

# SIMULTANEOUS POLLS — BUT ONLY IN A PRESIDENTIAL SYSTEM

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

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'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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