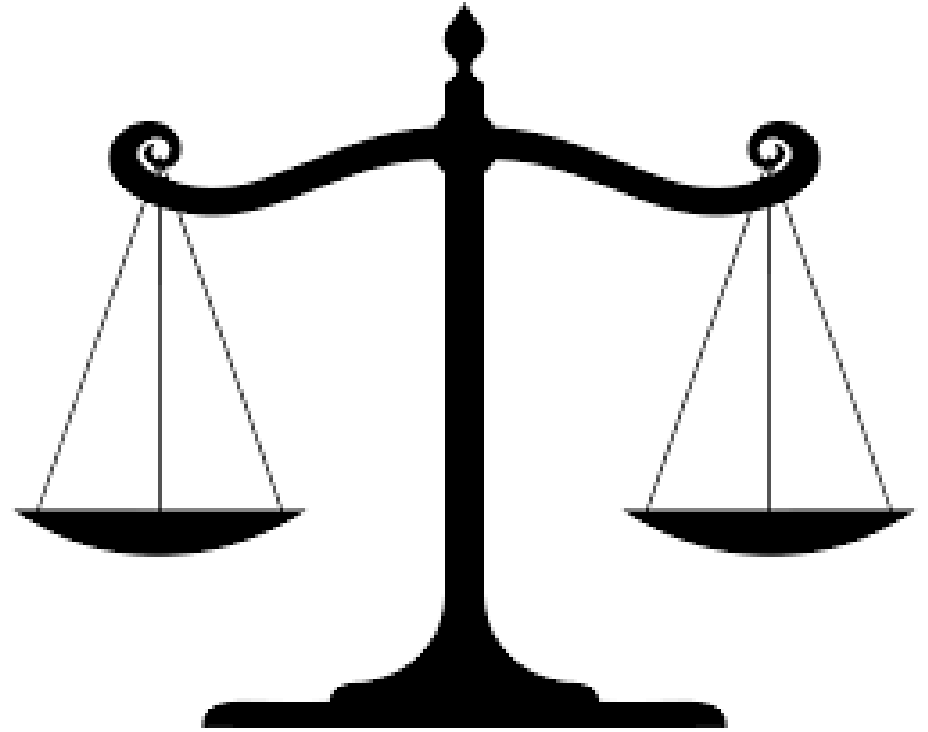


Lis pendens – Enabling an informed Choice for the Buyer

Countless innocent purchasers of immovable properties are being cheated by unscrupulous land mafias all over the State, and particularly in major cities and other urban areas. Our legal provisions are very weak, and though the middle class and poor buyer of property pays a substantial stamp duty and registration fee running into vast sums, the title of land is not guaranteed. A middle class or poor family invests their lifetime's savings in purchasing valuable immovable property. When such a property is found to be involved in litigation, or the seller has already sold it to another buyer, or the seller is not a bonafide owner of the property, the innocent buyer is subjected to enormous hardship, anxiety, litigation, and potential loss of lifetime's savings.

At present the amount collected through the stamp duty and registration fee as per 2016-17 budget is estimated at Rs 5,180 Crores. Unfortunately, the innocent buyer in most cases is not even aware of any pending litigation in respect of the land. The 2006 Bhu Bharathi land survey programme taken up as pilot project in Nizambad in the erstwhile united Andhra Pradesh has raised the expectations of all stake holders, including the poor buyers of immovable properties, realty promoters and banks who lend substantial funds on the basis of documents. However the programme has failed to take off and people's expectations were dashed. It is estimated in a study conducted by National Institute for Smart Government that 28% of the lands in peri-urban areas are affected by land disputes and the litigants end up spending about Rs.750 crores per annum without an end in sight. The Government which collects substantial sums from the public by way of stamp duty and registration fee has got a bounden duty to protect and reinforce the title to the properties purchased by unwary public.



The recent decisions of the Andhra Pradesh and Telangana governments to digitize and make land and revenue records accessible for verification by the banks and simplify the loan disbursal process to help the farmers and to amend the Registration Act to prevent the menace of double registration are positive steps to ensure transparency of property transactions.

Dr. Jayaparakash Narayan, recently wrote letters to the Chief Ministers of Andhra Pradesh and Telangana stressing the need for a mechanism for prospective purchasers of immovable property to verify whether a property is subject to any pending suit, decree or an attachment on the lines of the states of Maharashtra and Gujarat who through a State amendment to Sec 52 of The Transfer of Property and the Indian Registration (Bombay Amendment) Act, 1939 have facilitated registration of the notice of *lis pendens* so that the office of sub-registrar will disclose to the prospective buyer whether there are any pending litigation along with other encumbrances over the respective property. ■

Simultaneous Elections – Desirable but not sufficient!

-Surya

The debate on the desirability of simultaneous elections for the Lok Sabha and the State Assemblies was revived recently by the comments made by the Hon'ble PM. Although, it was only mentioned as a desirable change, it is one of the most important reforms which should be considered by both the government and the civil society.

Post-Independence, India as a whole has gone for elections only four times i.e. during 1951-52, 1957, 1962 and 1967. Later, due to various reasons, such as invocation of Article 356 of the Indian constitution (President's rule) in the states, etc., this cycle was broken and since then atleast one state has gone for elections every year. Even in the 2014 general elections, only five states (AP, Telangana, Arunachal Pradesh, Sikkim and Odisha) went for voting simultaneously with the Lok Sabha. Illogically, another four states (J&K, Maharashtra, Haryana and Jharkhand) as well have voted in the same year but during different months.



These non-synchronous elections have led to mis-governance, competitive populism, huge fiscal burden on the exchequer, unaccounted expenditure fuelling corruption and overburdened government staff. Simultaneous elections are one of the necessary but not sufficient steps to address these issues. We need to look beyond to firstly ensure that the synchronicity endures and secondly to achieve the larger goal of creating conditions to ensure good governance.

Last year, The Rajya Sabha Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice has invited suggestions from the civil society on the same matter. FDR, as a part of the larger agenda of advocating for political and electoral reforms has submitted its suggestions to the committee focussing not merely on conduction of elections but also on making them sustainable.

In general, from Panchayat to Parliament the people are voting for or against the state government - voters see state as the true political unit. At the State level, dependence of chief ministers on support of MLAs for survival and the enormous illegitimate expenditure for vote-buying are undermining governance. In our current model where the executive is formed from the legislature, this problem would persist. Hence, there is a need for clear separation of powers i.e. the head of government in states is elected directly by the

people for a fixed term of five years and s/he should have the choice of cabinet. Then, the government's survival would no more be dependent on the MLAs support. This can ensure stability, good governance and effective delivery in states.

Such a model is not suitable at the national level given our diversity, vastness, and complexity. Hence the present Westminster model suits best. But the past experiences of coalition governments due to rise in the number of regional parties, show us that stability of the government could always be an issue. One way to reduce this uncertainty is through constructive no-confidence. Under constructive no-confidence, a government can be unseated in Lok Sabha only

if an alternative government with majority support is feasible. This will guarantee stability and ensure that the Lok Sabha will run its full term. There will be no occasion for midterm polls. Germany has a similar provision.

Frequent bye elections due to a few seats falling vacant is another issue which needs due attention. These elections cause enormous dislocation of administration and disruption of governance. Democracies in the West follow different models to fill vacant seats. In the US, the state governor can appoint a candidate for the seat on temporary basis and in a few cases from a list of three candidates nominated by the party that held the office vacated. In nations with proportional representation such as Germany, etc., a vacancy is filled by appointing the next person drawn from the list of candidates of the party to which the earlier member belongs. Similarly, in India too we can make provisions to fill these seats by the way of appointment by governor of that particular state or by elections in which the representatives of the local governments (panchayats/municipalities) who belong to the same constituency vote to fill the seat.

Every matured democracy has evolved over time by reforming its institutions and processes. India too, has evolved in its past 69 years, but much is left to be desired. More than 80 crore people participate in the election process, making it the largest democracy in the world and the number is set to grow. The time is now ripe to revisit the fundamentals of our democracy and restructure our electoral and political structures to enhance credibility, efficacy and public good. ■