

Insights on the Constitutionality of ‘One Nation One Election’

Author: Dr. Sindhuja Iyengar*

One Election refers to the simultaneous conduct of general election to the Lok Sabha, and state elections to their respective legislative assemblies. The first four general and state elections in post-Independence India – 1951/52, 1957, 1962, 1967 - were conducted in a simultaneous and synchronized manner, and hence organically followed the One Election model. However, some state assemblies were dissolved prematurely in 1968 and 1969, and the resultant state elections disrupted the synchronicity of One Election. Haryana went to polls in 1968, and six assemblies – Bihar, Nagaland, Pondicherry, Punjab, Uttar Pradesh, and West Bengal – saw polls in 1969.

The institutionalization of One Election has been in discourse for several decades. The Law Commission in its 170th Report on electoral reform identified the subject as one that requires serious exploration, and later dedicated its Draft Report 2018 to Simultaneous Elections. The subject was studied by the NITI Aayog in its working paper on Analysis of Simultaneous Elections (2017), and by a Parliamentary Standing Committee in its Report on Feasibility of Holding Simultaneous Elections (2015).

In September 2023, the Union Minister for Parliamentary Affairs announced the formation of a committee to examine the subject. On 14 March 2024, the High-Level Committee on Simultaneous Elections chaired by Ram Nath Kovind presented its Report. On 18 September 2024, the Union Cabinet approved the committee’s proposal for One Election.

The committee’s proposal for simultaneous elections, popularly called ‘One Nation One Election’ (ONOE), has since been widely discussed in public discourse, with arguments being posited for and against it. The several general points of debate are available for perusal in popular media. The main themes of arguments in favour of One Election include the high financial and administrative cost of conducting separate elections, and the paralysis in policy execution caused by multiple successive codes of electoral conduct. Arguments against One Election include the need to protect federalism, and the diminished accountability of parties to the people that will be caused by the reduction in the number of elections.

In the light of the above, *the following submissions on the Constitutionality of One Election were*

made by Dr. Sindhuja Iyengar at the Prelude Conference on One Nation One Election organised by Indian Institute of Public Administration – Karnataka Regional Branch in association with St. Joseph's University on 28 September 2024 in Bengaluru.*

First, **it is posited that** the Indian Constitution is founded on the debate of Human Rights v. National Security, also commonly known as the Democracy v. Sovereignty dilemma. This facet of the Constitution is apparent in its several provisions such as:

Article 19(1)(a) - freedom of speech and expression - which is subject to national security and state sovereignty under Article 19(2),

Article 22(1),(2) – protection against arbitrary arrest and detention – which is abrogated for preventive detention under Article 22(3)(b), and

Article 25 (1) – freedom of religion – which begins with the non-obstante subjections of public order and other provisions of Part III.

These three instances are indicative examples of a host of Constitutional provisions that cause most Indian laws, ranging from national policies to local by-laws, to be identified under either the Human Rights or the National Security agendas.

The ONOE proposal however, has the distinction of violating not only one of the National Security and Human Rights agendas, but both of them.

How ONOE violates Human Rights:

The philosophy and practice of Democracy is underscored by the Theory of Choice.

- a. The core of all Choice is Consent.
- b. The essence of consent lies in the ability to withdraw such consent at any time.
- c. Hence, whether or not true consent exists is determined by the ease of the process, or the lack thereof, by which consent can be withdrawn.

In the case of ONOE, there is a concern that once the States give their consent to the Centre to implement One Election, they cannot later easily withdraw such consent. This is because, just as constitutional amendments are required for the introduction of ONOE, they would also be required to withdraw the system if the States change their minds. Given India's federal tenets, the accommodation of processes by which States are permitted to change their minds, is non-negotiable. The protection of withdrawal of consent is an important enabler of federalism. A case to point is Karnataka's withdrawal of General Consent for CBI investigations on the ground that

the agency is biased, on 26 September 2024.

Further, in a country as large and complex as India, prudent leadership calls for a step-back mechanism for when the context requires it. For instance, the Constitution provides for the office of Governor alongside the Chief Minister, and Fundamental Rights alongside Directive Principles of State Policy.

How ONOE violates National Security:

It is posited that in the contemporary world, non-traditional national security concerns are as important as traditional ones. In a democracy such as India, Electoral Security is a crucial facet of non-traditional security. Therefore, India cannot keep breaching the sanctity of her elections. It is one thing to engage in electoral tinkering at the level of gerrymandering, and altogether a different scale to convert a federal electoral system into a unitarian one. Moreover, the precedent set by ONOE may open the floodgates for further attacks on India's electoral system.

The argument that One Election will incur a lesser financial, administrative, and temporal cost has resounded from several quarters. These quarters must recognise that such costs are the price of democracy. Fascism may be apparently cheaper, but it costs a democracy her soul.

On Constitutional Amendment:

The ONOE Committee Report has recommended fifteen Constitutional Amendments to be effected through two Amendment Acts to institutionalise One Election.

It is posited that the discourse on Constitutional Amendment should not be restricted to questions of which Articles must be amended, and what the language of amendment should be. The larger question to be addressed is a fundamental one – When should the Constitution be Amended? Amendment is a tool to bring the letter of the Constitution in line with its spirit. It has been established in and reiterated since the Keshavanand Bharti judgement that the spirit of the Constitution – its *basic structure* – cannot be amended. The apex court has held that Federalism is an element of the basic structure, thereby rendering it unassailable. ONOE seeks Constitutional Amendments that have the effect of diluting the federal ethos of the nation. This makes One Election and the proposal of the ONOE Committee Report void ab initio on the ground of unconstitutionality.

Accordingly, the One Election proposal requires to be carefully reconsidered by the Centre, with

inputs from the States, in the interest of India's Electoral Security, federal democracy, and constitutionalism.

Dr. Sindhujaa Iyengar is Deputy Director, Programme Development and Outreach, Centre for National Security Studies, MS Ramaiah University of Applied Sciences. She can be reached at siyengar_cnss@msruas.ac.in. Views expressed are personal.