



LOK SABHA

BACKGROUND GUIDE

1. *Question Hour on Pegasus Spyware*
2. *Discussion Hour One Nation One Election*
3. *Deliberation on Representation of People Bill (Right to Recall)*



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Letter from the Executive Board

Dear Delegates,

I take this honor to welcome you all to Lok Sabha of Meridian MUN 2021. I appreciate you all for having chosen Lok Sabha as your committee preference. Though this is a committee that flows unconventional to the concept of Model United Nations, the sanctity this committee holds is something that is of supremost nature. As the future change makers of the society or global leaders of tomorrow it is expedient and necessary that in order to solve the global crisis one must have the ability to solve the crisis that exists in our own vicinity, as the famous English quote goes “Charity begins at home” it is tremendously significant for us to know the current affairs that tends to dominate in our country and a dynamic change maker is the one who not only respects the happenings that takes place at the international diaspora but significantly the one who has exceptional knowledge about his Country, his State, his Municipality etc. This committee is a platform for placing national interest above everything else. The Agendas chosen for this year are in consonance with the present day developments in Indian Politics to ease out and encourage productive debate. We expect all the delegates to go through this background guide and make note that this background guide holds significant importance.

-Naman Vankdari, Speaker

-Dhruv Chaganti, Deputy Speaker

DISCLAIMER : This Background guide is a compilation of information from various sources apart from the work of the Executive board. The content established below is in no way related to the personal ideologies of the Executive board. This background guide is authored with a sole intention of giving delegates a direction in the committee and orient them on the avenues of research. From the words of Swami Vivekananda “Courage and Confidence is the biggest armor for a man to pave his way for his success”.

The article for Right to recall has been authored by Sonika Bajpai

The article for Pegasus software has been authored by Ali Murtuza Moosvi

1. QUESTION HOUR

AGENDA : PEGASUS SOFTWARE CONTROVERSY 2021

Pegasus Spyware Controversy - 2021

Pegasus spyware is a surveillance software created by Israeli cyber intelligence firm NSO Group. This firm is known to build sophisticated software and technology for selling solely to law enforcement and intelligence agencies of vetted governments for the sole purpose of saving lives through preventing crime and terror acts, as claimed by the company. Pegasus is one such software that is created to gain access to your phone without consent and gather personal and sensitive information and deliver it to the user that is spying on you.

Pegasus spyware: What can it do?

According to Kaspersky, Pegasus spyware is able to read the victim's SMS messages and emails, listen to calls, take screenshots, record keystrokes, and access contacts and browser history. Another report corroborates that a hacker can hijack the phone's microphone and camera, turning it into a real-time surveillance device. It is also worth noting that Pegasus is a rather complex and expensive malware, designed to spy on individuals of particular interest, so the average user is unlikely to encounter it.

Pegasus spyware: How does it infect a phone?

The Organized Crime and Corruption Reporting Project (OCCRP) reports that eventually, as the public became more aware of these tactics and were better able to spot malicious spam, zero-click exploit solution was discovered. This method does not rely on the target doing anything at all in order for Pegasus to compromise their device. Zero-click exploits rely on bugs in popular apps like iMessage, WhatsApp, and FaceTime, which all receive and sort data, sometimes from unknown sources. Once a vulnerability is found, Pegasus can infiltrate a device using the protocol of the app. The user does not have to click on a link, read a message, or answer a call — they may not even see a missed call or message.

“It hooks into most messaging systems including Gmail, Facebook, WhatsApp, FaceTime, Viber, WeChat, Telegram, Apple's inbuilt messaging and email apps, and others. With a line-up like this, one could spy on almost the entire world population. It's apparent that NSO is offering an intelligence-agency-as-a-service,” Timothy Summers, a former cyber engineer at a US intelligence agency said.

Apart from zero-click exploits, OCCRP reports another method called “network injections” to quietly access a target's device. A target's Web browsing can leave them open to attack without the need for them to click on a specifically-designed malicious link. This approach involves waiting for the target to visit a website that is not fully secured during their normal online activity. Once they click on a link to an unprotected site, the NSO Group's software can access the phone and trigger an infection.

Amnesty International recently reported that NSO Group's spyware has infected newer iPhone models, specifically iPhone 11 and iPhone 12, through iMessage zero-click attacks. The spyware can impersonate an application downloaded to an iPhone and transmit itself as push notifications via Apple's servers. Thousands of iPhone handsets have been potentially compromised by the NSO spyware.

Kaspersky says that Pegasus for Android does not rely on zero-day vulnerabilities. Instead, it uses a wellknown rooting method called Framaroot. Another difference: If iOS version fails to jailbreak the device, the whole attack fails, but with the Android version, even if the malware fails to obtain the necessary root access to install surveillance software, it will still try directly asking the user for the permissions it needs to exfiltrate at least some data.

INDIAN PEGASUS ROW

On Sunday (June 18) evening, The Wire reported that the phone numbers of over 40 Indian journalists were on a hacking list of an unidentified agency using Israeli spyware Pegasus. The report said forensic tests have confirmed the presence of the military-grade spyware on some devices. Those on the list of potential targets included journalists at Hindustan Times, The Hindu, The Wire, The Indian Express, News18, India Today, etc, the report added.

The Wire's analysis of the data showed that most of the journalists were targetted between 2018 and 2019, in the run-up to the 2019 Lok Sabha elections. The report further added that the NSO Group, which sells Pegasus, has claimed that it only offers its spyware to only "vetted governments". "The company refuses to make its list of customers public but the presence of Pegasus infections in India, and the range of persons that may have been selected for targetting, strongly indicate that the agency operating the spyware on Indian numbers is an official Indian one," the report said.

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The report was published by The Wire in collaboration with 16 other international publications including the Washington Post, The Guardian and Le Monde, as media partners to an investigation conducted by Parisbased media non-profit organisation Forbidden Stories and rights group Amnesty International.

Meanwhile, it is important to note that a mere presence of a number on the list does not mean that the smartphone was successfully snooped upon using the spyware. It could only be concluded after conducting digital forensics on the device's data.

Govt officials, Opposition politicians, activists' part of snooping list in India: Report

Not just journalists, it was later revealed that the mobile phones of more than 300 Indians, including two union ministers, three opposition leaders and scores of business persons and activists in India have been targetted for hacking through the Israeli spyware Pegasus.

The second set of explosive revelations said the names of former Congress president Rahul Gandhi, election strategist Prashant Kishor, Mamata Banerjee's nephew Abhishek Banerjee, IT minister Ashwini Vaishnaw, minister of state for Jal Shakti Prahlad Singh Patel, personal secretary to Vasundhara Raje Scindia, officer on special duty (OSD) for Smriti Irani, Vishwa Hindu Parishad (VHP) leader Pravin Togadia, and many others were among the 300 verified Indian numbers listed as potential targets for surveillance during 2017-2019 by a client of the Israel-based NSO group, reported The Wire.

Besides, phone numbers belonging to the Supreme Court staffer who accused former Chief Justice of India (CJI) Ranjan Gogoi of sexual harassment in April 2019 also found place in the list of potential snoop targets, the report added.

Govt responds within a few minutes after the report was published:

Within a few minutes after The Wire published its report, the Centre responded and said the allegations have no concrete basis. "India is a robust democracy that is committed to ensuring the right to privacy to all its citizens as a fundamental right," the government said. "There has been no unauthorised interception by government agencies. The allegations regarding government surveillance on specific people has no concrete basis or truth associated with it whatsoever," it added. The Govt further said the news report appears to be a fishing expedition, based on conjectures and exaggerations to malign the Indian democracy and its institutions.

Reports of hacking 'false, misleading', says Israeli firm NSO Group

Amid the reports of possible hacking of phones of over 300 Indians through Pegasus spyware, the Israelbased NSO Group said the allegations on it are false and misleading. "The report by Forbidden Stories is full of wrong assumptions and uncorroborated theories that raise serious doubts about the reliability and interests of

the sources. It seems like the unidentified sources have supplied information that has no factual basis and are far from reality," reads the statement.

NSO Group said the reports published in this matter have no factual basis and the company is considering a defamation lawsuit. "After checking their claims, we firmly deny the false allegations made in their report. Their sources have supplied them with information that has no factual basis, as evident by the lack of supporting documentation for many of their claims. In fact, these allegations are so outrageous and far from reality, that NSO is considering a defamation lawsuit," the company said.

Opposition's take on the Pegasus Row -

Accusing the government of "treason" and compromising on national security over the Pegasus spyware issue, the Congress demanded the sacking of Home Minister Amit Shah and a probe into the "role of Prime Minister" Narendra Modi in the matter.

Addressing a press conference, Congress chief spokesperson Randeep Singh Surjewala held Shah responsible for the Pegasus spying issue and said his party's first demand is his dismissal from the post he occupies. He said Congress will take all Opposition parties on-board over the issue and decide whether to ask for a judicial or parliamentary probes in the matter. "Our first demand is the immediate sacking of Minister of Home and Internal security Amit Shah and a probe into the role of the prime minister in the matter," he said.

Mamata Banerjee appealed to the apex court to take suo motu cognizance of the alleged snooping by the Israeli spyware Pegasus. The Bengal CM also claimed that she is unable to speak with her counterparts in Delhi and Odisha. "Pegasus is dangerous. They are harassing people. Sometimes I cannot speak to anyone. I can't talk to Delhi or Odisha chief minister," Mamata Banerjee said.

Leader of Opposition in Rajya Sabha Mallikarjun Kharge said Shah should immediately resign as he "does not deserve" to occupy the position he is holding

BJP Government's Response -

Hitting back at the Congress over its attack over the Pegasus snooping row, the BJP claimed that there is not a "shred of evidence" to link either the ruling party or the Modi dispensation with the matter.

"BJP strongly refutes, condemns the baseless & bereft of political propriety comments leveled by Congress against the BJP. It is a new low for a party that has ruled India for more than 50 years," BJP leader and former Union Minister Ravi Shankar Prasad said in a press conference. "It is a strange situation. The company (NSO Group) is denying it (findings in Pegasus Project report) & saying that most of its products are being used by western countries but India is being targetted," he added.

Union Home Minister Amit Shah slammed the "rudderless Congress" after it demanded his resignation and investigation into Prime Minister Narendra Modi's role in the snooping row. "This is a report by the disrupters for the obstructers. Disrupters are global organisations that do not like India to progress. Obstructers are political players in India who do not want India to progress. People of India are very good at understanding this chronology and connection," he said.

Shah further said he wanted to assure the people of India that the Modi government's priority is clear - 'National Welfare' - and it will keep working to achieve that no matter what happens.

Media - Editors Guild demands SC-monitored probe into Pegasus phone tapping allegations

Expressing shock over media reports on widespread surveillance on journalists and politicians using Pegasus spyware, the Editors Guild of India on Wednesday demanded an independent Supreme Court-monitored inquiry into the alleged snooping.

"The Editors Guild of India (EGI) is shocked by the media reports on the widespread surveillance, allegedly mounted by government agencies, on journalists, civil society activists, businessmen and politicians, using a hacking software known as Pegasus, created and developed by the Israeli company NSO," the Guild said in a statement shared on Twitter.

Plea filed in SC seeking SIT probe into Pegasus snooping allegations

A petition has been filed before the Supreme Court seeking a court-monitored probe by a Special Investigation Team (SIT) into the reports of alleged snooping by government agencies using Israeli spyware Pegasus over journalists, activists, politicians and others.

The petition, filed by advocate ML Sharma, said the Pegasus scandal was a matter of grave concern and a serious attack upon Indian democracy, judiciary and country's security and the "widespread and unaccountable" use of surveillance is "morally disfiguring".

"Privacy is not about the wish to hide, as is often asserted. It is about having a space of one's own where our thoughts and being are not the instrument of someone else's purposes. It is an essential component of dignity and agency," it said.

2. DISCUSSION HOUR.

AGENDA : ONE NATION ONE ELECTION

A) INTRODUCTION

The Republic of India is a nation that is widely considered as a nation which houses the world's largest democracy and the elections that happens in the nation once in 5 years for central, state and local self government is the most vibrant, most celebrated and most spoken about elections across the globe and that puts India safely position where one can consider that no other democracy in the globe can come close to that of ours. Understanding our democracy this is a nation that stands on the philosophy of "WE THE PEOPLE" and that being mentioned so there are plethora of laws which regulate the conduct of elections in India and now considering that we are a federal nation with a unitary bias what keeps this principle of Republic of India alive is the spirit of the federal states and its pledged patriotism to the Center called as Republic of India and the democratic nature of this government is such that this nations celebrates and takes pride in its multiparty system and that has further given emergence to plethora of regional parties across all the states in India who play a pivotal role in running the governments both in the central and the state, unlike many countries where bi-party system holds the fulcrum of their politics in India too many political observers tried to establish the same concept keeping in view the two dominant national parties (One which claims large party of having won freedom for this nation and the other which believes in reviving the cultural glory this nation once had in its command in the past) but plethora of elections have proved the point that the so called national parties are toothless tigers without the support of various regional parties, in fact many governments in the center have tasted bitter defeat when they have ignored the cause of these regional parties and some have lost confidence of the house by a margin of one vote when they don't take into account the significance of the regional parties, twice in our past the leaders of our regional parties have gone on to become the Prime Minister of India and even to this day just my being a member of the coalition alliance captained by the national parties they enjoy to hold plum positions in the government and keeping the same significance in mind and also the politico- socio-economic effect it has on this country we have to understand how these plethora of elections happens at multiple times and hence the discussion of "One Nation One election" has been mooted by various bodies of the government since 1983, but owing to the chronology many argue that

it truly challenges the federal spirit of the nation as multiple states go for elections multiple times and that means either the state or the central governments(s) have to put a foot down and have to compromise on their tenures, which shall be a true litmus test to the entire Constitutional machinery of India and this background guide aims to provide details trying to analyze both the ends of the spectrum and the Committee shall debate and deliberate on the practical plausibility's of the concept of One nation – One election.

B) HISTORY

After the Independence in the year 1947 and after India had its own constitution to govern the country, she gave herself to her maiden elections in the year 1951-1952 and since then till 1967 India followed the concept of one nation one elections, wherein there used to be simultaneous elections all across the nation, wherein members of the Universal adult franchise voted for a government in the Central, State and the Panchayath or the local self governments, but back in the days except a state or two major parts of India had a single party domination as the political party which had the habit of winning election after election and did so for almost two decades had charismatic leadership both at the central and the state level and more importantly they had taken complete credit of having won India its much desired Independence and also drafting an unique Constitution that was never experimented by any nation of great reputation in the past, but this illuminati could not last for long as multiple regional parties came to dethrone the incumbent regimes and started displaying themselves as the true representatives of their people and this magic worked to a large extent in southern parts of India with the rise of Dravidian ideology and the sentiments of the people of South India and followed by the establishment of parties like Telugu Desam Party in the then largest Southern Indian State of Andhra Pradesh and establishment of All India Anna Dravida Munnetra Kazhagam in the most flourishing state of Tamil Nadu hence multiple rise and fall in central and State government resulted in the damage of the streak. The first dent was in the year 1968, followed by 1969 and 1971 respectively wherein multiple regional parties dissolved and following by the unforgivable Constitutional blunder of 1976, where the draconian laws of emergency was invoked in India just to satisfy the power lust of one family which was very powerful at the center did further damage to the democracy and completely annihilated the process of democracy. But now the current central government with the able guidance of NITI Ayog has again brought the implementation of one nation – one election to the charts, the feasibility of which shall be decided in the committee.

C) IS THERE A NEED FOR ONE NATION – ONE ELECTION.?

For those who argue that there is a need for implementation of one nation – one election fundamentally base their arguments on the basis of

1) Financial aspect

Elections basically is an expensive affair in India, be it recruiting electoral officers to supervise over the booths or to recruit staff for counting the votes or recruit police officers to ensure that there is free and fearless elections and candidates/parties/supporters do not indulge into election malpractice and hosting plethora of awareness programs to ensure that voters come out and vote or ensuring that everyone gets their voter Ids, election is indeed a herculean task the preparations of which takes at least 9 months to 3 months of hectic schedule and expenditure has always been double or thrice owing to the fact that there are multiple elections happening at multiple times throughout the year. Hence if there is one One nation one elections a lot of money can be saved by having simultaneous elections.

2) Administrative aspect.

Be it the Prime Minister or Chief Minister or any leader who holds a constitutional office, at the end of the day if he/she is accountable to something it is the political party he/she belongs to and owing to the fact that the leaders who hold legislative constitutional offices have owe significant loyalty to their parties and hold prominent positions in the party as well and the nature of Indian politics is such that there are multiple elections happening in India round the clock and throughout the year and these leaders have to focus on running the nation on one hand and travel to multiple states, cities, districts, villages etc to campaign for elections which keeps them deviated from functioning and even in some cases for I.A.S officers or other executives, District commissioners etc even they would have to face the wrath of multiple elections on one side they have the task of executing various laws implemented by the state and the central government and the State government and on the other hand ensure that the elections happen spick and span and understanding the fact that during election time the model code of conduct would be in place and no political leader will be in power and the authority of the District Commissioner is the law of the land. Hence to reduce the burden and to ensure that the administrative machibery of the nation focuses more on the polity, many opine that it is important to have one nation one elections.

3) Legal aspect.

As per the Representation of the peoples Act 1951, before the elections on a particular date the election commission shall declare the imposition of model code of conduct which means that the Government in authority cannot launch new schemes, cannot inaugurate new buildings, lay foundation stones etc to put it in simple terms the entire legislative machinery shall become partially paralytic and won't enjoy the power and autonomy they did for the past five years or the days when they assumed charge and in order to ensure that there is no complete paralysis of the functioning of the government the MCC provides flexibility for the government to administer over already implemented schemes and sanction funds and complete stock of the situation during the times of crisis, natural calamity, disaster or any unforeseen emergency, but owing to multiple elections the effective implementation of MCC or any other equivalent laws are not happening to its full effect.

D) DOES ONE NATION – ONE ELECTION AFFECT THE BASIC STRUCTURE OF OUR CONSTITUTION ?

Basic Structure' is a judicial innovation which was used for the first time in the case of Kesavananda Bharati & Ors. V/s State of Kerala 1973.

It includes:

- The supremacy of the Constitution.
- Republican and Democratic form of Government and sovereignty of the country.
- Secular and federal character of the Constitution.
- Demarcation of power between the legislature, the executive and the judiciary.
- The dignity of the individual (secured by the various freedoms and basic rights in Part III) and the mandate to build a welfare State contained in Part IV The unity and the integrity of the nation.

Doctrine of basic structure has evolved over the years. Features were added over time through various SC verdicts which gave progressive judgment and innovated to preserve the basic substance of the constitution.

Supreme Court in *Sajjan Kumar vs State of Rajasthan* 1965 observed that the Constitution "formulated a solemn and dignified preamble which appears to be an epitome of the basic features of the Constitution".

Fundamental rights were included in basic structure in *Minnerva mills v/s Union of India* 1980 where SC calls them "transcendental, inalienable and primordial" and if the elements are damaged or destroyed, would rob the Constitution of its identity so that it would cease to be the existing Constitution but would become a different Constitution. "One cannot legally use the Constitution to destroy itself", as the doctrine of constitutional identity requires. The theory of basic structure is based on the principle that a change in the thing does not involve its destruction, and destruction of a thing is a matter of substance and not of form. Free and fair elections were seen as an essential postulate of democracy hence it was also called a basic feature by SC in *Indira Gandhi v/s Raj Narain* case 1975. The court also struck down the Clause (4) of Article 329A which provided for special provision as to elections to Parliament in the case of Prime Minister and Speaker, on the ground that it damaged the democratic structure of the Constitution. The said Clause (4) had taken away the power of judicial review of the courts as it abolished the forum without providing for another forum for going into the dispute relating to the validity of election of the Prime Minister and the Speaker.

In *S.R. Bommai v. Union of India*, 1994 SC held that secularism was an essential feature of the Constitution and part of its basic structure.

In *M Nagaraj & Ors. v. Union of India* 2007 the Constitution Bench of the Supreme observed that "axioms like secularism, democracy, reasonableness, social justice, etc. are overarching principles" which links factor for principles of fundamental rights like Articles 14, 19 and 21. These principles are beyond the amending power of Parliament.

In *I.R. Coelho V/s. State of T.N*, 2007, a Nine Judge Bench of the Supreme Court laid down the concrete criteria for basic structure principle.

Stated that the power to amend the constitution was not unlimited, any changes that destroy the identity of the constitution, would be void. Every improper enhancement of its own power by Parliament, be it clauses 4 and 5 of Article 329A, or Section 4 of 42nd Amendment, have been held to be incompatible with basic structure doctrine. Thus, Basic means the base of a thing on which it stands and on the failure of which it falls. It is not a vague concept or abstract ideals found to be outside the provisions of the Constitution. Therefore, the meaning/extent of basic structure needs to be construed in view of the specific provision(s)

under consideration, its object and purpose, and the consequences of its denial on the integrity of the Constitution as a fundamental instrument of governance of the country.

E) FEDERALISM

In the introduction the authors did give you an understanding of the power of regional parties who command huge influence in their respective states and now understanding the theory and legality of federalism.

- In a federal system of government there is a division of power between the Central (Federal) Government and State Governments, in contrast to the unitary system of Government.
- In case of the United States which is a federal state, the separate and independent States first formed a Confederation (1781) and then transformed into a Federation (1789). The States have their own constitution; the federal Constitution is the supreme law and binding on all the States. Any amendment to the American Constitution is required to be ratified by three-fourths of the States.

The Indian Constitution provides for a dual system of government consisting of the center and the State with clear division of powers between them. Constitution is the fundamental law of the land and is guarded and interpreted by the higher judiciary. Federal feature for the first time was laid down in the GOI Act, 1935, providing for distribution of legislative powers between the

Union and the States, which was subsequently adopted in the Constitution of India as three lists under the Seventh Schedule. Indian federalism provides systematic and structural principles connecting various provisions of the Constitution. Supreme Court on Indian Federalism Though India not being Federal in the traditional sense of the term, Supreme Court has consistently held that federalism is one of the basic structures of the Indian Constitution. However it does contain some traditional characteristics of the federal system, namely supremacy of Constitution, Division of Power between the Union and the States and existence of an Independent Judiciary.

In Re. Berubari Union and Exchange of Enclaves Reference under Article 143(1) of the Constitution of India, Supreme Court observed:

“The constituent units of the federation deliberately had no organic roots in the past. Hence, in the Indian Constitution the emphasis on the preservation of the territorial integrity of the constituent States is absent.

Indian constitution does not propound absolute federalism despite a decentralized authority which is largely due to the arduous task of governing the large territory”

Residuary powers that were not given to anyone in GOI Act 1935 but under the Constitution, by virtue of Article 248, read with Entry 97 in List I of the Seventh Schedule, has been conferred on the Union.

SC in state of Karnataka V/s union of India 1978

“Our constitution is not only pragmatic federal but it has also strong unitary bias which is exhibited by lodging in Parliament the residuary legislative powers, and in the Central Government the executive power of appointing certain constitutional functionaries including High Court and Supreme Court Judges etc”.

SR Bommai V/s Union of India

SC called Indian Constitution, 'quasi federal' where the end aim of the essential character of the Indian federalism is to place the nation as a whole under control of a national Government, while the States are allowed to exercise their sovereign power within their legislative and coextensive executive and administrative sphere. Indian Constitution is not true to any traditional pattern of federalism where the Indian Union has been described as the “holding together” of different areas by the Constitution-framers, unlike the “coming together” of constituent units as in the case of USA and the confederation of Canada.

Unitary nature of the Constitution

It is evident that the Indian Constitution is not federal in a strict legal sense. The term Federalism is used in liberal sense as the Constitution provides for division of legislative powers, labeling it as quasi-federalism, pragmatic federalism, collaborative federalism or cooperative federalism. The States have been carved out for administrative convenience. The Central Government on assessment of the situation can either move either on the federal or unitary basis. Extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated politically and economically coordinated, and socially uplifted. Constitution of India is “amphibian”, in the sense that it can move either on the federal or unitary plane according to the needs of the situation and circumstances of the case. It is solely for the Union Government itself to decide and no one else.

F) ONE NATION ONE ELECTION IN OTHER COUNTRIES

South Africa

- In South Africa elections are held for National Assembly, Provincial Legislature and Municipal Councils in a five-year cycle. The electoral system is based on party-list "proportional representation", which means that parties are represented in the proportion of electoral support to them.
- Municipal Councils, elections are not held along with National and Provincial elections, there is a 'mixed-member system' in which, wards elect individual councilors alongside those named from party-lists.

Sweden

They employ PR system. Elections to Sweden's County Councils and Municipal Councils occur simultaneously with the general election whereas, elections to the Municipal Assemblies occur on the second Sunday of September after every five years.

Belgium

In Belgium one can vote in five different types of elections:

- European elections: representatives for the European Parliament
- Federal elections: for the Federal Parliament (the Chamber of Representatives)
- Regional elections: for the legislative bodies of the federated regions
- Provincial elections
- Municipal elections *Indonesia*

Indonesia will hold the presidential elections and legislative elections concurrently starting 2019.

Germany

Bundestag (i.e. Lower House) cannot simply remove the Chancellor with a vote of no-confidence, as the opponents must not only disagree with his or her governance but also agree on a replacement (constructive vote of noconfidence).

This Basic law of the Federal Republic of Germany, 1949 set up has provisions with regard to elections and stability of the Government, which are definitely imitable.

United Kingdom (Fixed Term Parliament)

Parliament of Westminster introduced a fixed term for the Parliament by enacting Fixed Term Act 2011, which provides a term of 5 years for general elections.

The Act 2011 specifies that early elections can be held only if a motion for it is agreed either by at least two-thirds of the whole House or without division; or if a motion of no confidence is passed and no alternative government is confirmed by the Commons within 14 days thereof.

G) VARIOUS REPORTS AND THEIR OPINIONS ON HAVING ONE NATION ONE ELECTION.

First Annual Report of the Election Commission of India, 1983

- Report supported holding simultaneous election due to reduced expenditure, effective use of manpower and Human Resource, continuous elections also affects the day to day functioning of the govt. both at state and the centre creating hardships for common people as the entire administrative machinery freezes.
- Separate election also result in duplication of expenditure.
- The Elections Commission in the report suggested that a stage has come for evolving a system by convention, if it was not possible or feasible to bring about a legislation for holding election simultaneously.

170th Report of the Law Commission of India, Reform of Electoral Laws (1999)

The report highlighted that elections after 1967 got disturbed due to frequent use of Article 356 of the Constitution, the dissolution of the State Assembly by the Governor on recommendation of the Chief Minister of the State which was a case of exception instead became a norm.

Report of the National Commission to Review the Working of the Constitution, 2002 (NCRWC Report)

A NCRWC was appointed to examine, as to how best the Constitution could respond to the changing needs of an efficient, smooth and effective system of governance and to the socio-economic development of modern India within the framework of Parliamentary democracy, and to recommend changes without tinkering with the basic structure of the constitution.

255th Report of the Law Commission of India "Electoral Reforms", (2015)

The report dealt with the anti defection law recommending the power to decide on questions of disqualification on the ground of defection be vested to the President or the Governor, who shall act on the advice of the ECI, instead of Speaker or the Chairman.

79th Report of Parliamentary Standing Committee, 2015

- Committee in its Report on “Feasibility of holding simultaneous elections to the House of the People (Lok Sabha) and State Legislative Assemblies” noted several justifications for holding simultaneous elections, such as expenditure, policy paralysis during MCC, burden on manpower etc.
- Impact on delivery of essential services: Holding of political rallies disrupts road traffic and also leads to noise pollution. Simultaneous election will bring it down significantly.

NITI Aayog

Working paper titled “Analysis of Simultaneous elections: the What, Why and How” by Niti Ayog highlighted the importance of simultaneous election which focused on heterogeneous needs of the nation as the national parties will focus on regional issues and regional parties will fight for national issues.

H) CONCLUSION

Hence with the above mentioned facts and statements the authors would like to rest their publication on the concept of One Nation One Elections the rest assured we shall trust the wisdom of our delegates to strive in the committees to debate and deliberate their debate and bring out the most fruitful discussion for the committee.

3. PASSING OF THE BILL.

Right To Recall India

RIGHT TO RECALL: THE UNDERLYING CONCEPT –

Unfortunately, India is witnessing a constant rise in unethical and irresponsible behaviour on the part of the elected legislators. There are numerous instances which could demonstrate the said preposition, for instance, (i) Sariprakash Jaiswal has openly rejected the findings of the CAG report on the coal-gate scam, (ii) Vilasrao Deshmukh has allegedly been involved in the infamous Adarsh Society scam, (iii) A.Raja had engaged in massive corruption during the allocation of 2Gspectrum etc. It this backdrop, there has been a wide-spread demand to have a right to recall or a right to de-elect our elected representatives.

Recall is basically a process whereby the electorate has the power to remove the elected officials before the expiry of their usual term. Thus recall confers on the electorate the power to actually ‘de-elect’ their representatives from the legislature through a direct vote initiated when a minimum number of voters registered in the electoral role sign a petition to recall.

‘Right to recall’, along with the ‘right to party platform’, finds its justification in the ‘basic structure’ of universal democracy. When a person is voted to power by the people based on his ‘party platform’, the said platform assumes the status of a contract and the elected person is under an obligation to honour the same. In a universal democracy, a default on the part of the elected representative vests in the electorate an ‘inalienable and non-negotiable’ right to recall such a representative.

Therefore, the right to recall is a democratic tool which ensures a ‘greater accountability’ in the political system as the electorate retains control over those legislators who are underperforming or are misusing their office for their selfish gains.

The need to have a corruption-free government was highlighted by the Hon. Supreme Court in State of Madhya Pradesh & Ors. v. Shri Ram Singh, and recall of delinquent representatives undoubtedly seems to be one way of achieving that.

The very basic objective of recall is to ensure 'good governance' by eliminating the corrupt, unworthy officials. But as of today, India does not have a recall provision except in certain states like Madhya-Pradesh or Chhattisgarh where people have the right to recall their representatives in local bodies.

Quite interestingly, India has certain other mechanisms which aim at having 'good governance', however, due to their failure to serve the intended purpose, there is a vehement demand for having recall provisions at both State and the National level. Apart from this, the successful recall elections held in local bodies of Chhattisgarh in the year 2008 has further revived the confidence of the proponents of recall to demand the said right.

THE PROCESS OF A RECALL ELECTION:

A COMPARITIVE STUDY OF US, UK AND INDIA

Right to recall is present in various jurisdictions across the world, for instance, United States (US), Canada, Venezuela, Philippines, Switzerland, British Columbia etc. Apart from this, a lot of countries are trying to bring in place a recall system given the various benefits of the said right, for instance, Sweden, New Zealand, Germany, and United Kingdom (UK) etc.

If one looks at any of the existing recall processes or the envisaged ones, there is a fundamental procedures which are is followed across the board. For instance, such commonality of procedure can be demonstrated by comparing the existing recall process of US against the one enumerated in the 'Recall of elected representatives Bill, 2012-13' of the UK.

The recall process in US commences with the filing of a notice of intention to circulate a recall petition, however, eight states requires certain grounds to be shown before the filing of such notice. Similarly, in UK the recall would commence only when the Speaker gives the notice to the returning officer indicating that a 'condition' triggering recall has occurred.

The next step involved in a recall process is the circulation of the recall petition and getting it signed by a 'minimum number' of voters within a 'specific time' . Once the requisite percentage of signature has been collected, the process of the verification of these signatures is undertaken. After the said gamut of events, the seat of the recalled representative is automatically vacated and a by-election is held.

India witnessed its first recall election in the year 2008 wherein three local body chiefs were de-elected by the people in accordance with the Chhattisgarh Nagar Palika Act, 1961. The procedure for the recall which is put forth by the said act and followed thereafter in the Chhattisgarh scenario raises various interesting issues when one tries to imported it into the general elections held at both state and the national levels, for instance, who should have the liberty to initiate a recall, whether the requisite number of votes to be cast by the electorate to effectuate a recall is too small a threshold, when can a recall election be initiated, how many chances does one have to recall a particular representative, etc. After putting forth some of the concerns which will require a careful attention and speculation, the basic issue remains the viability of conducting recall elections at state and the national levels.

RIGHT TO RECALL: THE FUNDAMENTAL DEBATE

ARGUMENTS IN FAVOUR OF RIGHT TO RECALL

This line of argument believes that the role of the representatives in the decision making is becoming marginalised with each passing day and this can be attributed to their lack of competence and ethics. The electorate brings a representative on the basis of the party platform and should definitely have a fallback mechanism if the representative fails to honour the same. Recall-provision essentially is the same fallback mechanism which vests in people the control over such unworthy representatives who have failed to secure the best interests of their electorates. Also, right to recall would check corruption as well as the criminalisation of politics.

To put it differently, the proponents of right to recall argue that if an individual can 'elect' a representative, then he should also be given the liberty to 'de-elect' the same. Such a system of de-electing the representatives would force him to conduct himself in a manner consistent with the interests of his constituency because the security of his position would now be contingent upon the post-election approval of his electorate , which in long term would infuse a 'greater accountability' in the system.

Additionally, it is also argued that having the system of recall will deter candidates from spending crores of money in campaigning for the elections because they will always have a fear of being recalled. Apart from this, some proponents of recall perceive it as an 'option' to correct wrong decisions without having to wait for the next five years.

ARGUMENTS AGAINST RIGHT TO RECALL

The most fundamental argument against right to recall is that it can lead to an 'excess of democracy' where the independence of representatives will go down due to the perpetual threat of being recalled. Apart from this, to escape a recall would demand the representatives to always keep their respective electorates happy, which would force these representatives to succumb to the populist pressure. Thus, recall would inevitably discourage the representatives from using their own judgment and coming up with tough but unpopular stands rather than the populist ones, which militates against the fact that we are a representative democracy wherein MPs and MLAs rise above the local duties and undertake national and state-level 'duties' respectively. Such tying up of representatives to their electorates is inherently detrimental to the larger public interest and hence should be avoided at any cost.

Additionally, having a recall system in India would not only create unnecessary chaos due to recurring recall election, but also would destabilise the government. Recall in a country like India would be very vulnerable to abuse by influential political groups and would give us those criminals as our leaders who could use strongarmed methods to prevent the recall being exercised against them . Leaving all these questions aside, there is always a question of practicability of conducting a recall which would involve enormous amounts of money, manpower, time etc.

It is also known that the Indian democracy vests the power of removal of elected representatives in Parliament or the State legislature itself, even though the power to elect them lies with the people. Indian democracy has certainly defied its conservative parentage and has tried to be as inclusive as possible by giving to its citizens a framework which ensures political equality, however, the introduction of recall would bring down this inclusiveness as only politically alert citizens would benefit from it.

Lastly, it is argued that introducing recall would unnecessarily undermine the role and importance of our representatives which, in fact, would weaken our democracy.

ANALYSIS

MPs and MLAs in India are given a lot of privileges and liberties. This is done so with an objective to bestow upon them the requisite independence which enables them to formulate effective policies. However, the

introduction of recall (even though being premised on the lofty idea of ensuring a greater accountability), it seems, would irreparably jeopardize such independence. Recall would, in effect, put every legislator under a constant threat to be removed out of the office if the electorate does not seem to like him. To succumb to the demands of the electorate would be the only way to survive for these legislators, which would inevitably bring down the quality of the policies formulated. Apart from this, it is very likely that the system of recall would revive all the evils for which a system of recall is envisaged at the first place, for instance, party politics, instability in legislative bodies, corruption, bribes etc. It seems that having recall in India would shift the focus of the parliamentarians from policy-making to making sure that their seat is secure, which would rather prove to be counter-productive for our democracy.

Also, recall is essentially a means of ensuring vertical accountability as opposed to horizontal accountability. In recall, the power to remove an unworthy representative must be with the people themselves, and not the other representatives. Unfortunately, in *Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and Ors.*, the Hon. Supreme Court opined that- “A President who is elected by the entire electorate when removed by such members of the Board who have also been elected by the people is in fact removal by the electorate itself. The Board represents the entire electorate as they are representatives of the people although smaller in body. Such provision neither violates the spirit nor purpose of recall of an elected representative.” However, Hon. Allahabad High Court later in the case of *Smt. Ram Beti Vs. District Panchayat Raj Adhikari and Ors.* advised that the provisions of removal of the representative could be made more stringent by restoring the old provisions of recall by Gram Sabha i.e. by the electors themselves. The position taken by the Supreme Court appears to be quite dangerous considering the ample scope created for arbitrariness and bias in such recalls, and therefore, the advice given by the Allahabad High Court indeed holds substance. Therefore, the interests of justice and fairness demand that the de facto power to remove the representatives should be with the electorate itself and not the representatives of the electorate.

The next question which needs to be addressed at this stage is whether a system of vertical recall is viable in Indian scenario. The ex-Chief election commissioner S. Y. Quraishi has highlighted various implications involved in introducing such a system in India, for instance, such a system would require a minimum percentage of the electorate to sign the petition for effectuating a recall, the verification of authenticity of those signatures, verification to see whether those signatures were given with free consent or under coercion, minimum time for presenting the petition before the electorate as well as gathering the requisite signatures, holding a subsequent by-election etc. The conduct of a by-election would further require a lot of resources

including financial resources, man-power, time etc. Apart from this, it would be difficult for a lot of Indians to appreciate the entire process of recall owing to the low literacy levels in the nation. Keeping all these factors in mind, it seems that recall could at best be introduced in local government level, but not on a State or National level.

Amidst the entire debate surrounding the introduction of Right to recall in India, one must not lose sight of the fact that the said right is a means to achieve certain end-objectives and not an end in itself. Thus, one has to speculate over what that 'end-objective' is, and whether we have other ways possible to secure it. It is submitted that any electoral reform, in the present case the right to recall, aims at 'good governance'. Recall is quintessentially a 'post-election' measure to ensure accountability from the elected representatives, however, there are already in existence various neglected 'pre-election' measures which aim to achieve the same purpose. Some examples of such pre-election measures would be the provisions relating to disqualification and expulsion of members and the existing vigilance bodies to check corruption etc. These pre-election measures are comprehensive enough to realise the cherished goal of 'good governance', however, there is a serious problem with the implementation of the same. Therefore, it is suggested that the introducing the post-election measure of recall would rather be a very 'premature' move and hence, the focus should be on a better implementation of the pre-election measures instead.

Apart from this, one also needs to focus on the root-cause of having unworthy representatives warranting us to ask for recall elections and the possible solution of the same. S. Y. Quraishi has opined that increased and informed participation in elections would increase the quality of representation. Therefore if the quality of representatives elected has a direct nexus with the quality and the quantity of voters present, the main focus should be on enhancing the political awareness of masses by various means possible and on ensuring a better turn-out of voters in the elections respectively. In fact, the Election Commission of India has undertaken 'social marketing strategies' to increase political awareness and it is in the process of forming alliance with media departments and organizations for ensuring greater participation of people in elections.

CONCLUSION

Right to recall seems like a very attractive idea on theory but introducing such a right would not only entail practical difficulties, but also bring along various undesirable repercussions. The idea to have recall elections does not seem to be the best idea when we already have other measures to ensure good governance. The focus should be on reviving the existing measures as well as finding solutions to the root-cause of having poor quality of representation at the first place.

A right to recall is not viable in India as of today. It might be viable in future, if the system of internet voting is introduced which could eradicate all the practical difficulties which have been already looked into. However, whenever recall is introduced, an attempt should be made to minimise all the foreseeable abuses of the same by devising a robust recall-procedure. For instance, a recall in India should only be triggered when a very high percentage of electors petition for a recall. This would check the institution of frivolous recall petition by the losing parties, more so in the light of our first-past-the-post voting system. Second, a recall should be carried only after conducting proper judicial scrutiny on certain specific grounds and not on vague or ambiguous grounds. Considering the delay that might be caused in the normal court proceedings, it is suggested that the Courts should have a bench that deals with election matters and admits them without any delay. However, whether this bench should be permanent or should exclusively hear election matters is a matter to be decided after an assessment of the probable work-load that it would cast upon the proposed bench. A proper judicial scrutiny by such a bench would ensure that a representative is not recalled on the whims and fancies of the electorate but on proven misconduct on the part of such representative. Third, the recalled representative must be debarred from contesting the by-election held thereafter. This would ensure that there is no scope of the same candidate coming into power otherwise all the money, man-power, time etc in conducting the recall would go in vain. Also, debarring him from contesting the recall election would serve as an 'actual' deterrence for him to engage in any kind act leading to such recall. Apart from all these suggestions, the right to recall or de-elect must be given a statutory recognition and the process to effectuate the same must be laid down in clear, unambiguous terms. Lastly, there should be certain methods to analyse the performance of the representatives on a timely basis through an independent body. These records of the performances of various representatives should be made public in order to enhance public awareness thereby facilitating the recall process. If such cautions are undertaken while formulating a recall process for India, we can minimise the risk posed by recall and benefit from being not led by corrupt, unworthy officials.