

Should States have their own flags?

It is clear that there is no prohibition under the Constitution to hoist any flag other than the national flag. File

The committee constituted in Karnataka to design a flag for the State is said to have finalised a design. The flag is reportedly a tricolour, modifying the popular yellow and red one seen in the State. Since the proposal has given room for questioning the legal sanctity of such an exercise by the State government, it is appropriate to ask: do existing laws prevent this? The answer is no.

Under the Constitution, a flag is not enumerated in the Seventh Schedule. However, Article 51A ordains that every citizen shall abide by the Constitution and respect its ideals and institutions, the national flag, and the national anthem. There is no other provision regulating hoisting of flags, either by the States or by the public. It is clear that there is no prohibition under the Constitution to hoist any flag other than the national flag.

Parliament has framed legislation regulating the hoisting of the national flag. One is the Emblems and Names (Prevention of Improper Use) Act, 1950. The other is the Prevention of Insults to National Honour Act, 1971. In the former, the statutory prohibition is only against “use for any trade, business, calling or profession, or in the title of any patent, or in any trademark of design, any name or emblem specified in the Schedule”. Under the 1971 Act, there is no prohibition against any State hoisting its own flag. What is prohibited under this Act is insulting the national flag by burning it, mutilating it, defacing it, etc.

No prohibitions in law

Even the Flag Code of India, 2002 does not impose prohibitions on a State flag. On the contrary, in the provisions regarding hoisting of the national flag by the general public, private organisations, educational institutions, etc., the Code expressly authorises the flying of other flags under the condition that they should not be hoisted from the same masthead as the national flag or placed higher than it. By implication, the Code provides space for a State flag as long as it does not offend the dignity and honour of the national flag. Similarly, the Code explicitly authorises (with restrictions) the flying of flags of other countries and also the flag of the United Nations. When flags of other countries are allowed to be flown along with the national flag, the above provisions cannot be read as imposing a prohibition on having or flying a State flag.

In India, State boundaries are demarcated on the basis of linguistic homogeneity. This has naturally generated aspirations in the States for promoting their own languages and cultures. It is, therefore, natural for them to have symbols to recognise, protect and promote their own languages and cultures. A flag, which is both a benediction and a beckoning, serves this purpose better than any other symbol.

Having a separate flag is not going to be an affront to national integration. On the contrary, a separate flag for each State would strengthen the federal structure and serve as a symbol for a much more specific identity.

In India, even the Army, Navy, Air Force, and paramilitary forces have separate flags. They use these regularly in all their official functions, in national parades, and on Republic Day.

A democratic right

All the 50 States in the U.S. have separate and distinct flags, apart from the national flag. In the U.K., the political units of England, Scotland, Wales, and Northern Ireland have their own flags without offending or affecting the integrity of the U.K. Karnataka is justified and constitutionally empowered to adopt its own flag to uphold the pride of the State without infringing the law. Democracy and federalism are essential features of the Constitution and are part of its basic structure. It is the democratic right of Karnataka to assert its identity through a separate name, emblem and flag.

Ravivarma Kumar is a former Advocate General of Karnataka and a senior advocate

The Constituent Assembly discussed the federal question in great detail, including the symbolic diversities of federal units. The emphasis of the founding fathers was on sustaining and encouraging those markers of diversity that were considered to be in sync with the concept of an organic unity, regarded as the ideal for the newly founded republic. In fact, even linguistic diversity, which eventually emerged as the pivotal marker of delineating internal boundaries, in the end was internally contested — the Marathi-speaking areas of Karnataka were discontented, for instance. So, to further complicate this by envisaging a separate flag for a State would be to open a Pandora's Box. It would likely lead to a demand for subregionalism in most States. This would weaken the idea of fraternity, which is enshrined in the Constitution and lies at the heart of the idea of citizenship.

India is not a federation

People argue that other countries have different flags. What has to be noted here is that India's trajectory as a polity is different from that of other countries, in the sense that despite being a federal republic, India was conceived of as a union of States and not as a federation. Therefore, these federal units cannot aspire to have distinct political symbols that compete with national political symbols; the markers of cultural diversity are already given suitable representation. Political symbolism has a unity of purpose which has served India well in the last 70 years. There is no compelling argument in favour of changing it. Therefore, to demand separate flags is tantamount to tampering with the foundational values of the republic.

The *S.R. Bommai v. Union of India* (1994) judgment, which is being cited to make the case for a separate flag for States, revolved around arbitrary actions of the Union against the States and provided a much-needed safeguard to them. It should not override the values enshrined in the Constitution unless there is a compelling case that something fundamental has gone wrong. Jammu and Kashmir is an exception; it cannot be made a rule.

Those countries with separate political identities like flags, dual citizenship, and State constitutions have followed a different trajectory from that of India. In the U.S., as the constituents were separate entities before they decided to form a federation, it is understandable that they were allowed their own political identities. The emergence of the U.S. as a republic was thus the outcome of the collective bargaining of all the federal units.

For a strong Centre

In India's case, the founding fathers were conscious of the weaknesses of this model. This aspect was deliberated on and a conscious decision with overarching consensus was taken to depart from the Government of India Act, 1935, which had envisaged a loose federation. Of course, the Partition, which had opened up many fault lines, also played an important role in convincing the founding fathers that India needed a strong Centre.

Against this backdrop, the demand to have a separate flag for any State is based on the logic of electoral incentives rather than a principled and well-considered argument. It not only goes against the constitutional vision but also against the very idea of India.

As told to Anuradha Raman

Ravi K. Mishra is deputy director of the Nehru Memorial Museum and Library

The strong and righteous indignation over the idea of States having flags of their own and the equally staunch support for the idea point to two very different conceptions of how to build Indian nationalism. And the extreme positions taken after the efforts of the Karnataka government to give the State its own flag should serve to bring this larger debate on the making of Indian nationalism to the fore.

Underlying the indignation is the belief that territorial loyalties are unitary in nature and the development of one territorial identity, say, around States, will erode other territorial identities, particularly those built around the nation. In this view, nationalism is quite apart from everyday life and has to be cultivated separately. It has to be taught in schools and enforced by the law. Such nationalism necessarily sees regionalism as a threat, especially when it goes so far as to claim a flag of its own.

The meaning of nationalism

This view of nationalism is riddled with contradictions. It demands that the majority will determine the nationalism that is taught, but expects the minorities to be loyal to it. The separation of nationalism from everyday life also leads to Hindu nationalists in the U.S. spending time and money in support of the staunchly Indian nationalist programmes of Prime Minister Narendra Modi, even as they return the next day to seeking U.S. citizenship, if they do not already have it. It is also perfectly fine for British citizens of Indian origin to cheer for the Indian cricket team, but god forbid anyone in India cheering any other team.

The other approach to building Indian nationalism is much more closely linked to everyday life. This view recognises that in the course of a person's everyday life, she would develop associations that go beyond herself. It could begin with loyalty to her family but that could soon extend to her community, state, and nation. At the heart of this understanding is the idea that nationalism requires individuals to look beyond their immediate self-interest to the interest of the nation. And any effort to look beyond their self-interest is a stepping stone to thinking about the nation. Celebrating all the social loyalties a person comes across in her everyday life is a way of preparing her for the selflessness that nationalism can demand. A flag for her State is then a step towards building nationalism, not one away from it.

No contradictions

This conception of nationalism as the pinnacle of all identities, and not necessarily competing with other identities, is consistent with what we see in the everyday happenings around us. It recognises that there is absolutely no contradiction between fans cheering the Karnataka cricket team one day and the Indian team the next. Indeed, during the Indian Premier League, they can even develop loyalties to players from other countries who belong to their city cricket teams but that support does not extend to the international teams that these players are part of.

The challenge then is not to cut out other identities but to help create an hierarchy of loyalties that

helps strengthen the Indian nation. Such an approach would require us to develop not just State identities but also those at a sub-State level. The Karnataka flag would have to recognise not just the dominant Kannada identity but also other smaller identities within the States, such as those of the Kodavas or the Tulus. The flying of flags could then reflect this hierarchy with the national flag on top, followed by State flags, and then by smaller regional flags.

Narendar Pani is Professor, School of Social Sciences, National Institute of Advanced Studies

Marriage is a civil contract — adultery or divorce should have only civil consequences

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com

crackIAS.com