories. Like the National Capital Territory of Delhi, Jammu and Kashmir is entitled to an elected Assembly with curtailed powers (for example, law and order remained with the Union Home Ministry and security with the Lieutenant-Governor); Ladakh is not.

The ostensible reason for the election delay was the reorganisation Act's requirement of a fresh delimitation of constituencies following their expansion to 114 from 107. Jammu and Kashmir's delimitation had earlier been frozen till 2026, in tandem with other Indian States. In 2019, it was added to four other States to be delimited; the process was later postponed for the four other States, leaving only Jammu and Kashmir. The Delimitation Commission submitted its final report in May 2022. Its recommendations raised two concerns: it gave six of seven new seats to Jammu and only one to the Valley, derogating from the democratic principle of equal representation. With 56.15% of the erstwhile State's population, the Valley was allocated 47 seats as compared to Jammu's 43 with 43.85% of the population. Former State Finance Minister Haseeb Drabu likened the award to weighting Kashmir's voter at 0.8 to Jammu's 1.

The commission's rearrangement of political constituencies concentrated minority voters in fewer districts or spread them across multiple districts, vitiating their vote share. In Jammu division, for example, Hindu-majority Padder with a population of just over 50,000 was allotted an Assembly seat, while thrice as numerous Muslim-majority Surankote was not. Former Chief Minister Mehbooba Mufti called it a 'tactical process of rigging before the elections'.

Changes in residency rules further skewed constituency balance. Prior to 2019, non-permanent residents were not eligible to vote in Assembly elections. After the reading down of Article 370 and withdrawal of Article 35A, any person 'ordinarily resident' in the former State became eligible to vote, including any person resident for more than 15 years; any person who had studied there for more than seven years, and any person registered as a migrant by the Relief and Rehabilitation Commissioner (Migrants). As a result, a staggering 7.7 lakh new voters (net figures, after accounting for deletion of four lakh voters) were added to the existing voter pool of 78.4 lakh.

Proposed fresh reservations will further narrow the number of seats available in the general category and/or expand competition within reserved categories. Of four new Bills proposed by the Union Law Ministry, the first, the Jammu and Kashmir Reorganisation (Amendment) Bill, 2023, reserves two seats for 'Kashmiri migrants' (one woman), and one for people displaced from Pakistani-held territories of Jammu and Kashmir. All three seats are to be filled by nominees of the Lieutenant-Governor.

The second Bill, the Constitution (Jammu and Kashmir) Scheduled Tribes Order (Amendment) Bill, 2023, includes the Pahari community and a handful of small tribes in Jammu and Kashmir's list of Scheduled Tribes. Paharis will now be able to contest reserved seats which were previously dominated by Gujjars and Bakerwals. The most affected area will be the Pir Panchal range along the Line of Control with Pakistan, which includes Rajouri and Poonch, where Paharis are in a majority in seven out of eight Assembly segments. It has four seats reserved for Scheduled Tribes.

The third Bill, the Constitution (Jammu and Kashmir) Scheduled Castes Order (Amendment) Bill, 2023, includes the Valmiki community, earlier considered non-permanent residents, in Jammu and Kashmir's list of Scheduled Castes.

The fourth, the Jammu and Kashmir Reservation (Amendment) Bill, 2023, adds 15 more 'other backward classes' (OBCs), including West Pakistan refugees and Gorkhas. The electoral impact of these two Bills will also be mostly in Jammu, which has the largest number of Scheduled Castes and OBCs.

At face value, there can be little objection to these provisions. Effectively, it is another matter. Pandit migrants have been elected without reservation for decades, even during the insurgency and after their exodus. They do not need reserved seats, they need security when elected. Gujjars accept Pahari reservation if it does not cut into their quota but have received no assurance of that. Long-term residents such as refugees, Gurkhas and Valmikis should be entitled to vote, but does the former require a reserved seat? Given these gaps, the Bills risk entrenching caste- and community-based voter polarisation in a region of many castes and communities.

Successive reports from the ground suggest that alienation has spread across the former State. In Muslim-majority areas, people note that the number of their representatives will shrink. In Jammu, they suspect that fresh reservations are directed towards creating new support for the Bharatiya Janata Party where the party is fading. In Kashmir, Home Minister Amit Shah's repeated attacks on political leaders and repeated assertions that 'future legislators' will emerge

from panchayats, signal that the Union administration seeks supplicant legislators.

Despite their fears, most people now desire a speedy Assembly election. The unilateralism, nepotism and inaccessibility of Jammu and Kashmir's centrally-directed administration has led to higher than ever unemployment and loss of land and resource rights, leading even supporters of the August 2019 actions to believe they will do better with elected representatives, especially since Statehood will only he restored after elections, according to Mr. Shah.

Meanwhile a welter of discontent is brewing in Ladakh, where the powers of the elected Hill Councils have been whittled to puny by the Lieutenant-Governor's office. Here too, the demand for Statehood is gaining ground.

Holding an Assembly election before the year-end can build confidence, as prior experience shows. The Atal Bihari Vajpayee administration held elections in 2002, at a time when insurgency had taken a heavy toll. But that election ushered in 12 years of peace-building, with two free and fair elections. By contrast, the attempt to rig the 1987 election led to over a decade of armed conflict. The lesson is plain to see for all but the intentionally blind.

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Source : www.thehindu.com Date : 2023-09-16

IN DIVERSE INDIA, NAME CHANGE DEMANDS CONSENSUS

Relevant for: Indian Polity | Topic: Indian Constitution - Historical underpinnings & Evolution

September 16, 2023 12:16 am | Updated 09:15 am IST

“The official name of the country is the Republic of India”. Photo: loc.gov

An official invitation sent out by Rashtrapati Bhavan in connection with the G-20 summit in New Delhi under India’s presidency which carried the nomenclature of the President of India as ‘President of Bharat’ set off a controversy. The controversy is symptomatic of the present-day political atmosphere, characterised by an intense distrust of each other, extreme and inexplicable revengefulness and heightened revanchism on the part of the power wielders, and widespread anxiety about the future of the country.

Editorial | India that is Bharat: On a name game

There has been no explanation from official spokesmen of the government for this sudden change. The abrupt change in a very formal official communication from the head of the state caught the nation unawares. Apologists of the powers that be came out with the proposition that the name of the country is interchangeable as Bharat (as is described in Article 1 of the Constitution); therefore, Bharat can be used. In this context, someone was heard saying that all that is required to change to Bharat is a resolution to that effect in Parliament. In fact, it was even suggested that the special session of Parliament next week would do just that. It is a bit surprising that some senior advocates of the Supreme Court of India too chimed in with their considered opinion — of course, in favour of the proposition highlighted above.

Before the whole issue of changing the name of the country and the manner in which it is being handled are considered, it is necessary to make it clear that Parliament has the absolute power to change the name of the country at any time by amending the Constitution. Article 368 of the Constitution empowers Parliament to amend any provision of the Constitution which includes the name of the country, as mentioned in Article 1. But the public has been left aghast by the general cacophony which has left them none the wiser as far as the issue is concerned.

So, let us examine the whole issue of the change of name of the country from a purely constitutional point of view. First, the invite that went out from Rashtrapati Bhavan. This invite used the nomenclature, “President of Bharat”. In fact, at the moment, constitutionally speaking, there is no President of Bharat in the country. Article 52 says that there shall be a President of India. This is the official nomenclature of the head of the state which cannot be changed into anything else unless Article 52 is amended suitably. Thus, it is quite obvious that the term

‘President of Bharat’ is not in conformity with Article 52 of the Constitution.

Article 1 says, “India, that is Bharat, shall be a Union of States”. These words by no means signify that the words ‘India’ and ‘Bharat’ are interchangeable and that ‘Bharat’ can be used in place of ‘India’ as the official name of the country. As a matter of fact, the word ‘Bharat’ is not used in any of the articles of the Constitution except in the Hindi version, which was published under the authority of the President under Article 394A.

If the intention of the Constitution makers was to use the word ‘Bharat’ interchangeably, they would have used it in some parts of the Constitution which is the authentic Constitution of India officially so described under Article 393. In this context, let us try to understand the true import of the words “India, that is Bharat...”, used in Article 1. The words ‘that is’ are clarificatory whose function is to explain or further clarify the preceding word ‘India’. Thus, it is interpreted that Article 1 would mean India that is known as Bharat shall be a Union of States. Article 1 in the Hindi translation of the Constitution says “Bharat means India”, which shows that Bharat is treated as the translation of India.

In other words the word ‘Bharat’ does not stand as an independent word in the original Constitution. It is to be used only in the Hindi translation of the Constitution. Further Article 394A(2) says “the translation of this Constitution…shall be construed to have the same meaning as the original thereof...”; this clause reinforces the point that the word Bharat is a translation of the word ‘India’, as used in the original Constitution, and India is the authentic name of the country until it is legally changed.

The use of ‘Bharat’ interchangeably with ‘India’ in official communication can create a great deal of confusion. The official name of the country is the Republic of India. This is the name used in all official communication sent to foreign countries and international bodies. Agreements and treaties entered into with foreign countries are in the name of the Republic of India and not republic of Bharat. If Bharat is used interchangeably, the foreign governments will be thrown into utter confusion. In some agreements with foreign governments or international bodies India will be shown as Republic of India and in some other, as republic of Bharat. A country can have only one official name. It can be either India or Bharat, not both.

A perusal of the debates of the Constituent Assembly shows that Article 1 in the draft Constitution was worded “India shall be a union of states”. The word Bharat was added later during the debate because of strong pressure from many Members to use Bharat instead of India. Many formulations were suggested by members such as H.V. Kamath, K.T. Shah, Seth Govind Das, and Shibban Lal Saxena. But B.R. Ambedkar added the words “that is Bharat” as a compromise. He never once said that ‘Bharat’ can be used interchangeably in the original Constitution.

The change of name of a country cannot be and should not be done as the agenda of a political party. In a diverse country like India there needs to be a consensus on this. People in every nook and corner of the country must be able to emotionally connect with the name. Otherwise it will create a sense of alienation among some section or the other. The weird idea of liberation from India’s colonial past should lead us to demolish all symbols of colonialism such as Rashtrapati Bhavan, Parliament House, the Assembly building, and completely change the whole administrative structure that is prevalent as well as many other things. The entire railway system in India is also a symbol of the colonial past.

Does this newfound anti-colonial exuberance sit well with the idea of ‘Vasudhaiva Kutumbakam’, that was the motto of the G-20 under India’s presidency?

P.D.T. Achary is former Secretary General, Lok Sabha

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Source : www.thehindu.com Date : 2023-09-20

THE CAUVERY WATER MANAGEMENT AUTHORITY SHOULD ACT

Relevant for: Indian Polity | Topic: Issues and Challenges Pertaining to the Federal Structure, Dispute Redressal Mechanisms, and the Centre-State Relations

September 20, 2023 12:08 am | Updated 09:02 am IST

At the Krishnaraja Sagar, in 2016 | Photo Credit: FILE PHOTO: V. SREENIVASA MURTHY

With the pace and output of the southwest monsoon this year casting a shadow over the catchment areas of the Cauvery river in Karnataka and Kerala, the elusive distress-sharing formula is back in focus. Recent submissions by Tamil Nadu and Karnataka as well as the deposition of the Cauvery Water Management Authority (CWMA) before the Supreme Court of India only reinforce the need for an early formulation that is acceptable to all.

The notion of a distress-sharing formula has been in the air ever since the Cauvery Water Disputes Tribunal (CWDT) gave its interim order in June 1991. A serious attempt to have one was made in 2002-03 when the southwest monsoon yielded scant rain (compared to long-term data) over a three-year block, between 2001-02 and 2003-04, with poor inflows to four reservoirs — Krishnaraja Sagar (KRS), Kabini, Hemavathy and Harangi, all in upper-riparian Karnataka. The state of Mettur dam in Tamil Nadu, the lower riparian State, needed no elaboration.

There is nothing much in the final order of the Tribunal in 2007 and the judgment of the Supreme Court in 2018, which the players concerned could look to for distress sharing. The judicial bodies had referred to the principle of pro-rata sharing in times of distress. The Tribunal had suggested that in the event of there being two consecutive bad years of rain, the monthly schedule of water release be relaxed and all the reservoirs in the entire basin operated in an integrated manner “to minimise any harsh effect”. But, in the discourse now, neither of the parties to the dispute nor the Authority has expressed anything against the concept of distress sharing. The divergence appears to be over what the elements of the proposed formula should be. Tamil Nadu takes into account the deficit in inflows to the four Karnataka reservoirs vis-à-vis the average flows in the last 30 years, and the rainfall pattern in three groups of the Cauvery catchment (the catchment of the KRS and Kabini, the catchment upstream of Biligundulu on the inter-State border, and the catchment downstream of Biligundulu).

Karnataka, which is not for considering only the deficit in inflows into its reservoirs, has been maintaining that the overall distress situation cannot be calculated till the end of January. It has said that the outcome of the northeast monsoon (October-December) should also be taken into account with that of the southwest monsoon (June-September). As an upper riparian State that is dependent on the southwest monsoon for irrigation, drinking water and more, Karnataka is

well within its rights to be concerned about meeting its requirements for the next eight-odd months, even though it has the propensity to fix the “rules of the game” for water release unilaterally. It had even informed the Court of its difficulties in releasing water in view of a “severe drought situation” in the Cauvery and Krishna basins.

The CWMA, in its meeting on August 29, deliberated on many factors that included the shortfall in inflows and rainfall, the monsoon forecast over the next fortnight (till September 12), and inflows and outflows of four other reservoirs in the Cauvery basin. — an approach that has not been to the satisfaction of both States. While directing Karnataka to ensure the realisation of 5,000 cubic feet per second (cusecs) for 15 days from August 29, the CWMA recorded that during June 1 to August 27, the four Karnataka reservoirs had suffered a shortfall of 51.22% in their inflows, with the upper catchment of the Cauvery basin having had a more negative deficit in rainfall. The CWMA pointed out that the shortfall for Biligundulu, as compared to the stipulated flows in a normal year, was 62.4%. The Authority, which held an emergency meeting on September 18, endorsed the Cauvery Water Regulation Committee (CWRC)‘s direction given on September 12 to Karnataka to continue providing 5,000 cusecs for another 15 days (September 13 to 27).

Tamil Nadu, which has worked out what is due to it this year, is waiting for the Supreme Court’s intervention to get back “its quota” of water for the one-and-a-half months (half of August and the whole of September), even as the case is likely to be heard by the Court on September 21. Regardless of the outcome, the State should pursue the idea of judicious use of water.

The positions taken by Karnataka and Tamil Nadu may appear to be difficult to reconcile but this should not deter the Authority — or, if required, the Union government — from trying to find a formula. Such an approach could and should have been used by the Authority after its inception in June 2018. Unfortunately, nothing much was done in these five years. The opportunity now should not be lost.

The history of the Cauvery dispute shows that it is people at the helm of affairs who have not risen to the occasion to resolve the problem. Instead of giant steps being taken to solve the issue, settling for status quo has been the norm. Of course, political considerations have been a factor. A silver lining when it comes to the composition of the Authority is that the body is populated with officials and technical experts, who should not have any problem in coming to a distress-sharing formula in a rational and objective manner. The CWMA may not have shown its mettle so far, but it should now try and make a fresh beginning. To begin with, the Authority along with its assisting body, the CWRC, should make the proceedings of all its meetings held so far available to the public on a website. Putting out all the facts in the public domain will help the CWMA dispel misconceptions in both States about this issue given that the Cauvery has always been an emotive subject.

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Source : www.thehindu.com Date : 2023-09-25

SIMULTANEOUS POLLS — BUT ONLY IN A PRESIDENTIAL SYSTEM

Relevant for: Indian Polity | Topic: Elections, Election Commission and the Electoral Reforms in India Incl. Political Parties

September 25, 2023 12:16 am | Updated 07:34 am IST

‘The issue has been by committees and the conclusion was that it would be exceedingly difficult to implement it without substantial changes to the Constitution’ | Photo Credit: RITU RAJ KONWAR

A fresh attempt is being made by the Narendra Modi government to veer towards one nation-one poll, which would mean that all State elections are held simultaneously with the general election to the Lok Sabha. In order to kickstart this process, one would need to curtail the term of the Assemblies in several States, whose terms have not ended at the time the Lok Sabha election is to take place.

There is a deeper problem in implementing one nation-one poll. In the present parliamentary system of India’s democracy, at both the central and State levels, since the survival of the government is dependent on its enjoying the confidence of the majority of the house (majorities can change mid-term because of splits in parties, defections or even if some Members of Parliament/Members of the Legislative Assemblies from the ruling party refusing to support the government) the government can fall mid-term thus leading to mid-term elections. However, in one nation-one poll you cannot have mid-term elections if the rest of the States and the Centre have to go to the polls together. Therefore, the only option would be to either continue with a minority government headed by a Chief Minister/Prime Minister who has lost the confidence of the House or to impose President’s rule for the rest of the term. In my view, both these options would be undemocratic as it would mean that the government rules the Centre/States without enjoying the confidence of the majority of the House. This will defeat the essence of democracy in a parliamentary system.

Therefore, in my view, one nation-one poll is possible only if we switch to a presidential form of government where the government is run by a directly elected President/Governor who does not need to enjoy the confidence of the majority of the House. This happens in countries such as the United States. In those countries, there is also a clear line of succession laid down for the President/Governor. If the President dies mid-term, the Vice-President and thereafter the Speaker becomes the President for the remainder of the term. Such a presidential system can have one nation-one poll without compromising the essence of a democracy.

The issue of one nation-one poll has been examined by the Law Commission and some

parliamentary committees as well and the conclusion was that it would be exceedingly difficult to implement it without substantial changes to the Constitution. There were some suggestions that one nation-one poll can happen even in a parliamentary democracy by ensuring that when a government loses the confidence of the majority of the House by a no-confidence motion, such a no-confidence motion must be accompanied with a confidence motion in an alternative government. This will ensure that some government or the other continues for the remainder of the term. However, the problem here is that the legislators may not have confidence in an alternative government if they feel that a substantial number of Members of the House have lost the confidence of the people. Therefore, the will of the people about the government can only be determined by fresh elections.

If one provides that a no-confidence motion has to be accompanied by a confidence motion in an alternate government, we may have a situation of a government continuing in office which effectively has lost the confidence of the majority of the members. It will not be able to pass legislation or even money Bills and finance Bills, without which it will become difficult to run the government. These suggestions are impractical if we continue with parliamentary democracy in a one nation-one poll system.

The provisions of the Constitution that would need to be amended to switch to an essentially presidential system would be as follows: Part V – The Union – Chapter I – Executive – Articles 52-78 and Chapter III – Legislative Powers of the President; Part VI – The States – Chapter II – The Executive – Articles 153-167 and Chapter IV – Legislative Power of the Governor

Introduction of the presidential system would also require amendments to include several new provisions within the Constitution regarding the powers of the President, the Governors, the Council of Ministers, and provisions relating to the line of succession.

Some people feel that parliamentary democracy in India is part of the basic structure of the Constitution. Though the Constitution-makers had discussed the issue of a parliamentary versus presidential form of government at some length in the Constituent Assembly, they, for good reason, adopted the parliamentary system in a diverse country such as India. However, in my view, that would still not make the parliamentary system part of the basic structure. Democracy is certainly a part of the basic structure, and is consistent with the presidential form. One cannot say that the American system is not democratic.

Some people also feel that the presidential system would be antithetical to a federal country. But that is not the case either. The United States is a federal country, with its States enjoying vast powers even within a presidential form. The devolution of powers to the States or to the lower tiers of government such as municipalities, and panchayats will not depend on whether the system is presidential or parliamentary. In a presidential system, the power of the government is concentrated in one directly elected person whether he is the President of the country or the Governor of the State rather than being in the hands of multiple legislators. This is probably a reason why the Constitution-framers chose a parliamentary rather than a presidential form since they did not want executive power to be in the hands of one person alone, especially in a diverse country such as India. However, that to my mind is not part of the basic structure.

Though the present government has appointed another committee headed by a former President of India and hand-picked members to decide on this issue, it does not enjoy a two-thirds majority in either House so as to push through these amendments without the support of a substantial section of the Opposition. The Opposition, i.e., the INDIA alliance, has indicated that it does not support this move. Thus, this fresh attempt to switch to one nation-one poll appears to me to be a non-starter.

In my view, it may have been floated at this juncture only to give the government some leeway to postpone elections in five States which are due to go to the polls this year end. The ruling party is staring at defeat in almost all these States and do not want to go to the general election on the back of a defeat. However, even postponing these elections in five states till April-May 2024 would involve constitutional issues. For instance, Article 172(1) states that a Legislative Assembly of a state, unless sooner dissolved, 'shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly'.

Perhaps what the ruling party may be wanting is to impose President's rule in these five States by exercising powers under Article 356 of the Constitution and then get a pliant Election Commission of India to toe the government's line to postpone the Assembly elections until the general election to the Lok Sabha. The question is, will that not fall foul of the Constitution and the laws? In my view, it will. Though the Supreme Court of India has held that the Election Commission of India has a leeway of up to six months to hold the elections after the dissolution of the Assembly (in Re Special Reference Case 1 of 2002), the justification of using that leeway merely because a committee is again considering the idea of one nation-one poll would be a mala fide decision, and thus liable to be struck down by the courts.

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